

Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Monday, June 12, 2017

10:00 AM to 4:00 PM

State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	Call to Order Introductory remarks	<i>Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs</i>
Item no. 2	Approval of the April 28, 2017 meeting minutes	<i>Justice Berch and Judge Armstrong</i>
Item no. 3	Workgroup reports: <ul style="list-style-type: none">- Workgroup 1: Rules 6 (including 6.1), 9, 10*, and 12- Workgroup 2: Rules 39 and 43*- Workgroup 3: Rules 57, 58, 60, 61, 62, 63, and 64- Workgroup 4: Rules 85 and 91* <p>*Excluding proposed Rules 10.1, 43.1, and 91.1 through 91.7</p>	<i>Ms. Henderson, Ms. Burns, Judge Cohen, Mr. Woodnick</i> <i>Mr. Pollitt, Ms. Clark</i> <i>Mr. Wolfson, Judge Swann, Mr. Aaron</i> <i>Mr. Berkshire, Judge McMurdie, Ms. Davis</i>
Item no. 4	Roadmap <ul style="list-style-type: none">- Next four meeting dates: Friday, July 14, 2017 [Room 119] Friday, August 4, 2017 [Room 119] Friday, August 25, 2017 [Room 345] Friday, September 29, 2017 [Room 119]	<i>Justice Berch and Judge Armstrong</i>
Item no. 5	Call to the Public Adjourn	<i>Justice Berch</i>

The Chairs may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Karla Williams at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

Task Force on the Arizona Rules of Family Law Procedure

State Courts Building, Phoenix

Meeting Minutes: April 28, 2017

Members attending: Hon. Rebecca Berch (Chair), Hon. Mark Armstrong (Co-Chair), Michael Aaron (by telephone), Hon. John Assini (by telephone), Keith Berkshire, Annette Burns, Cheri Clark, Hon. Suzanne Cohen, Helen Davis by her proxy Therese McElwee, Hon. Karl Eppich, Joi Hollis, Hon. Paul McMurdie, Aaron Nash, Jeffery Pollitt, Janet Sell by her proxy Holly Wan, Gregg Woodnick

Absent: Hon. Dean Christoffel, Mary Boyte Henderson, Kiilu Davis, Steven Serrano, Hon. Peter Swann, Steven Wolfson

Guests: None

Administrative Office of the Courts Staff: Mark Meltzer, Karla Williams, Sabrina Nash

1. Call to order; introductory remarks; approval of meeting minutes. The Chair called the third Task Force meeting to order at 10:01 a.m. She welcomed the members and introduced the proxies. The Chair advised that workgroups have met 7 times since the March 20 Task Force meeting, and she thanked the members for their diligence. But she observed that even if the Task Force completed all of the rules on today's agenda, it then would be less than a quarter of the way through the rules. Moreover, the rules completed so far are easier compared to the remaining ones. She requested that workgroups strive to prepare more rules for Task Force review. Because there are 99 rules, the Task Force needs to review, on average, more than a dozen rules at each meeting.

Judge Armstrong reminded (a) Workgroup 1 to consider pending rule petition R-17-0019 concerning proposed Rule 23.1; and (b) Workgroup 3 to consider pending petition R-17-0017 regarding proposed Rule 67.2.

During the call to the public at the March 20 Task Force meeting, a public member suggested that proposed Rule 22 concerning the conduct of proceedings should say that parents cannot expose their children to conflict and are prohibited from making disparaging remarks to their children about the other parent. Staff thereafter located documents used in three different counties that bear on this subject, which were posted on the Task Force meeting information webpage.

The first document was a notice from the Pima County Superior Court that says in part, "You are required to complete a course in Domestic Relations Education on Children's Issues (Parent Education)...if you have natural or adopted minor children

with the other party....You must attend the course within 45 days of filing a petition [or] being served with a petition...." Attendance is required under A.R.S. § 25-352.

The second document, from the Maricopa County Superior Court, was entitled "Order and Notice to Attend Parent Information Class." It contained information similar to the Pima notice, but it explicitly says, "This is an official court order. If you fail to obey this order, the court may find you in contempt of court." The notice portion of this document says that "the purpose of the program is to give parents information about how children are affected by matters that involve family courts."

The third document was a standard form parenting plan used in Maricopa County. It requires the signatures of both parties. Section I of the plan ("additional arrangements and comments" at page 8) includes agreements to "praise the other parent" ("encourage love and respect between the minor children and the other parent, and [not] do anything that may hurt the other parent's relationship with the minor children"); and to "cooperate and work together...consistent with the best interests of the minor children, and to amicably resolve such disputes as may arise."

The fourth document, a single page, is from the Yavapai County Superior Court. The document lists the goals of parent education, including "helpful and harmful parent behaviors" and "parent conflict and what it does to children."

The Chair accordingly noted that after considering the public comment, the subject addressed by that comment seems to be adequately covered elsewhere, and a rule of procedure on the subject does not appear necessary.

The Chair asked members to review the draft March 20, 2017 meeting minutes, and a member then made this motion:

Motion: To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 003**

2. Discussion of style and substance. The Chair then discussed boundaries of rules restyling, and when it might be appropriate for workgroups to cross the threshold of a substantive rule revision. She referred to Administrative Order 2016-131, which established this Task Force. The Order directed that the Task Force recommend rule revisions "to conform to modern usage and to clarify and simplify language." Judge Armstrong observed that changing the way a rule applies in a court proceeding to conform to modern usage might require a substantive revision. But he noted there may be circumstances when these substantive changes are appropriate and desirable. In those instances, the Task Force should "flag" the change in a comment or prefatory comment, explain how the proposed rule differs from the current one, and provide reasons for the change. The Chair added that it might not be easy to draw a "bright line" on when a substantive change may be necessary, and that members might determine on a rule-by-rule basis when these changes are appropriate. The Civil Rules Task Force drafted rules

that were more comprehensible for self-represented litigants by clarifying and simplifying language, and family rules revisions also should further that objective.

The Chairs then requested workgroups to report their recommendations concerning individual FLR.

3. Workgroup 2. Mr. Pollitt presented three rules on behalf of Workgroup 2.

Rule 36 (“real party in interest”): Mr. Pollitt reviewed the workgroup’s draft. He observed that the workgroup deleted a portion of staff’s proposed provisions, particularly provisions that would conform the FLR to Civil Rule 17. The workgroup believed these provisions, covering topics such as bailees or executors as parties, had minimal application in family law cases. The Assistant Attorney General who was present at the meeting confirmed that the workgroup’s proposed Rule 36(d) (“action in the name of the State for another’s use”) would be applicable in Title IV-D cases. Members agreed with the workgroup’s changes.

Rule 37 (“death, incompetency, and transfer of interest”): Proposed Rule 37(a)(2) includes a provision that says, “if a party dies while a petition for paternity or maternity is pending, the action does not necessarily abate.” Members believed this was appropriate. For example, after a respondent in a paternity action dies, a family court judge still might need to order DNA testing of the respondent, although the case thereafter could become a probate proceeding against the respondent’s estate. However, members also believed that the proposed rule’s recitation that the case “does not necessarily abate” did not adequately address what should happen after the petitioner’s death. The members discussed whether Rule 37(a)(2) should include a reference to a pertinent statute, A.R.S. § 25-805. The statute provides guidance for the court in the event of the “death, absence, or insanity” of the petitioner in a paternity or maternity action. Members agreed these events were not common, but they were not rare either, and accordingly, the court rule should include a reference to this statute. They further agreed that the reference should be located in a comment to Rule 37 rather than in the body of Rule 37.

- Workgroup 2 will prepare a comment for Rule 37 that incorporates the statutory reference.

Rule 38 (“reserved”): Mr. Pollitt noted that the current rule has no text and members agreed that Rule 38 will remain as a “reserved” rule number.

4. Workgroup 4. Mr. Berkshire presented Rules 79 and 82, and Judge Eppich presented Rule 88.

Rule 79 (“summary judgment”): Mr. Berkshire advised that the restyled family rule mirrors newly restyled Civil Rule 56 in most respects, but the workgroup revised a few

items to conform the rule to family law proceedings. Draft Rule 79(b)(3) requires the filing of a summary judgment motion 90 days before “the date set for trial.” The Task Force had previously discussed using the term “hearing” rather than “trial.” One member suggested that “hearing” would be appropriate in Rule 79, but Judge Armstrong suggested dealing with this issue globally, later in the project, rather than on a piecemeal basis now. The draft of Rule 79(c)(4) (“objections to evidence”) initially included language derived from Civil Rule 7.1(f), a rule for which there currently is no FLR analog. However, the workgroup did not believe Civil Rule 7.1(f) language was necessary in Rule 79, and it substantially pared Rule 79(c)(4) to simply say that a party objecting to the admissibility of evidence must raise the objection in a response, reply, or opposing statement of facts.

Members discussed the proposed requirement of a good faith consultation certificate in draft Rule 79(d)(1)(B). The workgroup proposed a provision that corresponds to Civil Rule 7.1(h). Mr. Berkshire suggested that in lieu of locating this provision in Rule 79, members should consider adding an analog to Civil Rule 7.1(h) in the general provisions of the FLR. Relocating the provision would allow its application to multiple family law rules, including rules on motions, discovery, and disclosure. One member supported adopting language in the FLR from Civil Rule 7.1(h), which requires a consultation “in person or by telephone, and not merely by letter or email.” Counsel in family law cases occasionally will contend that a letter or email is sufficient “consultation,” and adding language from the civil rule will clarify that these methods do not suffice. Members agreed it would be beneficial to insert the “good faith” provision in one of the “general” rules at the beginning of the FLR. Judge Armstrong suggested the workgroup might locate this provision within a new Rule 35.1, following Rule 35 on motion practice.

- The Chairs requested Workgroup 1 to draft language for a proposed rule on “good faith consultation.”

However, Judge Armstrong cautioned about applying such a rule to self-represented litigants who might have orders of protection. The rule should apply in cases where both parties are represented, but this cohort constitutes only about ten percent of family cases. Workgroup 1 should also consider how the good faith consultation rule would apply where one party in a case, the party who has the order of protection, is represented, and the opposing party has no counsel.

Rule 82 (“findings and conclusions by the court; judgment on partial findings”): Mr. Berkshire noted that the workgroup removed verbiage in the current rule that makes the draft simpler and clearer. It eliminated in section (a) a sentence that said, “Requests for findings are not necessary for purposes of review.” It also deleted from section (a) specific references to “motions under Rules 32 and 79” because these motions

are subsumed under the phrase “any other motion,” which section (a) retains. Members agreed that the draft was more readable than the current rule and they had no other comments or revisions.

Rule 88 (“judge’s inability to proceed”): Judge Eppich advised that Ms. Sell’s alternative draft of this rule was stylistically different than staff’s, but it was substantively the same. Members concurred with using Ms. Sell’s version. Members agreed that the rule should refer to the successor judge as “the replacement” rather than “the new” judge. The second sentence of the draft begins with the words, “If an adequate electronic record is unavailable,” and members discussed whether the word “electronic” was necessary. It appeared that not all counties have video recordings of proceedings, some have only audio; and in some cases, a replacement judge may not need to review any electronic record. Accordingly, members agreed to delete the word “electronic” from this phrase, and they otherwise agreed with the rule as modified.

5. Workgroup 1. Workgroup 1 presented Rules 11, 14, 23, and 30.

Rule 11 (“attendance of minors”): Mr. Woodnick recalled that at the March meeting, members had requested Workgroup 1 to make additional revisions to this rule. Thereafter, the workgroup modified its use of the words “minor child” and “child” in this rule, and it reorganized section (b). A member said that some practitioners contend the current rule operates to exclude children from testifying as witnesses, and asked the draft rule to address this contention. The members rejected adding to the draft rule the phrase, “unless the child is testifying as a witness,” but they agreed to change the word “present” in sections (a) and (b) to “attending” or “attendance,” which harmonizes the phrasing of the rule with its title. They also agreed to reverse the order of sections (a) and (b), so “exclusion of minors generally” is now the first section, and “attendance of a minor child affected by the proceeding” is the second. Finally, in new section (b), members added the words “affected by the proceeding” after the words “minor child.” Members concurred with this rule as modified.

Rule 14 (“written verifications and unsworn declarations under penalty of perjury”): Mr. Woodnick advised that the workgroup made changes to this rule to make it more readable. In section (a) (“written verification”), the workgroup clarified language and added user-friendly descriptions to cross-referenced rule numbers. In section (b) (“unsworn declarations under penalty of perjury”), the workgroup paid particular attention to making the rule easier for self-represented litigants to understand by removing unnecessary words. Task Force members further streamlined the form of the subscription contained in draft section (b), and eliminated the words “executed on.” Members agreed to the rule’s text after these modifications.

Rule 23 (“beginning an action”): Judge Cohen explained that Rule 23 is the analog of Civil Rule 3. The workgroup removed language in current FLR 23 about a requirement that parties advise the court of their current address, because this requirement should be in a separate general rule concerning duties and conduct of parties. (The requirement to notify the court of an address change also is frequently mentioned in minute entries.) The members considered locating this general rule regarding duties of a party as Rule 21, which currently is “reserved.” (Note that Rule 9 is a separate rule that concerns “duties of counsel.”) Members discussed whether the remaining language of draft Rule 23 (“a family law action begins when a person files a petition with the court”) is redundant to Rule 24; that rule provides in part, “A family law action is commenced by filing a petition with the clerk of the court.”

- The Task Force returned Rule 23 to the workgroup to consider consolidating it with other rules, and for inclusion of a general provision concerning duties and conduct of parties.

Rule 30 (“form of pleading”): Mr. Woodnick noted the workgroup’s suggestion that section (a) (“caption, names of parties”) say that the petition “should” name all the parties, but after discussion, Task Force members changed this to “must” name all the parties. The workgroup removed from its draft version a Latin phrase (“et. al.”) that is in current section (a). Although the workgroup deleted the entire provision of the current rule where this Latin phrase was used, one member suggested it would be beneficial to retain the portion that says it is unnecessary to include the names of all parties in the caption of subsequent filings. In section (b) (“paragraphs, separate statements”), members requested to reinsert the word “numbered” between “separate” and “paragraphs.”

The discussion evolved to whether rules should have different requirements for filings by attorneys and filings by self-represented parties, many of whom file handwritten documents that are marginally compliant with the rules’ formal mandates. Some members contended the rules should not have one standard for counsel, and another standard for pro per filers. Other members believed the rules should not contain pleading requirements that self-represented litigants do not follow, and that judges don’t enforce. And others suggested that there are certain basic requirements, for example, that filers use only one side of the paper, which all filers are obligated to observe. A few members were reticent to adopt in FLR 30 the relatively rigid requirements of corresponding Civil Rule 5.2 (“form of documents”).

- Workgroup 1, which is assigned Rules 24, 30, and related rules, should consider and propose practical responses to the above issues regarding the requirements of court filings.

6. **Roadmap.** The Chair confirmed June 12, July 14, and August 25 as Task Force meeting dates. Because of the number of rules remaining for Task Force review, the Chair also set an additional Task Force meeting for August 4, 2017. If the Task Force makes substantial progress at the next two meetings, the Chair might vacate the August 4 date; but it appears that meeting will be necessary for adequate progress toward the January deadline for filing a rule petition. She encouraged workgroups to review their rules as soon as practicable so the Task Force has a reasonable time to consider each rule.

By a show of hands, the Task Force should have a quorum for the June 12 meeting.

7. **Call to the public; adjourn.** There was no response to the Chair's call to the public.

The meeting adjourned at 1:38 p.m.

Rule 6. Change of Judge as a Matter of Right

- (a) Generally.** In each action, whether single or consolidated, each party is entitled as a matter of right to a change of one judicial officer.
- (b) Notice Requirements.** A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:
- (1) *Written Notice.*** A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(c). The notice must contain:
 - (A)** the name of the judge to be changed;
 - (B)** a statement that:
 - (i)** the notice is timely under Rule 6.1(c);
 - (ii)** no waiver has occurred under Rule 6.1(d); and
 - (iii)** the party has not been granted a change of a judge as a matter of right previously in the action. The notice cannot specify grounds for the change of judge.
 - (2) *Oral Notice.*** An oral request for change of judge must include the information required by Rule 6.1(b)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the requesting party’s name, and the judge’s disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 6.1(a). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.
- (c) Time Limits.** A party is precluded from obtaining a change of judge as a matter of right unless the party files a timely notice.
- (1)** The notice must be filed 60 or more days before a scheduled contested hearing or trial.
 - (2)** If a new judge is assigned within 60 days of a scheduled contested hearing or trial, a notice is timely filed as to the newly assigned judge if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.

- (3) If a party has received less than 10 days' notice of a proceeding or the assignment of the judge, the party must file a notice at least 3 days before the proceeding.
- (4) If a party has received less than 5 days' notice of a proceeding or a judge assignment, the party may file a notice of change of judge at any time before the proceeding begins.
- (5) If the right to a change of judge is renewed under Rule 6(e), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under ARCAP 24.

(d) **Waiver.** A party waives the right to change a judge assigned to preside over any proceeding in the action, if:

- (1) the party agrees to the assignment;
- (2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;
- (3) a resolution management, scheduling, pretrial, or similar conference begins; or
- (4) a scheduled contested hearing or trial begins.

(e) **Actions Remanded from an Appellate Court.** In actions remanded from an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:

- (1) if the appellate decision requires a new trial; and
- (2) the party seeking a change of judge has not previously exercised its right to a change of judge in the action.

(f) **Procedures on Notice.**

- (1) ***On Proper Notice.*** If a notice is timely filed and no waiver has occurred, the judge named in the notice should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss, or damage from occurring before the action can be transferred to another judge. If the named judge is the only judge in the county, that judge may also reassign the case.
- (2) ***On Improper Notice.*** If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge may proceed with the action.
- (3) ***Reassignment.***

(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing if they have agreed on an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness, or other incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.

(B) *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.

Rule 6.1. Change of Judge for Cause

(a) **Definitions.** The term “judge” as used in this rule refers to any judge, judge pro tem, or court commissioner. The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge’s designee.

(b) **Grounds.** A party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. § 12-409.

(c) **Filing and Service.** The affidavit must be filed and copies served on the parties, the presiding judge, the noticed judge, and the court administrator, if any, by any method provided in Rule 43(c).

(d) **Timeliness and Waiver.** A party must file an affidavit seeking a change of judge for cause within 20 days after discovering that grounds exist for a change of judge. Case events or actions taken before that discovery do not waive a party’s right to a change of judge for cause.

(e) **Hearing and Assignment.** If a party timely files and serves an affidavit complying with A.R.S. § 12-409:

(1) Within 5 days after the affidavit is served, any other party may file an opposing affidavit or a responsive memorandum of no more than two pages. No reply memorandum or affidavits are permitted unless authorized by the presiding judge.

(2) The presiding judge may hold a hearing to determine the issues raised in the affidavit, or may decide the issues based on any affidavits and memoranda filed by the parties.

- (3) On filing of the affidavit for cause, the named judge should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable harm from occurring before the request is decided and the action transferred. However, if the named judge is the only judge in the county, that judge may also perform the functions of the presiding judge.
- (4) The presiding judge must decide the issues by the preponderance of the evidence. Under A.R.S. § 12-409(B)(5), the sufficiency of any “cause to believe” must be determined by an objective standard, not by reference to the affiant’s subjective belief. If grounds for disqualification are found, the presiding judge must promptly reassign the action. Any new assignment must comply with A.R.S. § 12-411.
- (5) If the court determines that the party who filed the affidavit is not entitled to a change of judge, the named judge may proceed with the action.

Rule 9. Duties of Parties or Counsel

(a) **Current Address.** Parties or counsel must keep the court informed of their current mailing addresses, email address, and telephone number.

(b) **Responsibility to the Court.** Each party or counsel is responsible for knowing the status of their case. Each party or counsel is required to inform the court of any material fact affecting their case.

(c) Good Faith Consultation Certificate.

(1) **Generally.** When these rules require a “good faith consultation certificate,” the certificate must demonstrate that a party has tried in good faith to attempt to resolve the issue. The consultation or attempted consultation required by this rule must be in person or by telephone, and not merely by letter or email.

(2) **Protective Order.** If there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties are not required to personally meet or contact each other in violation of the court order, but the parties or their counsel must take reasonable steps under the circumstances to consult in good faith.

(d) Appearance, Withdrawal, and Substitution of Counsel.

(1) Attorney of Record; Duties of Counsel.

(A) **Appearance Required.** Counsel may appear as attorney of record by filing a document—including a notice of appearance, petition, response, motion to quash, notice of association of counsel, or notice of substitution of counsel—that identifies counsel as the attorney of record for a party. Counsel may not file anything in any action or act on behalf of a party in open court without appearing as attorney of record.

(B) **Duties.** Once counsel has appeared as attorney of record in an action, counsel is responsible for all matters involving the case until counsel withdraws or is substituted.

(2) Withdrawal and Substitution.

(A) **Motion to Withdraw as Counsel.** A motion to withdraw as attorney of record must be in writing, state the reasons for the withdrawal, and set forth the client’s address and telephone number. Additionally:

(i) If the motion bears the client’s written approval, it must be accompanied by a proposed written order and may be presented to the court *ex parte*. The

withdrawing attorney must give prompt notice of the entry of such order, together with the client's name and address, unless protected, to all other parties.

(ii) If the motion does not bear the client's written approval, it must be served on the client and all other parties. The motion must be accompanied by a certificate of the moving attorney that the client has been notified in writing of the status of the action (including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions), or that the client cannot be located or cannot be notified of the motion's pendency and the case status.

(B) *Withdrawal After Trial Setting.* No attorney will be permitted to withdraw as attorney of record after a trial date is set, unless:

(i) the application includes the party's signed statement that the party is aware of the trial date and has made suitable arrangements to be prepared for trial; or

(ii) the attorney seeking withdrawal shows good cause for allowing the attorney to withdraw even though the action has been set for trial.

(C) *Substitution of Counsel.* Counsel may be substituted upon written notice to the Court and all parties bearing the written consent of the represented party. The notice must affirm that the substituting attorney is advised of all pending court dates and has made suitable arrangements to be prepared. The notice must be accompanied by a form of order approving the substitution.

(D) *Change of Counsel Within the Same Firm or Office.* If there is a change of counsel within the same law firm or governmental law office, an order of substitution or association is not required. Instead, the new attorney must file a notice of substitution or association. The notice must state the names of the attorneys who are the subjects of the substitution or association and the current address and email address of the attorney substituting or associating.

(e) Limited Scope Representation.

(1) *Scope.* In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake a limited scope representation of a person involved in any court proceeding.

(2) *Notice.* An attorney undertaking a limited scope representation may appear by filing and serving a Notice of Limited Scope Representation in a form substantially as prescribed in Rule 97, Form 1.

- (3) **Service.** Service on an attorney who has undertaken a limited scope representation on behalf of a party will constitute effective service on that party under Rule 43(c) with respect to all matters in the action, but will not extend the attorney's responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.
- (4) **Withdrawal.** Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as provided in Rule 9(d)(2).

Rule 10. Representation of Children

(a) Appointment of a Child's Attorney and Best Interests Attorney. The court may appoint one or more of the following on behalf of a minor child:

- (1) a best interests attorney; or
- (2) a child's attorney.

(b) Grounds. The court may appoint an attorney to represent a child in a family law case under A.R.S. § 25-321 for any reason the court deems appropriate.

(c) Qualifications. The court may appoint a child's attorney or best interests attorney only if the attorney is qualified through training or experience in the type of proceeding in which the appointment is made, as determined by the court. The attorney should be familiar with the American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases.

(d) Appointment Order. The order appointing an attorney must include:

- (1) a clear statement of the reasons for the appointment;
- (2) the duration of the appointment;
- (3) the attorney's compensation, and an allocation of fees and expenses between the parties;
- (4) language authorizing the attorney to have immediate access to the child;
- (5) language authorizing the attorney to have immediate access to any privileged or confidential information and records relating to the child;
- (6) language requiring a custodian of any of the child's records to provide the appointed attorney with access to those records.

(e) Participation. An attorney appointed under this rule:

- (1) must participate in the proceeding to the same extent as an attorney for any party;
- (2) may not engage in ex parte contact with the court except as authorized by law other than this rule;
- (3) may not be compelled to produce the attorney's work product developed during the appointment;
- (4) may not be required to disclose the source of information obtained as a result of the appointment;

(5) may not submit a report into evidence; and

(6) may not testify in court.

(f) Appointments from Juvenile Dependency Rosters. The court may not appoint a best interests attorney or a child's attorney from a State or county-funded juvenile dependency roster unless the court finds that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.

Rule 10.1. Court-Appointed Advisor

(a) Generally. For any reason the court deems appropriate, the court may appoint a qualified individual as a court-appointed advisor.

(b) Qualifications. An individual is qualified if he or she has training or experience in the type of proceeding in which the appointment is made, and meets and complies with A.R.S. § 25-406. The court-appointed advisor should be familiar with the Uniform Law Commission's Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act.

(c) Appointment Order. The appointment order must include:

(1) a clear statement of the reasons for the appointment;

(2) the duration of the appointment;

(3) the advisor's compensation, and an allocation of fees and expenses between the parties;

(4) language authorizing the advisor to have immediate access to the child;

(5) language authorizing the advisor to have immediate access to any privileged or confidential information and records relating to the child;

(6) language requiring a custodian of any of the child's records to provide the appointed advisor with access to those records.

(d) Participation. A court-appointed advisor:

(1) may not engage in ex parte contact with the court except as authorized by rule or court order;

(2) may not make opening and closing statements, examine witnesses, or engage in discovery; and

(3) is subject to deposition and may testify at a hearing;

- (4) if the advisor is an attorney, may take only those actions that a court-appointed advisor who is not an attorney may take.
 - (5) must submit a report concerning the court-appointed advisor's recommendations regarding the child's best interests and the basis for those recommendations, as provided by A.R.S. § 25-406. [end here, 05.22.17]
- (e) **Right to Call Advisor as a Witness.** In a proceeding, a party, including a child's attorney or best interests attorney, may call as a witness and cross-examine a court-appointed advisor regarding the advisor's report, even if the party did not list the advisor as a witness. [Note: Is this the practice, to call someone not listed as a witness?]
- (f) **Limits on Attorney Disclosures and Testimony.**
- (1) **Generally.** An attorney appointed as child's attorney or best interests attorney may not:
 - (A) be compelled to produce the attorney's work product developed during the appointment;
 - (B) be required to disclose the source of information obtained as a result of the appointment;
 - (C) submit a report into evidence; or
 - (D) testify in court.
 - (2) **Exception.** The limits in (f)(6) do not alter an attorney's duty under applicable law to report child abuse or neglect.
- (g) **Fees and Expenses in Custody Proceedings.** The court may allocate fees and expenses between the parties in custody proceedings as it deems appropriate.
- (h) **Appointments from Juvenile Dependency Rosters.** The court may not appoint a best interests attorney, a child's attorney, or a court-appointed advisor from a State or county-funded juvenile dependency roster unless the court finds that a child may be the victim of child abuse or neglect as defined in A.R.S. § 8-201.
- (i) **Minors and Incompetent Persons.** If a minor or incompetent person has a court-appointed representative or a representative authorized by Title 14, Chapter 5, Arizona Revised Statutes [A.R.S. §§ 14-5101 et seq.][JWR Note: Bracketed material is shown as an alternative to the clunky reference to statutory titles], the representative may act on behalf of the minor or incompetent person to the extent allowed by the court's appointment order or under Arizona law. The court may not appoint a guardian to act on behalf of the minor or incompetent person except as provided in

Title 14, Arizona Revised Statutes[A.R.S. §§ 14-5201 et seq. and A.R.S. §§ 14-5301 et seq.].

COMMITTEE COMMENT [AMENDED 2007]

The American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases, adopted August 2003, provides guidance to the court, counsel, and litigants about the appointment of attorneys for children. The Standards include suggestions about when and how an attorney should be appointed, and in which capacity, and detail what the attorney’s responsibilities are to the court and the client.

A court-appointed advisor shall not function as an attorney but shall independently investigate the case and make recommendations to the court. The National Conference of Commissioners on Uniform State Laws 2005 draft of the Representation of Children in Abuse and Neglect and Custody Proceedings Act provides guidance to the court, court-appointed advisors and litigants about the appointment of court-appointed advisors, as well as their role and responsibilities.

Paragraph H is based on Rule 17(g), Arizona Rules of Civil Procedure

Rule 12. Court Interviews of Children

- (a) **Generally.** On a party's motion or on its own, the court may conduct an *in camera* interview with a minor child who is the subject of a legal decision-making or parenting time dispute to ascertain the child's preferences as to both.
- (b) **Definition of "Court."** As used in this rule, "court" includes any Conciliation Services department, agency, or other third-party professional ordered by the assigned judge to conduct a child interview under A.R.S. § 25-405 or these rules.
- (c) **Record of the Interview.**
1. **Generally.** Upon request, the court must record the interview, either by having a court reporter transcribe it or by recording it through another retrievable and perceivable electronic medium. The court must advise the parties of their right to request a recording of the interview when it enters the order, and a party must file a request or make a request on the record within 5 days after entry of the order.
 2. **Sealing.** For good cause and after considering the child's best interests, the court may seal part or all of the record of the interview.
 3. **Availability to the Parties.** The parties may stipulate that the court not provide them with a record of the interview. If a party makes a request for recording, the court must make the record available to the parties no later than 14 days before the hearing at which the court will consider the interview, unless the court finds good cause for a different deadline.

COMMENT

Generally, the court should not conduct an *in camera* interview of a child under this rule unless it finds that the child is of sufficient age and intellectual capacity to reason and form an intelligent preference as to legal decision-making and parenting time. The court is strongly encouraged to utilize other resources, where available and appropriate, to ascertain that preference. In particular, a court should proceed with caution when interviewing a child in any case in which a party has alleged "domestic violence" as defined in [Ariz. Rev. Stat. §§ 13-3601\(A\)](#) and [25-403.03\(D\)](#), or "abuse" as defined in [Ariz. Rev. Stat. § 8-201\(2\)](#).

~~Rule 39. Proof of Authority by Attorney for Respondent Not Personally Served~~

~~In family law actions, an attorney appearing for a respondent who has not been personally served shall file a responsive pleading or a notice of appearance.~~

~~COMMITTEE COMMENT~~

~~This rule is adapted from [80\(f\), Arizona Rules of Civil Procedure](#).~~

Rule 39. [Reserved]

NOTE: The Supreme Court deleted Rule 80(f) in September 2008.

NOTE: Rule 9(d)(1)(A) covers the Notice of Appearance.

Rule 43. Serving Pleadings and Other Documents [**Note:** Draft Rule 43 includes only sections (a), (b), and (c) of current Rule 43, which concern service. Like the Civil Rules, which has separate Rules for “service” and “filing,” a new proposed Rule 43.1 governs “filing.”]

(a) Service Generally.

- (1) **Scope.** Rule 43 governs service on other parties after service of the summons, petition, and response. [Add order to appear?] Rules 41 and 42 govern service of petitions for contempt.
- (2) **When Required.** Unless otherwise provided, the following documents must be served as required by Rule 43(b):
 - (A) an order stating that service is required;
 - ~~(B) a pleading filed after the original petition;~~
 - (C) a discovery or disclosure document required to be served on a party, unless the court orders otherwise;
 - (D) a written motion, except one that may be heard ex parte; and
 - (E) a written notice, appearance, demand, or any similar document. [**Note:** The current rule includes “offer of judgment,” but this is omitted from the draft.]
- (3) **If a Party Fails to Respond to the Petition.** No service is required on a party who fails to respond to a petition, except as provided in Rules 44 and 44.1. A pleading asserting a new claim for relief against such a party must be served on that party under Rule 40, 41, or 42, as applicable.
- ~~(4) **Seizing Property.** If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.~~

(b) Service After Service of the Summons, Petition, and Response

- (1) **Serving an Attorney.** ~~Petitions for contempt, orders of protection, and injunctions against harassment must be served under Rules 41 and 42.~~ If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders otherwise or a specific rule requires service on the party.
- ~~(2) **Personal Service Required.** Petitions for contempt, orders of protection, and injunctions against harassment must be served under Rules 41 and 42.~~

(3) **Service Generally.** A document is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it by U.S. mail or other national courier service to the person's last-known address—in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in Rule 43(b)(3)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

(4) **Certificate of Service.** The date and manner of service must be noted on the last page of the original of the served document or in a separate certificate, in a form substantially as follows:

A copy has been or will be mailed/mailed/hand-delivered [select one] on [insert date] to:

[Name of opposing party or attorney]

[Address of opposing party or attorney]

If the precise manner in which service has actually been made is not so noted, it will be presumed that the document was served by mail. This presumption will only apply if service in some form has actually been made.

(c) **Service After Judgment.** After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, or other pleading requesting to modify, vacate, or enforce that judgment must be served in the same manner that a summons and pleading are served under Rule 40, 41, or 42, as applicable.

(c) ~~Service Numerous Defendants.~~ **[Note:** this provision is not in current Rule 43.]

- (1) ~~**Generally.** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:~~
- ~~(A) defendants' pleadings and replies to them need not be served on other defendants;~~
 - ~~(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and~~
 - ~~(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.~~
- (2) ~~**Notifying Parties.** A copy of every such order must be served on the parties as the court directs.~~

Rule 43.1. Filing Pleadings and Other Documents [New] [Note: Current Rule 43(d) is the starting point of this proposed new rule.]

- (a) **Filing with the Court Defined.** The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.
- (b) **Effective Date of Filing.**
- (1) **Generally.** Except for documents submitted directly to a judge under Rule 43.1(a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.
 - (2) **Documents Submitted Directly to a Judge.** If a document is submitted directly to a judge under Rule 43.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.
 - (3) **Late Filing Because of an Interruption in Service.** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

(4) ***Incarcerated Parties.*** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

(c) **Limits on Access to Filed Documents.** If proscribed by local rule or an administrative order by the presiding judge, the clerk must not disclose to the general public any pleading filed under Rule 24, any petition for order of protection, or any petition for injunction against harassment—or any document or evidence that is filed relating to those filings—until 45 days after the pleading or petition is filed. Notwithstanding this rule, the clerk must allow access to the documents by judicial officers, court and clerk’s office personnel, the parties and their associated counsel of record, and any other person authorized by court order. The clerk may determine the manner in which such access is provided.

(d) **Service with Filing and Documents Not to Be Filed.**

(1) ***Filing and Service.*** After a petition’s filing, if a document must be filed within a specified time, it must be both filed and served within that time period.

(2) ***Documents Not to Be Filed.*** The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court:

(A) ***Subpoenas.*** Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;

(B) ***Discovery and Disclosure Documents.*** Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection, or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response, including notices of compliance with the provisions of Rule 49, 50, or 91;

(C) ***Proposed Pleadings.*** Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) ***Prior Filings.*** Any document that has been previously filed in the action, which may be called to the court’s attention by incorporating it by reference; and

(E) ***Authorities Cited in Memoranda.*** Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal.

- (3) **Attachments to the Assigned Judge.** Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 43.1(e)(d)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge also must be provided to all other parties.
- (4) **Sanctions.** If this rule is violated, the court may order removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerk's costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 71(a).

(e) Proposed Orders; Proposed Judgments.

- (1) **Service.** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court.
- (2) **Filing.** The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record.
- (3) **Exception.** If directed by the court, required by rule, or done to preserve the record on appeal, a party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing.
- (4) **Format.** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as apart of any other document. The proposed order or proposed judgment must have at least two lines of text above the signature.

(5) Stipulations and Motions; Proposed Forms of Order.

- (A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.
- (B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

(f) Sensitive Data. [JWR Note: The current rule is badly organized. I've made a stab at reorganizing it so it makes more sense. One thing I'm not sure about is whether the form is supposed to be used only if the court asks for data. I think that is what the rule says. If I'm wrong about that, I would modify (B)(1) by saying at the beginning: "If a party wants to submit sensitive data to the court or the court specifically requests

it,” I also would change the title to “Submitting Sensitive Data to the Court.”
Otherwise I think the organization would stay the same.]

(1) **Definition.** For the purposes of this rule, “sensitive data” means social security numbers, driver’s license numbers, bank account numbers, credit card numbers, and other financial account and personal identifying numbers.

(2) **Filing Sensitive Data.**

(A) **Generally.** Before filing any document containing sensitive data, the person making the filing must omit or otherwise redact the sensitive data unless they are specifically requested by the court. References to the data may be made using only the last 4 digits of the identifying number. The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or to seal or redact documents that contain sensitive data.

(B) **Court-Requested Data.**

(i) If the court specifically requests sensitive data from a party, the party must record the requested information on a separate sensitive data form that is substantially in the form set forth in Rule 97, Form 3 (“Confidential Sensitive Data Form”).

(ii) The clerk will maintain the form as a confidential record that is only available to the parties, the parties’ attorneys, court personnel, and any other person or agency authorized by court order.

(iii) Unless the court orders otherwise, further written reference to sensitive data must be made by referring to a corresponding item number on the sensitive data form or other means, rather than inserting the actual data into a document that is filed with the court.

(iv) Whenever new information is needed to supplement the record in a case, the parties or their attorneys must file an updated sensitive data form that includes all previously disclosed sensitive data and any additional sensitive data required for the case.

(C) **Exception.** The provisions of (f)(2)(A) and (B) do not pertain to orders or decrees, or to petitions and accompanying documents filed under the Uniform Interstate Family Support Act (UIFSA) as adopted by the State of Arizona.

(3) **Orders of Assignment and Orders to Stop Order of Assignment.** Orders of assignment and orders to stop order of assignment may contain sensitive data as

required by law, but these orders are confidential and may be made available only to the parties, the parties' attorneys, the parties' employers, child support enforcement agencies, court personnel, and any other person or agency authorized by court order.

- (4) ***Clerk's Authority.*** The clerk may maintain sensitive data forms, orders of assignment and orders to stop order of assignment either in paper or electronic form. If these documents are maintained electronically, the clerk is authorized to destroy any paper version.
- (5) ***Requests for Relief.*** If a document containing sensitive information is filed with the court, any person may request a court order, or the court may order on its own, that the document be sealed or replaced with an identical document with the sensitive data redacted or removed.
- (6) ***Sanctions.*** If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.

COMMITTEE COMMENT [DELETE]

This rule is based on Rule 5, Arizona Rules of Civil Procedure.

2006 COURT COMMENT

Rule 43(C) was amended: (i) to make the rule easier to understand, (ii) to transfer and slightly modify the electronic service provisions in [Rule 124\(e\) and \(g\) of the Rules of the Supreme Court of Arizona](#) to Rule 43(C); and (iii) to authorize service by other means if the recipient consents in writing or the court so orders.

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served paper must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by “other means.” The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

The amended rule also authorizes courts to order service by “any other means, including electronic means.” The prior rule already authorized courts to permit service by facsimile, and this authority has been extended to authorized a court to permit other methods of service. In some instances, it may be appropriate to authorize alternative service methods over a party’s objection because of the exigencies of the case, difficulties of hand-delivery or other factors. In deciding whether to authorize such methods, a court should consider whether: (i) an additional copy of the paper must be served by another method specifically authorized by Rule 43(C) (such as mailing or hand-delivery); (ii) whether page limitations should be imposed (such as in the case of facsimile service); and (iii) whether the recipient’s costs associated with an alternative service method (such as in the case of facsimile delivery) should be included as a taxable cost.

Service by electronic means or by “other means” is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the “send” command on a computer to transmit the paper to the recipient. Similarly, facsimile service is complete when transmission of the paper on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a paper served by these methods may defeat the presumption that service has been effected.

The amended rule also eliminates the requirement that certificates of service must be filed with the court whenever service is effected under the rule. The amended rule, however, is not intended to modify the requirement that a certificate of service accompany any paper that is served on a party or is filed with a court.

Rule 57. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

- (1) ***Depositions Permitted.*** A party may depose: (A) any party; (B) any party's current spouse; and (C) any person disclosed as an expert witness under Rule 49(h). A party also may depose any document custodian to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.
- (2) ***Depositions by Petitioner or Other Party Earlier Than 30 Days After Serving the Summons and Petition.*** A petitioner or other party must obtain leave of court to take a deposition earlier than 30 days after serving the summons and petition on any respondent or other party unless: (A) a respondent or other party has served a deposition notice or otherwise sought discovery under these rules; or (B) the petitioner or other party certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period.
- (3) ***Incarcerated Deponents.*** Subject to Rule 57(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.
- (4) ***Attendance of a Party.*** A party's attendance at a deposition is required without service of a subpoena.
- (5) ***Compelling Attendance of Non-Party Deponent.*** A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 52.

Note: add a provision from the civil rules in 57(b)(1) about counsel consulting before setting a deposition date.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

- (1) ***Notice Generally.*** Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) **Producing Materials.** If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 62 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 62 apply to any such request.

(3) **Method of Recording.**

(A) **Permitted Methods.** Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may in addition be recorded by audio or audiovisual means.

~~(B) **Method Stated in the Notice.** The party who notices the deposition must state. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.~~

(C) **Notice of Method of Recording.** With at least two days written notice to the deponent and other parties, any party may designate another method for recording the testimony in addition a certified reporter. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(D) **Transcription.** Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) **By Remote Means.** The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 55(a), 65(a)(2), 62(b)(3)(B), and 62(e), the deposition takes place where the deponent answers the questions, but an Arizona certified court reporter may record the testimony in Arizona. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

~~(5) **Officer's Duties.**~~

~~(A) **Before Deposition.** Unless the parties agree otherwise under Rule 56, a deposition must be conducted before an officer appointed or designated under~~

~~Rule 55. The officer must begin the deposition with a statement or notation on the record that includes:~~

- ~~(i) the officer's name, certification number, if any, and business address;~~
- ~~(ii) the date, time, and place of the deposition;~~
- ~~(iii) the deponent's name;~~
- ~~(iv) the officer's administration of the oath or affirmation to the deponent; and~~
- ~~(v) the identity of all persons present.~~

~~(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 57(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques.~~

~~(C) *After the Deposition.* At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters. **[JWR Note:** Note that this is not in the current Family Law Rule 57(B)(4), although it was in the former Civil Rule 30(b)(4). Was the omission intentional?]~~

(6) *Notice or Subpoena Directed to an Entity.* In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) *Examination and Cross-Examination.* The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence including Rule 615. Parties may not make evidentiary objections, including relevance objections.. Any party not present within 30 minutes after the time

specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personally—or a person acting in the presence and under the direction of the officer—must record the testimony by the method(s) designated under Rule 57(b)(3).

- (2) **Objections.** The officer must note on the record any objection made during the deposition—whether to evidence, to a party’s, deponent’s, or counsel’s conduct, to the officer’s qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.
- (3) **Conferences Between Deponent and Counsel.** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(d) Duration; Sanctions; Motion to Terminate or Limit.

- (1) **Duration.** Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.
- (2) **Sanctions.** The court may impose appropriate sanctions—including any order under Rule 65—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, including an unreasonable refusal to agree to extend a deposition beyond 4 hours.
- (3) **Motion to Terminate or Limit.**
 - (A) **Grounds.** At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order*. The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 51(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses*. Rule 65(a)(5) applies to the award of expenses.

(e) Review by the Deponent; Changes.

(1) ***Review; Statement of Changes***. If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: ~~When the officer has fully transcribed a deposition or has completed the recording of a deposition taken by audio-visual means only, the officer must notify the deponent that the transcript or recording is available for review. After receiving such notice, the deponent has 30 days in which:~~ **[JWR Note:** Note that current Family Law Rule 57(E) departed from the former Civil Rule 30(e). Under the civil rule (like the federal rule), notice was sent only if requested by the deponent at the end of the deposition. The family law rule flipped that, making notice mandatory. (That used to be the federal rule until it was changed.) I revised the draft rule to incorporate the current rule’s requirement that the officer must always notify the deponent. I did not, however, retain the requirement of signature, which also was deleted in the old federal rule in 1993 because court reporters often had a hard time getting the deponents to sign the transcript.]

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

(2) ***Officer’s Certificate to Attach Changes***. The officer must note in the certificate prescribed by Rule 57(f)(1) whether the officer received a statement of changes from the deponent and, if so, the officer must attach any changes the deponent made during the 30-day period. **[Note:** what if the trial or hearing is less than 30 days after the deposition?]

(f) Officer’s Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording; Filing.

(1) ***Certification and Delivery***. The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent’s testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked “Deposition of [witness’s name]” and must promptly deliver it to the attorney who arranged

for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) Originals and Copies. Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition—and any party may inspect and copy them—but if the person who produced them wants to keep the originals, the person may:

- (i)** offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or
- (ii)** give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) Order Regarding the Originals. On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) Copies of the Transcript or Recording. Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. [**JWR Note:** Note that Family Law Rule 30(F)(3) requires that the record may not be kept outside Arizona. That is not part of the old Civil Rule 30(f). No idea why that provision was added and I don't recommend including it here.] Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

- (1)** attend and proceed with the deposition; or
- (2)** serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service. [Consider merging this with Rule 65(f) and the failure of a party to attend his or her deposition.]

COMMITTEE COMMENT

This rule is based upon Rule 30, Arizona Rules of Civil Procedure.

Committee Comment

1991 Amendment to [Civil] Rule 30(a)

Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without agreement or leave of court. Any other depositions must be taken either by agreement of the parties, on motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).

Rule 58. [Reserved]

Rule 60. Interrogatories to Parties

(a) Generally.

- (1) **Definition.** Interrogatories are written questions served by a party on another party.
- (2) **Number.** In connection with any petition, unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories. A uniform interrogatory and its subparts count as one interrogatory. Any subpart to a non-uniform interrogatory is considered a separate interrogatory. [WG note: add spousal maintenance to uniform interrog. WG will propose changes to the nature and number of uniform interrog in Form 7.]
 - (A) **Stipulations.** If a party believes good cause exists for the service of more than 40 interrogatories, that party must consult with the party upon whom the additional interrogatories would be served and request a written stipulation regarding the number of additional interrogatories.
 - (B) **By Motion and Court Order.** If a party cannot obtain a stipulation permitting the service of additional interrogatories, the party may serve additional interrogatories only if a court grants a party's motion to do so. The party requesting additional interrogatories must show that:
 - (i) the issues presented warrant the service of additional interrogatories;
 - (ii) requiring the responding party to answer additional interrogatories is a more practical or less burdensome method of obtaining the information sought than by other alternatives; or
 - (iii) other good cause exists for serving additional interrogatories.
 - (C) **Accompanying the Motion.** ~~judge's copy of the motion, and the copy served on the other parties,~~ A motion for additional interrogatories must be accompanied by a copy of the proposed additional interrogatories and by a good faith consultation certificate required by Rule ***.
- (3) **Scope.** An interrogatory may ask about any matter allowed under Rule 51(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts, but the court may, on motion, order that such a contention interrogatory need not be answered until a later time.

(4) **Uniform Interrogatories.** Rule 97, Form 7, contains uniform interrogatories that a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. The use of uniform interrogatories is not mandatory. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by requesting a response only as to particular persons, events, or issues—without converting it into a nonuniform interrogatory.

(5) **Service.**

(A) **Nonuniform Interrogatories.** A party propounding nonuniform interrogatories must serve a copy on every party who has appeared in the action. [**JWR Note:** Again, consider just requiring service on the party to whom they are directed and all other parties who have appeared in the action. The two set requirement comes from the time when parties typed in the answers in the copy that was sent to them. The second copy was for answering party's records (they would type in the answers there too).]

(B) **Uniform Interrogatories.** A party propounding uniform interrogatories must serve a Notice of Service of Uniform Interrogatories containing the names of the party and attorney to whom the requests are made, and each uniform interrogatory for which the propounding party requests an answer. The propounding party also must serve the notice on every other party.

(C) **No Filing with the Court.** The propounding party must not file nonuniform interrogatories or a notice of service of uniform interrogatories.

(b) **Answers and Objections.**

(1) **Time to Respond.** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a respondent may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and petition.

(2) **Answers Under Oath.** Subject to Rule 60(b)(3), an answering party must answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party must furnish the information available to it. It must also reproduce the text of an interrogatory immediately above its answer to that interrogatory.

- (3) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.
- (4) **Signature.** The party who answers the interrogatories must sign them under oath. An attorney who objects to any interrogatories must sign the objections.
- (5) **Service.** The answering party must serve the original answers, with any objections, on the propounding party, and must serve a copy on every other party who has appeared in the action. The answering party must not file interrogatory answers with the court.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) **Option to Produce Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business, medical, therapeutic, psychological, psychiatric, employment, income tax, or education records (including electronically stored information), and if the burden of determining the answer will be substantially the same for either party, the responding party may answer by:

- (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
- (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

**Rule 61. ~~Uniform and Non-Uniform Interrogatories; Limitations; Procedure~~
[Reserved]**

Note: There is no longer a Civil Rule 33.1. The substance of current Family Law Rule 61 is now in draft Rule 60.

~~COMMITTEE COMMENT~~

~~This rule is based upon Rule 33.1, Arizona Rules of Civil Procedure.~~

Rule 62. Production of Documents and Things and Entry On to Land for Inspection and Other Purposes

(a) Generally. A party may serve on any other party a request within the scope of Rule 51(b):

- (1)** to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:
 - (A)** any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or
 - (B)** any designated tangible things; or
- (2)** to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

- (1) *Number.*** Unless the parties agree or the court orders otherwise, a party may not serve requests for more than 10 items or distinct categories of items on any other party.
- (2) *Contents of the Request.*** The request:
 - (A)** must describe with reasonable particularity each item or distinct category of items to be inspected;
 - (B)** must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and
 - (C)** may specify the form or forms in which electronically stored information is to be produced.
- (3) *Responses and Objections.***
 - (A) *Time to Respond.*** Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served.

- (B) *Responding to Each Item.* For each item or distinct category of items, the response must either state that inspection and related activities will be permitted as requested or state the grounds for objecting with specificity, including the reasons.
- (C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.
- (D) *Producing the Documents or Electronically Stored Information.* Unless the parties agree or the court orders otherwise, these procedures apply to producing documents or electronically stored information:
- (i) a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
 - (ii) [**WG-3 note:** The workgroup is replacing the sentence in staff’s draft with the following language that is taken from current Civil Rule 26.1b2D] ~~Unless the parties agree or the court orders otherwise,~~ a party must produce electronically stored information in the form requested by the receiving party. If the responding party objects to a requested form [**Note:** the preceding portion of this sentence comes from deleted paragraph (D) and it should probably be omitted; the workgroup needs to discuss this]—or if no form was specified in the request—the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party; and
 - (iii) absent good cause, a party need not produce the same electronically stored information in more than one form.

(c) **Nonparties.** As provided in Rule 52, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

COMMITTEE COMMENT

This rule is based upon Rule 34, Arizona Rules of Civil Procedure.

~~WG-3 Note: add equivalent civil provision requiring a conference between parties before exchanging ESI. But limit the provision that requires an attorney to invoke it, e.g., “on request of an attorney for a party....” X ref Civil 26.1(b)(2)(A).~~

~~‘or the court orders otherwise’~~

WG-3 Note: Also see a new provision, Rule 49(1).

Rule 63. Physical, Mental, and Vocational Evaluations of Persons

(a) Examination on Order.

- (1) **Generally.** The court where the action is pending may order a party whose physical or mental condition is in controversy to submit to a physical or mental examination or a vocational evaluation by a physician, psychologist, or designated expert. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.
- (2) **Motion and Notice; Contents of the Order.** An order under Rule 35(a)(1):
 - (A) may be entered only on motion for good cause and on notice to all parties and the person to be examined;
 - (B) must specify the time, place, manner, conditions, and scope of the examination; and
 - (C) must specify the person or persons who will perform the examination.

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

- (1) **Notice.** When the parties agree that an examination is appropriate but do not agree on the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:
 - (A) identify the party or person to be examined;
 - (B) specify the time, place, and scope of the examination; and
 - (C) identify the examiner(s).
- (2) **Motion Objecting to Examiner.** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a physician, psychologist, or designated expert other than the one specified in the notice.
- (3) **Failure to Appear.** Unless the party has filed a motion under Rule 53(a), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may, on motion, make such orders concerning the failure as are just, including those under Rule 65(a)(4).

(c) Attendance of Representative; Recording.

- (1) **Physical or Vocational Exam.** Unless it may adversely affect the examination's outcome, the person to be examined at a physical or vocation examination has the rights to have a representative present during the examination, and to make a video or audio recording of the examination.
- (2) **Mental Exam.** The person to be examined at a mental examination may have a representative present during the examination, or may make a video or audio recording of the examination, only if the parties agree, or as the court permits for good cause.
- ~~(3) **Recording.** [**JWR Note:** The Civil Justice Reform Committee proposes major changes in this rule. The changes make it easier to video record the exam, but a similar proposal was widely objected to back in 2009-10.]~~
 - ~~(A) **Audio Recording.** The person to be examined may audio record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio record any mental examination.~~
 - ~~(B) **Video Recording.** On order for good cause—or on agreement of the parties and the person to be examined—an examination may be video recorded.~~

Note: WG-3 discussed and decided against including the change to Civil Rule 35 proposed by the Civil Justice Reform Committee regarding recording of examinations.
 - ~~(C) **Copy of Recording.** A copy of a recording made of an examination must be provided to any party upon request.~~

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

- (1) **Contents.** The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.
- (2) **Request by the Party or Person Examined.** The party who is examined—or who produces the person examined—may request the examiner's report, and written or recorded notes from the examination. If such a request is made, the party who moved for or noticed the examination must, within 20 days of the examination or request—whichever is later—deliver to the requestor copies of:
 - (A) the examiner's report; and

(B) all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing them with the copies.

(3) *Disclosure of Other Reports.* Absent good cause, the party who is examined must disclose reports of all other examinations for the same condition.

(4) *Waiver of Privilege.* An examination conducted under this rule does not constitute a waiver of any privilege that the examined party is otherwise entitled to assert under law.

COMMITTEE COMMENT

This rule is based upon Rule 35, Arizona Rules of Civil Procedure.

Rule 64. Requests for Admission

(a) Scope and Procedure.

- (1) **Scope.** A party may serve on any other party a written request to admit the truth of any matters within the scope of Rule 51(b) relating to:
 - (A) facts, the application of law to fact, or opinions about either; and
 - (B) the genuineness of any described documents.
 - (2) **Form; Copy of a Document.** Each request must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document..
 - (3) **Number.** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.
 - (4) **Time to Respond; Effect of Not Responding.** A matter is deemed admitted unless timely denied or objected to. The responding party must serve his or her response within 30 days after service. A response must be signed by the party or the party's attorney. The parties may agree to, or the court may order, a shorter or longer time for responding.
 - (5) **Response.** If a request is not admitted, the response must specifically deny it or state in detail why the responding party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the request; and when good faith requires that a party qualify a response or deny only part of a request, the response must specify the part admitted and qualify or deny the rest. The responding party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that he or she has made reasonable inquiry and that the information he or she knows or can readily obtain is insufficient to enable an admission or denial.
 - (6) **Objections.** A party must state grounds for objecting to a request. A party may not object solely on the ground that the request presents a genuine issue for trial.
 - (7) **Motion Regarding the Sufficiency of a Response or Objection.** The requesting party may move to determine the sufficiency of a response or objection.
- (b) Effect of an Admission.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

COMMITTEE COMMENT

This rule is based upon Rule 36, Arizona Rules of Civil Procedure.

Rule 85. Relief from Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. A court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 83(b)(1);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason justifying relief.

(c) Timing and Effect of the Motion.

- (1) **Timing.** A motion under Rule 85(b) must be made within a reasonable time—and for the reasons set forth in (b)(1), (2), and (3), no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later. This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2).
- (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

- (2) grant relief to a defendant served by publication as provided in Rule 83(f); or
- (3) set aside a judgment for fraud on the court.

(e) ***Reversed Judgment of Foreign State.*** If a judgment was rendered on a foreign judgment from another state or country and the court of such state or country reverses or sets aside the foreign judgment, the Arizona court that rendered judgment must set aside, vacate, and annul its judgment.

COMMITTEE COMMENT

This rule is based on Rule 60, Arizona Rules of Civil Procedure.

Rule 91. Modification or Enforcement of a Judgment

(a) Definitions.

- (1) **Judgment.** When used in this rule and in Rules 91.1 through 91.7, “judgment” includes a decree of dissolution of marriage, a decree of legal separation, a decree of dissolution of a covenant marriage, a decree of legal separation of a covenant marriage, a decree of annulment, judgments of paternity and maternity, and orders defining legal decision-making, parenting time, or child support.
- (2) **Applicant.** When used in this rule and in Rules 91.1 through 91.7, an “applicant” is the party who, after the entry of a judgment, seeks to modify or enforce all or part of a judgment.
- (3) **Designating the Parties.** The original designation of the parties as “petitioner” and “respondent” in this jurisdiction remains unchanged in all post-judgment petitions, motions, and documents.

(b) Petition to Modify or Enforce a Judgment. An applicant who seeks to modify or enforce all or a portion of a judgment after the entry of the judgment must file a petition with the court and pay the required filing fee. The petition must meet the requirements of this rule and, as applicable, Rules 91.1, 91.2, 91.3, 91.4, 91.5, 91.6, or 91.7. The petition must include, at a minimum:

- (1) the date the judgment was entered;
- (2) the name and location of the court that entered the judgment;
- (3) as an attachment, a copy of the judgment the applicant seeks to modify or enforce, but if the judgment is lengthy and the judgment is in the official court file, the applicant may incorporate the judgment by reference;
- (4) the page or pages of the judgment that contains the provisions the applicant wishes to change or enforce; and
- (5) the relief requested.

(c) Verification or Declaration. The petition to modify or enforce a judgment must be verified under Rule 14. However, the State does not need to verify a petition it files in a Title IV-D matter.

(d) Order to Appear. After filing the petition, the applicant must submit to the assigned judicial officer two copies of an Order to Appear, and a copy of the petition showing the court’s filing stamp. An Order to Appear must be substantially in the form set forth in Rule 97, Form 14 (“Order to Appear Post-Judgment”).

- (e) **Manner and Timing of Service.** The applicant must serve the petition, and every order, warrant, and affidavit in support of the petition, on all other parties in the manner required under Rules 40, 41, or 42, as applicable. The applicant must complete service no later than 10 days before the scheduled hearing, unless the court orders otherwise.
- (f) **Affidavit of Financial Information.** When this rule or Rules 91.1 through 91.7 require an Affidavit of Financial Information, the parties must use an affidavit substantially in the form set forth in Rule 97, Form 2 (“Affidavit of Financial Information”), or another form permitted by local rule.
- (g) **Responses; Time for Response.** Unless a statute or rule requires otherwise, a party served with a petition may, but is not required to, file a response to the petition. However, if a party chooses to respond or when these rules specifically require a response, the responding party must file and provide a copy of the response to the applicant or, if represented, the applicant’s attorney. Unless the court orders otherwise, the response must be filed at least 3 ~~judicial~~ days before the scheduled hearing.
- (h) **Temporary Orders.** Any request for a temporary order in a post-judgment proceeding must meet the requirements of Rules 47.2 or, if applicable, Rule 48.
- (i) **Contempt.** A petition that requests a contempt remedy must comply with this rule and Rule 92.
- (j) **Initial Review of Petitions and Return Hearing.**
- (1) ***Setting a Return Hearing or Rejecting a Petition.*** Upon receipt of the petition and proposed Order to Appear, the court must review the petition and: (a) reject the petition for failure to state grounds upon which relief can be granted; or (b) issue the Order to Appear. If the court rejects the petition, the court must provide the applicant with an explanation of the deficiency and provide an opportunity to correct the deficiency within 30 days after the date of the rejection notice. In making a determination whether to reject a petition, the court cannot assess credibility or weigh evidence. If the court issues the Order to Appear, it must set a return hearing where, excepting emergent circumstances, no evidence will be taken.
 - (2) ***Counsels’ Duties.*** If the court schedules a return hearing, and both parties are represented by counsel, counsel must confer before the return hearing regarding the issues raised by the petition, anticipated discovery and disclosure, the timing for anticipated discovery and disclosure, alternative dispute resolution or

mediation options, and the possible resolution of any of the issues raised by the petition.

(3) *Scope of Return Hearing.* At any return hearing, the court may take any action provided in Rule 76(c).

(k) *Pre-Hearing Statement.* Before an evidentiary hearing, the parties must comply with Rule 76.1 and any local rules, including the filing of a pre-hearing statement.

(l) *Mediation.* No party may be required to submit to mediation before filing a petition. However, the parties may be required by local rule or court order to submit to mediation before the court will schedule an evidentiary hearing regarding any legal decision-making or parenting time issues. The court may not order private mediation absent an agreement of the parties.

(m) *Disclosure.* In any proceeding under Rule 91 or Rules 91.1 through 91.7, each party must comply with Rule 49 and 50, as applicable, within the time established by the court at the return or other hearing or as agreed by the parties.

(n) *Dismissal of Petition for Lack of Prosecution.*

(1) In the following circumstances, the court may dismiss a post-judgment petition: :

(A) If a petition to enforce or modify a judgment is filed but not presented to the assigned division with a proposed Order to Appear within 30 days after filing;

(B) if the applicant fails to accomplish service before the return hearing as provided in this rule and the date to accomplish service is not extended; or

(C) If the applicant fails to appear at the return hearing.

(2) *Extension of Time.* The court may extend the deadlines in this rule for good cause.

(o) *Attorney's Fees, Costs, and Expenses.* In any post-judgment proceeding in which an award of attorney's fees, costs, and expenses is an issue, both parties must file and exchange a completed Affidavit of Financial Information at the time established by the court, but not later than in compliance with the Rule 76.1 submittals.

(p) Stipulations. Stipulations to modify or enforce post-judgment orders that substantially change the terms of a legal decision-making or parenting time order must meet the requirements of Rule 14.

Rule 91.1. Post-Judgment Petition to Modify Spousal Maintenance or Child Support [New]

(a) Generally. A petition to modify spousal maintenance or child support must comply with Rule 91. In addition, the petition must include a statement of the facts that establish that substantial and continuing changes in circumstances exist that support the requested modification.

(b) Affidavit of Financial Information. The parties also must file and exchange current Affidavits of Financial Information 30 days after the return hearing unless a different date is established by the court.

(c) Request for Simplified Procedure. A party seeking to modify child using the simplified procedure for modification outlined in the Arizona Child Support Guidelines must file a request for simplified modification, accompanied by a sworn Parent's Worksheet for Child Support Amount, an Affidavit of Financial Information and pay the required filing fee. The opposing party must file an Affidavit of Financial Information with any response or request for hearing. The parties must then follow the procedures specified in the Arizona Child Support Guidelines, Appendix to A.R.S. § 25-320.

(d) Title IV-D. In Title IV-D matters, the State must serve both parents with the petition, the issued Order to Appear, and a blank Affidavit of Financial Information, with instructions to complete, file, and serve the Affidavit as required in Rule 91(h). If the petition is filed by a parent (not the state) the applicant must file and submit an Affidavit of Financial Information with the petition.

Rule 91.2. Post-Judgment Petition to Enforce Child Support or Spousal Maintenance [New]

(a) Generally. A petition to enforce an order to pay spousal maintenance, child support, medical or dental costs, or other sums that are due under a child support order must comply with Rule 91. The petition also must include a current summary calculation of arrears derived from the Clearinghouse records of the Department of Child Support Enforcement, if available, or if not available, a statement of all sums due.

(b) Medical Costs. If the petition includes a request for reimbursement of medical, dental, or vision costs, the petition also must include:

- (1) a detailed summary of every claimed medical, dental, and vision bill;
- (2) the amount of each bill that was paid by insurance or a third party;
- (3) the amount of each bill paid by each party;
- (4) the remaining unpaid balance; and
- (5) the remaining proportionate **[NOTE: the current rule uses the term “pro rata”]** obligation of each party.

(c) **Service.** The applicant must serve on the opposing party within the time provided in Rule 91(f) copies of the petition and the court-issued Order to Appear, and a blank copy of an Affidavit of Financial Information.

(d) **Response.** Within the time provided by Rule 91(h), the responding party must file with the court and serve on the applicant a completed Affidavit of Financial Information and copies of the following documents:

- (1) the responding party’s most recently filed federal and state income tax returns, with all schedules;
- (2) the responding party’s 4 most recent consecutive wage statements from all sources of employment;
- (3) the responding party’s most recent W-2, 1099, and K-1 forms, as applicable; and
- (4) supporting documents, such as receipts or statements, if the responding party claims that medical costs sought by the applicant have already been paid.

Rule 91.3. Post-Judgment Petition to Modify Legal Decision Making [New]

(a) **Generally.** Any party seeking a modification of legal decision-making must file the following documents with the court and provide copies to the assigned division:

[JWR Note: Why is this requirement unique to Rules 91.3 and 91.5? Should it be a generally applicable requirement? If so, should a provision be added to Rule 91? Or, this requirement generally applies to all filings, should it go in one of the early rules? Also, should it be required if things are filed electronically?]

- (1) a Petition for Modification of Legal Decision-Making complying with Rule 91, and either verified by the applicant or supported by affidavit(s) under A.R.S. § 25-411;
- (2) a certification whether the underlying legal decision-making order or agreement contains a provision requiring the parties before requesting court modification to participate in mediation or another alternate dispute resolution process, and, if so, what efforts have been made to comply with that provision;

(3) a Notice of Filing Petition for Modification of Legal Decision-Making directed to all persons entitled to notice under A.R.S. § 25-1035; and

(4) in actions in which the legal decision-making order or decree was not entered by an Arizona court, an affidavit required under A.R.S. § 25-1039.

(b) **Notice.** Upon filing of the petition, the clerk will issue [enter?] [**JWR Note:** Wouldn't the notice be filed?] a Notice of Filing a Petition for Modification of Legal Decision-Making.

(c) **Service.** The applicant must serve the petition, affidavits, and the [issued—delete?] Notice of Filing Petition for Modification of Legal Decision-Making on all persons entitled to notice under Rules 40, 41, 42, or 43, whichever is applicable. [**JWR Note:** Again, this is confusing. Isn't Rule 4 service required? The rule doesn't tell me whether Rule 4 service is required or if Rule 5 service will do.]

(d) **Response.** Unless the court orders otherwise, any person entitled to notice may file a verified response no later than 20 days after the petition is served, if served in Arizona, and no later than 30 days after the petition is served, if served outside Arizona. Any person filing a response must provide [serve? **JWR Note:** Why wouldn't the response be served?] a copy to [on] the applicant's attorney or, if unrepresented, to [on] the applicant and, unless a local rule provides otherwise, to the assigned division.

(e) **Hearing.**

(1) **Request for Hearing.** No sooner than 5 days after the time for filing a response expires, any party may submit a Request for Order Granting or Denying a Hearing to the assigned division.

(2) **Whether to Hold a Hearing.** Whether or not a response or a request for hearing is filed, and in accordance with A.R.S. § 25-411 and without argument or hearing unless set by the court on its own, the court must decide whether to grant a legal decision-making hearing. The court will mail a copy of the determination to all persons entitled to notice.

(3) **If a Hearing Will Be Held.** If the court decides that a legal decision-making hearing is warranted, the court may schedule a Resolution Management Conference or evidentiary hearing. The court will schedule a hearing for modification of an order or decree concerning legal decision-making only after the applicant has complied with A.R.S. § 25-411 and the requirements of Rules 91 and this rule.

(4) Other Requests. Unless the court orders otherwise, a post-judgment petition that seeks to modify a legal decision-making order and also seeks to modify or enforce other court orders, whether requested in one or more contemporaneous petitions, must comply with Rule 91 and Rules 91.1 through 91.7, as applicable, but will proceed under the procedures provided in Rule 91.3 to allow the court to schedule all issues for hearing at the same time.

Rule 91.4. Post-Judgment Petition to Relocate or Prevent Relocation [New]

(a) Generally. A petition to relocate a minor child, or to prevent the minor child's relocation under A.R.S. § 25-408, is considered a request to modify a prior court order and must comply with Rule 91.

(b) Change of Legal Decision-Making. A petition to relocate or to prevent the relocation of a minor child that also requests a change of legal decision-making must comply with Rule 91.3.

Rule 91.5. Post-Judgment Petition for Modification or Clarification of Parenting Time or Visitation [New]

(a) Generally. A party who seeks a modification or clarification of parenting time or visitation that does not involve a change of legal decision-making must file with the court and provide a copy to the assigned division [**JWR Note:** Again, why is this requirement unique to this rule and Rule 91.3?] of a Petition for Modification or Clarification of Parenting Time or Visitation that complies with Rule 91 and also includes:

- (1) detailed facts supporting the requested modification or clarification;
- (2) the specific parenting time or visitation plan sought;
- (3) a certification whether the underlying legal decision-making order or agreement contains a provision requiring the parties before requesting court modification to participate in mediation or another alternate dispute resolution process, and, if so, what efforts have been made to comply with that provision;
- (4) if the applicant seeks an order of supervision or denial of parenting time or visitation, a statement that details facts why unrestricted parenting time would seriously endanger the child's physical, mental, moral, or emotional health; and
- (5) in actions in which the parenting time or visitation order was not entered by an Arizona court, an affidavit required under A.R.S. § 25-1039.

(b) Order to Appear. At the same time as filing the petition, the applicant must provide to the assigned division an original Order to Appear, which the court will issue.

(c) **Service.** The applicant must serve a copy of the petition, any required affidavit, and the court-issued Order to Appear on the opposing party within the time provided in Rule 91(f).

Rule 91.6. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody [New]

(a) **Generally.** A party seeking to enforce an existing legal decision-making, parenting time, or visitation order, must file the following:

(1) a Petition for Enforcement of Legal Decision-Making, Parenting Time, or Visitation Order that:

(A) complies with Rule 91 and meets all legal requirements, including any applicable provisions of A.R.S. § 25-1058,

(B) includes detailed facts supporting a violation of the order or enforcement action and the specific remedy or remedies sought; and

(C) if the applicant seeks a warrant, complies with A.R.S. § 25-1061; and

(2) a warrant to take physical custody of a child.

(b) **Submissions to the Assigned Division.** At the time of filing the petition, the applicant must provide to the assigned division a copy of the petition, an original Order for Issuance of a Warrant for Physical Custody, an original Warrant for Physical Custody if requested in the petition, and an original Order to Appear that the court will issue.

(c) **Service.** The applicant must serve a copy of the petition, Order and Warrant, if issued, and the issued Order to Appear on the opposing party within the time provided in Rule 91(f).

Rule 91.7. Other Post-Judgment Petitions [New]

(a) **Generally.** A party seeking any other post-judgment relief not specifically addressed in Rule 91 or Rules 91.1 through 91.6 must file a petition in compliance with Rule 91 that states:

(1) detailed facts supporting the requested relief; and

(2) the specific legal authority that confers subject-matter jurisdiction on the family court, or authorizes it to grant the relief requested.

(b) **Submissions to the Assigned Division.** At the time of filing the petition, the applicant must provide a copy of the petition and an original Order to Appear, which the court will issue, to the assigned division.

(c) **Service.** The applicant must serve a copy of the petition and the issued Order to Appear on the opposing party within the time provided in Rule 91(f).