

# *Task Force on the Arizona Rules of Family Law Procedure*

## Meeting Agenda

Friday, July 14, 2017

10:00 AM to 4:00 PM

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

Item no. 1	<b>Call to Order</b>  <b>Introductory remarks</b>	<i>Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs</i>
Item no. 2	<b>Approval of the June 12, 2017 meeting minutes</b>	<i>Justice Berch and Judge Armstrong</i>
Item no. 3	<b>Workgroup reports:</b> <ul style="list-style-type: none"><li>- <b>Workgroup 1: Rules 6 (including 6.1), 8, 9, 10 (including 10.1), 12, and 13</b></li><li>- <b>Workgroup 2: Rules 39 (new) and 43 (including 43.1)</b></li><li>- <b>Workgroup 4: Rules 89 and 91 (including 91.1 through 91.6)</b></li></ul>	<i>Ms. Henderson, Ms. Burns, Judge Cohen, Mr. Woodnick  Comm'r. Christoffel, Ms. Clark, Mr. Nash  Ms. Davis, Judge Eppich</i>
Item no. 4	<b>Roadmap</b> <ul style="list-style-type: none"><li>- <b>Next meeting dates:</b>  Friday, August 4, 2017 [Room 119] Friday, August 25, 2017 [Room 345] Friday, September 29, 2017 [Room 119] Friday, October 20 [Room 345] Friday, December 1 [Room 119] Friday, December 15 [Room 119]</li></ul>	<i>Justice Berch and Judge Armstrong</i>
Item no. 5	<b>Call to the Public</b>  <b>Adjourn</b>	<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.

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**Task Force on the Arizona Rules of Family Law Procedure**

**State Courts Building, Phoenix**

**Meeting Minutes: June 12, 2017**

**Members attending:** Hon. Rebecca Berch (Chair), Hon. Mark Armstrong (Co-Chair), Michael Aaron, Hon. John Assini (by telephone), Keith Berkshire, Annette Burns, Cheri Clark, Hon. Suzanne Cohen, Helen Davis, Kiilu Davis, Hon. Karl Eppich, Mary Boyte Henderson, Joi Hollis, Hon. Paul McMurdie, Aaron Nash, Jeffery Pollitt, Janet Sell, Hon. Peter Swann, Steven Wolfson, Gregg Woodnick

**Absent:** Hon. Dean Christoffel

**Guests:** Hon. Scott Bales, Terry Decker, Tanya Henson, Martin Lynch, Ed Pizarro Sr., Claudia Arrunategui

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

**1. Call to order; remarks by the Chief Justice.** The Chair called the fourth Task Force meeting to order at 10:01 a.m. She welcomed Chief Justice Scott Bales and invited him to address the Committee. The Chief Justice noted that the work of this Task Force is very demanding, but it's also critically important because rules of procedure affect every family law case. The restyling of the family law rules is a culmination of rules projects that began during his tenure as Chief Justice, which included restyling of the evidence, civil appellate, protective order, civil, and criminal rules. These projects furthered major goals of his strategic agenda, such as promoting access to justice and improving judicial procedures. Clear and simple rules help cases progress through the court system. He anticipated that the restyled family law rules will greatly improve the usability of the rules, especially for self-represented litigants. He recognized that the timetable for the Task Force to complete its work is challenging, yet he commended the capability of the Task Force members and he looked forward to seeing their rule petition next year. He concluded by expressing the justices' appreciation for the work and commitment of Task Force members.

**2. Remarks by the Chair; approval of meeting minutes.** The Chair advised that workgroups had met 20 times to-date, including 8 meetings since the April 28 Task Force meeting; and that each workgroup has a pending meeting date. Based on the number of rules now completed, she said the Task Force was on track to meet the Court's timetable, but many of the completed rules were "easy" and she encouraged the workgroups to remain diligent. She acknowledged that workgroups are time-consuming, and she and Judge Armstrong thanked the members for their excellent effort.

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Judge Armstrong also reminded the workgroups to consistently use terminology by referring to rules, sections, and subparts. The Chair then asked members to review the draft April 28, 2017 meeting minutes, and a member then made this motion:

**Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 004**

The Chair then asked for rule presentations by the workgroups.

**3. Workgroup 2.** Workgroup 2 presented Rules 39 and 43.

*Rule 39 (currently “proof of authority by attorney for respondent not personally served,” and proposed, “reserved”):* Mr. Pollitt noted that in 2008, the Court deleted corresponding Civil Rule 80(f), which is referenced in the comment to the current family rule. What thereafter remained in the family rule concerns the notice of appearance, and this topic will be covered in restyled Rule 9(d)(1)(A). Mr. Pollitt accordingly recommended that the content of current Rule 39 be deleted, and that Rule 39 instead be “reserved.” Task Force members concurred with his recommendation.

*Rule 43 (now, “service and filing of pleadings and other papers; sensitive data form,” and proposed, “serving pleadings and other documents”):* Ms. Clark advised that the workgroup utilized the corresponding civil rule, Rule 5.1, as a starting point, but it removed text that had no application to family cases, for example, a provision about “seizing property.” The workgroup also attempted to eliminate redundancies. Task Force members then offered comments. In (a)(1), a member suggested deleting as unnecessary the words “other parties” from the phrase “service on other parties,” and changing “Rule 43” to “this rule.” In that same sentence, another member suggested changing “summons, petition, and response” to “summons, petition, or order to appear.” Members agreed to these changes. They also agreed to delete the entirety of subpart (a)(3) (“if a party fails to respond to the petition”), because there are circumstances, especially in cases involving children, where a failure to respond should not impair a party’s rights. They further noted that in some situations involving an order to appear or a post-judgment proceeding, a response to a petition is not required and a failure to respond does not result in a party’s default. Members also agreed to delete an inappropriate draft provision concerning “serving numerous defendants.” (The Chair directed staff to do a global search for the word “defendant,” and to replace it with the correct family law term, “respondent.”)

The word “service” is a term of art. It sometimes refers to the original service of a summons and petition, and at other times it refers to “delivery” in the course of litigation. One member suggested that the rules should refer to the latter as “mail,” because that is how service is typically done since it does not require “personal delivery.” Another

member suggested that there were three levels of service: one, service in the course of litigation; two, quasi-personal service (i.e., on an agent or a person of suitable age and discretion); and three, actual service on the person (i.e., what is necessary for a contempt petition.) Many self-represented litigants misunderstand these distinctions. One member observed that Rule 41 and 42 service establishes jurisdiction, whereas Rule 43 service provides notice. Members discussed the possibility of using a distinct word for each level of service (even “levels 1, 2, and 3”), and describing these levels in Rule 40. Members agreed that self-represented litigants in family court should have a simple and clear explanation of service.

- The Chair returned Rule 43 to Workgroup 2 to fashion definitions and explanations, and to determine where these should be located. When the Workgroup next presents Rule 43, it should also present Rules 40, 41, and 42 sequentially.

**4. Workgroup 3.** The Chair then asked Workgroup 3 to present its rules.

*Rule 57 (“depositions by oral examination”):* Mr. Wolfson first advised that the workgroup intends to add a provision about the need for parties to confer and cooperate on deposition scheduling. The workgroup deleted provisions found in Civil Rule 30(b)(5) concerning the “officer’s duties” because it believed those provisions were either antiquated or redundant. However, Task Force members noted the need to include in Rule 57 a provision that the officer administers an oath. (Members agreed that an unsworn audio recording is not a “permitted method” under draft Rule 57(b)(3)(A).) The workgroup discussed whether parties should have equal amounts of time at a deposition, but Task Force members were comfortable with the approach taken by the civil rules, which is reflected in draft Rule 57(c). In draft Rule 57(e), the workgroup did not determine a time limit for a deponent’s review of a transcript when the deposition occurred less than 30 days before trial. And it changed this provision to make submission of the transcript to the deponent optional rather than mandatory.

Members discussed draft Rule 57(g), which allows for sanctions against the noticing party under specified circumstances. The current provision does not provide for sanctions against a non-appearing deponent, and the members considered but did not decide whether to provide for that circumstance in this rule or in Rule 65. Members also discussed draft Rule 57(a)(2), which requires a petitioner to obtain court permission to take a deposition sooner than 30 days after service of a petition. One member suggested changing “petitioner” to “party” so the provision applied to both parties, but other members offered reasons for applying this 30 day requirement solely to petitioners. However, a judge member observed that a “petitioner” in a post-decree proceeding may have been the “respondent” during pre-judgment proceedings, with resulting name confusion. The judge suggested addressing this confusion by treating both sides equally.

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The members agreed with the judge and revised (a)(2) to provide that “a party” must obtain the court’s permission unless both parties otherwise agree in writing, or if the deponent may leave Arizona within the 30 day period. Members made a conforming change to the title of (a)(2). They also made a conforming change to the title of section (c) by removing the words, “written questions.”

Section (d) includes provisions for a motion to terminate or limit a deposition. The draft rule is comparable to restyled Civil Rule 30(d)(3). Members discussed how the rule works in practice, and whether or how the parties could contact a judge. Can a party terminate a deposition unilaterally? If a party terminates a deposition without judicial input, should the party be required to file a subsequent motion, and if so, what should be the filing deadline? (Members agreed that within 10 days was an appropriate time.) Should a provision allow sanctions for a frivolous motion, one interposed solely for delay, or one that is not granted? Should the opportunity to terminate or limit be available to either side (the deponent and the deposing party)? Should there be a good faith requirement?

- The Chair asked the workgroup to consider these issues.

Section (d) also includes a 4-hour deposition limit. Members discussed whether time spent during breaks, or when the parties were “off-the-record,” should be excluded from that limit. Would it matter whether it was the deponent or the examiner who requested a break? Members concluded that the family rule is modeled on the corresponding civil rule, which does not go into this level of detail, and they accordingly made no changes to the family rule. One member proposed relocating (c)(3) (“conferences between deponent and counsel”) to section (d), but after discussion, the Task Force declined this suggestion. Members agreed to retain (a)(4), which specifies that a subpoena is not necessary to require a party’s attendance at a deposition; this provision is particularly for the benefit of self-represented litigants.

Members made stylistic changes elsewhere in the rule, such as using the word “party” rather than “it,” adding the words “or affirmation” after the word “oath,” and in places, changing the word “officer” to “certified court reporter.” A member asked whether Rule 57 should specify who may be present at a deposition. The member proposed limiting those present, absent a court order, to the parties and their counsel. But other members noted that an expert may want to attend, as may a parent of a minor in a paternity case. On the other hand, and without the parties’ agreement, the attendance of friends and significant others could be problematic.

- The Chair asked the workgroup to address this issue, including how notice of a non-party’s attendance would be provided, and who would have the burden of obtaining a court order to allow or disallow a non-party to attend. The Chair

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would also like the workgroup (1) to consider the sanctions issue noted earlier, including whether to relocate section (g); (2) to further review (c)(2) regarding objections; and (3) to make additional conforming changes consistently with the first sentence of the paragraph above.

*Rule 58 (now, “depositions by written questions” and proposed, “reserved”):* Judge Swann advised that the procedure provided by this rule had no ongoing relevance. The workgroup recommended, and Task Force members agreed, that the text of this rule be deleted, and that the rule be “reserved.”

*Rule 60 (“interrogatories to parties”):* Mr. Wolfson and Judge Swann jointly presented this rule. The rule, which as drafted includes uniform as well as non-uniform interrogatories, provides for a limit on the number of interrogatories. There are different ways of counting uniform and non-uniform interrogatories; in uniform interrogatories, subparts are not counted, but subparts are counted in non-uniform interrogatories. Also, spousal maintenance is now a subject for non-uniform interrogatories, but the workgroup envisions drafting uniform interrogatories for spousal maintenance. (Mr. Wolfson will advise members when the workgroup will be discussing spousal maintenance interrogatories.) The workgroup also considered whether some uniform interrogatories might be inapt or misplaced and whether those should be deleted. Members discussed the numerical limit for interrogatories, but they did not reach consensus on a particular number. However, they concurred that each uniform interrogatory and its subparts should only count as one interrogatory.

One member suggested that interrogatories were more “affordable” for self-represented litigants than other types of discovery, but said these litigants may not understand the meaning of “interrogatories.” The member suggested that the rule include clearer language, and that the word “oath” be added to the definition in Rule 60(a)(1).

- The workgroup will review this rule further.

*Rule 61 (now, “uniform and non-uniform interrogatories; limitations; procedures,” and proposed, “reserved”):* Mr. Wolfson advised that the substance of the current rule is now in proposed Rule 60, and the workgroup recommended that Rule 61 be “reserved.” Members concurred.

*Rule 62 (“production of documents, etc.”):* Judge Swann reviewed the restyled rule. He noted additional language modeled on the revised civil rule concerning electronically stored information. Members proceeded to a discussion of the limit provided in draft Rule 60(b)(1) of “10 items or distinct categories of items.” Members criticized this phrasing and noted that a category could include multiple subsections of documents. For example, a single category might request “business records” plus numerous sub-

categories under that general item. Judge Swann acknowledged that the word “category” was not particularly specific; he asked members to propose a better term, but none were proposed.

One member suggested that disclosure should be the touchstone of production; that this concept should be built into the rules; and that a party should be able to demand compliance with disclosure without the necessity of serving a request for production. Another member agreed and noted that disclosure, discovery, and mandatory forms may require the production of duplicate information. In addition, parties occasionally ask for information, e.g., records of joint bank accounts, which both parties can access. Members concurred that requests for production could be used abusively, and that courts may not have the resources to effectively manage discovery. Members discussed possible ways to address this problem. Proposed solutions included uniform requests for production; or an enforceable standard of “reasonableness,” that is, that the requested information be relevant and reasonable in both scope and quantity. Judge Swann observed that uniform requests for production, like uniform interrogatories, might be overused and be requested in cases where they don’t apply. Members also should be mindful of cases in which experts may ask counsel to request particular documents. And there are situations in which there is an imbalance of power between spouses, where notwithstanding the joint nature of an account or asset, one party is in control of information.

- Workgroup 3 will reconsider draft Rule 62 in light of this discussion. Ms. Davis and Mr. Berkshire offered to prepare and present a set of uniform requests for production.

*Rule 63 (“physical, mental, and vocational evaluations of persons”)*: Mr. Wolfson and Judge Swann, who also jointly presented this rule, noted that it raised a variety of evidentiary and logistical issues. An example of an evidentiary issue of concern was the difference in treatment between a report from the conciliation court, which typically is admitted as evidence even when the author does not testify; and a report from, for example, a vocational expert, which may not be admitted as evidence even if the expert has testified. The workgroup was divided on how to treat these differences. Some believed that application of the rules of evidence would keep all of these reports out of evidence; that the mere preparation of a written report does not make it admissible; and that because a report, such as one from the conciliation court, was court-ordered should not render it automatically admissible. One member said that the court’s appointment of an expert under Rule 63 should not invariably render the expert “court-appointed,” because the expert still may have been selected by a party. Some members believed that expert opinions need to be tested by courtroom cross-examination. Others believed that if an expert witness testified and laid a proper foundation, then the expert’s written report should be admitted even when the expert did not testify about the entire contents of the

report. One member made a distinction between a report that simply contains the content of an interview, which would be admissible, and a report that includes conclusions and recommendations, such as a § 25-406 custody evaluation, which should not be admitted. Rule 63 does not address these issues, but Judge Swann proposed that Rule 2 should address them. Judge Armstrong noted that Evidence Rule 702 applied even if the rules are not invoked under Rule 2.

- Following this discussion, members asked Workgroup 1 to consider these issues when they review Rule 2.

Elsewhere in Rule 63, members discussed the meaning in section (d) of “like reports of the same condition.” They modified this phrase by saying “all other reports for the same condition, except for a vocational exam protected by the work product privilege.” Distinguishing Rule 63 from corresponding Civil Rule 35, members further revised the “waiver of privilege” provision of Rule 63(d) to say that a Rule 63 examination “does not constitute a waiver of any privilege that the examined party is otherwise entitled to assert under law.” Members also discussed the provisions of draft Rule 63(c) concerning the attendance of a representative and making an audio or video recording of an examination. They agreed that whether to allow a representative or a recording should depend on the type of examination at issue. They concurred that the examining expert for a physical or vocational exam could determine if a representative or recording would “adversely affect the examination’s outcome,” but if the examined person insisted on a representative or recording and the court did not order otherwise, the examiner could decline to perform the exam. On the other hand, the workgroup concluded that a representative or recording would presumptively and adversely affect the outcome of a mental examination, and it drafted a provision to this effect. However, the provision still allows the parties and the examiner to agree to the presence of a representative or a recording, or to request the court to permit the representative or recording for good cause.

- The Chair asked the workgroup to further review this draft rule and add other clarifying language where needed.

*Rule 64 (“requests for admission”):* Mr. Wolfson noted that the workgroup’s changes streamlined the rule. One member objected to shortening the response time from 40 days, which is in the current family rule, to 30 days, which is the time for responding in corresponding Civil Rule 36. Another member believed that 30 days would be easier to calculate for practitioners who do both civil and family work, and that 30 days, i.e., one month, is also easier to calculate than 40 days. But other members supported the 40 day period, and noted that while most civil litigants have counsel, most family litigants do not, and they would benefit from the additional time. Another member noted the omission from this draft rule of a 60 day period to respond after service of requests for admission with the summons and petition, and the member asked that this be added

back. After discussion and a straw vote, the members favored the 40/60 day period not only for responding to requests for admissions, but also for responding to requests for production and for answering interrogatories.

Draft Rule 65(b) concerns the effect of an admission, and the withdrawal or amendment of an admission. A member asked whether there should be a time limit for a withdrawal or amendment. For example, if a party files a summary judgment motion based on admissions, would the opposing party's subsequent request to withdraw or amend be untimely? Members discussed the standard and the burden. Judge Armstrong noted that the second sentence of Civil Rule 36(b) contains a standard based on federal case law, and members agreed that this sentence should be incorporated in Rule 65(b). (Members also agreed that the words "requesting party" in the referenced sentence refers to the party who requested the admission rather than the party requesting relief.)

- The Chair requested the workgroup to add the sentence from Civil Rule 36(b). She also asked the workgroup to consider whether Rule 64 should include an equivalent to Justice Court Rule of Civil Procedure 126(b), which among other things requires a notice to the opposing party of a calendar date when responses to requests for admission are due.

**5. Workgroup 4.** Mr. Berkshire presented Rule 85, and Judge McMurdie and Ms. Davis jointly presented Rule 91.

*Rule 85 ("relief from judgment or order"):* Mr. Berkshire noted that the language of proposed Rule 85 was almost identical to corresponding Civil Rule 60, and this would facilitate the application in family law matters of case law under the civil rule. Members had no questions and no suggested changes regarding Rule 85.

*Rule 91 ("modification or enforcement of a judgment"):* Judge McMurdie and Ms. Davis advised that the workgroup reorganized current Rule 91 into a newly written Rule 91 and new Rules 91.1 through 91.7. Their presentation today concerned the newly written Rule 91 only. The workgroup revised this rule to reflect actual practices in post-judgment proceedings, and to eliminate traps for self-represented litigants. For example, on a post-judgment petition to modify child support under the proposed rule, an affidavit of financial information would not need to accompany the petition, but would be due at a more realistic time set at the return hearing. Moreover, the procedure for the initial filing would be more straightforward; see proposed Rule 91(j)(1), "setting a return hearing or rejecting a petition." A judicial officer would first screen a post-judgment petition under the proposed rule. As in a Civil Rule 12(b)(6) proceeding, the judicial officer would presume that all of the information in the petition was true, and then determine whether that information would be sufficient to state a claim upon which the court could grant relief. If it did, the judicial officer would issue an order to appear; and

if it did not, the judicial officer would reject the petition, and provide the applicant with an explanation of the deficiency and an opportunity to correct it.

The workgroup also considered a requirement that parties submit to mediation before they can file a post-judgment petition. The workgroup concluded that this is counterproductive because it empowers a recalcitrant party to delay judicial proceedings. Judge McMurdie observed that some self-represented litigants who have a decree that requires mediation before seeking judicial intervention believe they are precluded from filing a post-judgment petition if the other party won't first engage in mediation. Proposed Rule 91(l) ("mediation") accordingly provides that "no party may be required to submit to mediation before filing a petition." This provision would allow a judge to require mediation, but after rather than before the filing of a post-judgment petition. (Members noted that a mediation provision in a decree is often "boilerplate" rather than the result of a knowing agreement, and such a provision may even constitute a deprivation of due process.) However, after discussion, members agreed to add to the language of Rule 91(l) quoted above the underlined words "before filing a petition for modification of legal decision-making or parenting time." Members discussed current Rule 66(C) ("initiation of ADR") and further agreed to add a new sentence to section (l) that says, "The court may not order private mediation absent an agreement of the parties."

This led to a discussion about the availability of mediation services through courts in all 15 Arizona counties. Some counties have conciliation courts that offer mediation for a nominal fee or no fee. But other counties don't have that resource. Courts in those counties may have contracts with private providers ("court-annexed mediators"), but members were not sure which counties had those arrangements. And even Maricopa County is not offering free dispute resolution in post-decree proceedings, not as a policy choice, but because of its high volume of cases.

- The Chair requested staff to research arrangements each county has for mediation services.

Ms. Davis observed that the workgroup deleted requirements for exchanging resolution management statements and other disclosure before the return hearing. The workgroup believed that the resolution statements sometimes have marginal application in post-judgment proceedings. Moreover, early disclosure requirements do not make the litigation more productive, and Ms. Davis noted that generally, neither attorneys nor self-represented litigants are disclosing information before the return hearing. Draft rule 91(m) would allow the court to set times to comply with disclosure at the return or other hearing. The workgroup removed a current provision that allows the return hearing to be an evidentiary proceeding. Members also discussed draft Rule 91(d), which would require the petitioner to submit an order to appear with a post-judgment petition. One

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member inquired whether a petition that requested modification of legal decision-making should include a summons rather than an order to appear.

- The Chairs noted that Rule 91 is a work-in-progress. The rule will go back to Workgroup 4, which will consider the members' comments today and make further revisions.

6. **Roadmap.** The Chair confirmed July 14, August 4, August 25, and September 29 as Task Force meeting dates. All of these dates are on Friday. By a show of hands, the Task Force should have a quorum for the July 14 meeting. The Chair encouraged workgroups to schedule future meeting dates. The Chair also advised that Mr. Serrano had resigned from the Task Force, and the Chief Justice has appointed David Horowitz to fill that vacancy. The Chair assigned Mr. Horowitz to Workgroup 3.

7. **Call to the public.** The Chair made a call to the public. Mr. Terry Decker, Mr. Martin Lynch, and Mr. Ed Pizzaro, Sr., responded and addressed the members.

8. **Adjourn.** The meeting adjourned at 4:02 p.m.

## **Rule 6. Change of Judge as a Matter of Right**

### **(a) Definitions.**

- (1) **Judge.** The term “judge” as used in this rule and Rule 6.1 refers to any judge, judge pro tem, or court commissioner.
- (2) **Presiding judge.** 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) Generally.** In each action, whether single or consolidated, each party is entitled as a matter of right to a change of judge.

**(c) 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 (d);
- (ii)** no waiver has occurred under Rule 6(e); 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(c)(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(b). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.

**(d) 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(f), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under ARCAP 24.
- (e) **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.
- (f) **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.
- (g) **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) **Grounds.** A party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. § 12-409.

(b) **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).

(c) **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.

(d) **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 6. Change of Judge**

A party may notice or request a change of judge in the manner provided in Rules 42.1 and 42.2 of the Arizona Rules of Civil Procedure. If a post-decree or post-judgment petition is filed, a party or side may exercise a right to change of judge as a matter of right only if that party or side has not previously exercised or waived that right during the action's prior proceedings.

**(a) Rule 6. Change of Judge as a Matter of Right**

**(a) Definitions.**

**(1) Definitions.** *Judge.* The term "judge" as used in this rule and Rule 6.1 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.

**(2)** *In each action, whether single or consolidated, each party is entitled as a matter of right to a change of one one judicial officer, judge or judge pro tem, and one court commissioner or commissioner pro tem. [RePresiding judge.* 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) Generally.** In each action, whether single or consolidated, each party is entitled as a matter of right to a change of judge.

**(c) 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(ed);
  - (ii)** no waiver has occurred under Rule 6.1(de); 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.

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~~(f)~~(2) **Oral Notice.** An oral request for change of judge must include the information required by Rule 6-~~1~~(b)(c)(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)(b). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.

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~~(g)~~(d) **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 ~~the date set for a scheduled contested hearing or~~ trial.
- (2) If a new judge is assigned within 60 days of ~~the date set for 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. such new assignment.~~

~~(3) If the right to a change of judge is renewed on under Rule 6(e), a notice is timely if filed within 15 days after issuance of the appellate court’s mandate under ARCAP 24.~~

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~~(3) A notice of change of judge is ineffective if filed within less than 3 days of a scheduled proceeding unless. 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 the parties have received less than 5 days’ notice of that proceeding or the assignment of the judge.~~

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~~(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. [go back to workgroup]~~

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~~(h)~~(5) If the right to a change of judge is renewed under Rule 6(f), a notice is timely if filed within 15 days after issuance of the appellate court’s mandate under ARCAP 24.

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~~(i)~~(e) **Waiver.** A party waives the right to change of 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; ~~or~~

~~(j)~~(4) trial begins.

~~(k)~~(f) **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

~~(l)~~(2) the party seeking a change of judge has not previously exercised its right to a change of judge in the action.

~~(m)~~(g) **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.

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## Rule 6.1. Change of Judge for Cause

~~(n)(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.

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

(a) **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).

(b) **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.

(c) **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 ~~in length~~. 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.

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- (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 8. Telephonic Appearances and Testimony**

**(a) Meaning of “Telephonic Appearance.”** When used in this rule, “telephonic appearance” includes an appearance by telephone, by videoconferencing, or by other available audio and video technology. [**JWR Note:** I don’t normally think of a telephonic appearance as an “electronic” appearance. Perhaps “appearance by remote access”?] ]

### **(b) Appearance of a Party at a Non-Evidentiary Proceeding.**

(1) The court may allow a party to appear telephonically at a non-evidentiary proceeding if each person will be audible to every other person participating in the proceeding, including the judge, and, if applicable, to the court reporter or an electronic recording system.

**(c) Testimony of a Party or Witness at an Evidentiary Proceeding.** On request of a party or a witness or on its own, and subject to A.R.S. §25-1256(F), the court may allow a party or witness to testify telephonically if the court finds it would not substantially prejudice any party and the testifying party or witness:

(1) is not reasonably able to attend the hearing or trial; [**JWR Note:** What does it mean to be reasonably prevented from attending a hearing? Barricades on the door, car got confiscated?]

(2) would be unduly inconvenienced by attending the hearing or trial in-person; or

(3) would incur a burdensome expense to attend the hearing or trial in-person.

### **(d) Request to Testify by a Telephonic Appearance.**

(1) **Time.** A party must file a request to have a party or witness give testimony within a time that allows the opposing party a reasonable opportunity to respond.

(2) **Hearing.** The court may rule on the request with or without a hearing.

**(e) Introducing Documents During Telephonic Testimony.** To introduce exhibits into evidence through a party or witness who appears telephonically:

(1) the party calling the witness must make a good faith effort to contact the opposing party to identify and provide exhibits that will be used during the witness’ testimony;

(2) the exhibits must be provided in advance to the party or witness;

(3) the party who introduces the exhibits must affirm that they are accurate copies of the exhibits provided to the party or witness who is appearing electronically.

(f) **Responsible Party.** The party requesting a telephonic appearance, or who presents a witness' testimony telephonically, must arrange and pay the related cost, unless the court orders otherwise.

**Rule 8. ~~Electronic-Telephonic~~ Appearances and Testimony**

(a) **Meaning of “~~Electronic-Telephonic~~ Appearance.”** When used in this rule, “~~electronic-telephonic~~ appearance” includes an appearance by telephone, by videoconferencing, or by other available audio and video technology. [**JWR Note:** I don’t normally think of a telephonic appearance as an “electronic” appearance. Perhaps “appearance by remote access”?]

**(b) Appearance of a Party at a Non-Evidentiary Proceeding.**

(1) ~~**Generally.**~~—The court may allow a party to appear ~~telephonically electronically~~ at a non-evidentiary proceeding if each person will be audible to every other person participating in the proceeding, including the judge, and, if applicable, to the court reporter or an electronic recording system.

~~(2) **Responsible Party.**—The party requesting an electronic appearance must arrange and pay for it, unless the court orders otherwise.~~

(c) **Testimony of a Party or Witness at an Evidentiary Proceeding.** On request of a party or a witness or on its own, and subject to A.R.S. §~~1225~~-1256(F), the court may allow a party or witness to testify ~~electronically telephonically at an evidentiary hearing or trial~~ if the court finds it would not substantially prejudice any party and the testifying party or witness:

(1) is not reasonably able to attend the hearing or trial; [**JWR Note:** What does it mean to be reasonably prevented from attending a hearing? Barricades on the door, car got confiscated?]

(2) would be unduly inconvenienced by attending the hearing or trial in-person; or

(3) would incur a burdensome expense to attend the hearing or trial in-person.

~~(3)~~

**(d) Request to Testify by an ~~Electronic-Telephonic~~ Appearance.**

(1) ~~**Timing—Time.**~~ A party must file a request to have a party or witness give testimony ~~by an electronic appearance no later than 30 days before the trial or evidentiary hearing. If the trial or evidentiary hearing is scheduled to occur in less than 30 days, the requesting party must file the request no later than 5 days before the trial or hearing~~within a time that allows the opposing party a reasonable opportunity to respond.

~~(2) **Response.**—An opposing party may file a response no later than 5 days after the request is served.~~

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~~(3)~~(2) **Hearing.** The court may rule on the request with or without a hearing.

~~(4) **Responsible Party.** Unless the court orders otherwise, the party requesting testimony by an electronic appearance must arrange and pay for it.~~

(e) **Introducing Documents During ~~Electronic~~ **Telephonic** Testimony.** To introduce ~~documents~~ **exhibits** into evidence through a party or witness who appears ~~electronically~~ **telephonically**:

~~(1) the documents must be provided in advance to the party or witness;~~

~~(1) the party calling the witness must make a good faith effort to contact the opposing party to identify and provide exhibits that will be used during the witness' testimony; duplicates of the documents must be provided to all other parties who have appeared in the action; and~~

~~(2) the exhibits must be provided in advance to the party or witness;~~

~~(2) —~~

(3) the party who introduces the ~~exhibits~~ **documents** must affirm that they are accurate copies of the ~~exhibits~~ **documents** provided to the party or witness who is appearing electronically.

(f) **Responsible Party.** The party requesting a telephonic appearance, or who presents a witness' testimony telephonically, must arrange and pay the related cost, unless the court orders otherwise.

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## **Rule 9. Duties of Parties or Counsel**

- (a) **Current Address.** Parties or counsel must keep the court informed of a 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 9. Duties of ~~Counsel and Parties~~ or Counsel**

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

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~~(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. keeping the court advised informed of the status of cases in which that party or counsel has appeared and for being informed of any assignments for hearing or argument.~~

~~(c) Good Faith Consultation Certificate.~~

~~(1) Generally. When these rules require a "good faith consultation certificate," must be attached the certificate must demonstrate that a party has tried a demonstrating that the movant has tried in in good faith to attempt has been made 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. Unless such consultation is prohibited by a valid order of protection or injunction against harassment.~~

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~~(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.~~

~~(a)(d) Parties and counsel must keep the court appraised of their current mailing addresses. Attorney of Record; Withdrawal and Substitution of Counsel. Appearance, Attorney of Record; Withdrawal, and Substitution of Counsel.~~

~~(1) Attorney of Record; Duties of Counsel.~~

~~(A) Appearance Required. An attorney Counsel may appear as attorney of record by filing a document—including a notice of appearance, complaint, answer, petition, response, motion to quash, notice of association of counsel, or notice of substitution of counsel—that identifies the attorney counsel as the attorney of record for a party. No attorney Counsel may not may file anything in any action or act on behalf of a party in open court without appearing as attorney of record.~~

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

(2) *Withdrawal and Substitution.*

~~(A) Court Order Required.~~ Except as otherwise provided in these rules, in any local rules pertaining to domestic relations actions, or if there is a change of counsel within the same law firm or governmental law office, an attorney may not withdraw, or be substituted, as attorney of record in any pending action unless authorized to do so by court order.

~~(B)(A) Application Motion to Withdraw or Substitute as Counsel.~~ An application motion to withdraw ~~or be substituted~~ as attorney of record for a party must be in writing, state the reasons for the withdrawal, ~~or substitution,~~ and set forth the client's address and telephone number. Additionally:

- (i) If the application 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 application motion does not bear the client's written approval, ~~it # must be made by motion and~~ 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.

~~(C)(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 ~~signed statement of a substituting attorney stating that the attorney is aware of the trial date and will be prepared for trial, or the party's client's signed statement stating that the client 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.

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**(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.

~~(b) Responsibility to Court.~~ Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and court administrator, in each of the counties in which that attorney has actions that are pending, of the attorney's current office address and telephone number.

~~(e)~~**(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, ~~including vulnerable adult exploitation actions.~~

**(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)~~**(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 ~~543~~(c) with respect to all matters in the ~~action~~ 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.

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~~(3)~~**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 ~~follows provided in Rule 9(d)(2).~~

~~(A)~~**With Consent.** ~~If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating:~~

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- ~~(i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and~~
- ~~(ii) the last known address and telephone number of the party who will no longer be represented.~~

~~— The attorney must serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney’s withdrawal from the action will be effective upon the filing and service of the Notice of Withdrawal with Consent.~~

~~(B) Without Consent. If the client does not sign a Notice of Withdrawal with Consent, the attorney must file a motion to withdraw, which must be served on the client and all other parties, along with a proposed order.~~

~~(i) If no objection is filed within 10 days after the motion is served on the client, the court must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney must serve a copy of the order on the client. The withdrawing attorney also must promptly serve a written notice of the entry of such order, together with the client’s name, last known address, and telephone number, on all other parties.~~

~~(ii)(4) If an objection is filed within 10 days after the motion is served, the court must conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.~~

**COMMITTEE COMMENT [AMENDED 2007]**

This rule is based on Rule 5.1, Arizona Rules of Civil Procedure. This rule will be reviewed in two (2) years by a committee appointed by the Supreme Court to review the Arizona Rules of Family Law Procedure.

Examples of limited scope services under paragraph B that a client may seek from a licensed attorney may be found in Form 1, Notice of Limited Scope Representation, and include but are not limited to such matters as protective orders, establishment or modification of child support, temporary orders, and Qualified Domestic Relations Orders (QDROs).

**[Note:** Although restyled Rule 9 is based on Civil Rule 5.3, the draft above does not include Civil Rule 5.3(d), “Notice of Settlement.” “Notice of Settlement” is covered in Family Law Rule 70(a).]

FROM RULE 23:

~~{Parties who are not represented by counsel must keep the court apprised of their current mailing addresses. Each party must notify the court within 10 days of any changes in the party's mailing address. [NOTE: hold the second and third sentences for Rule 9.]~~

## **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 interest 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 interest 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 interest 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.

(f) **Appointments from Juvenile Dependency Rosters.** The court may not appoint 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.

## **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 interest 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)(f) **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~~

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## **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. This definition excludes court-appointed advisors under Rule 10.1 and experts hired by the parties.

### **(c) Record of the Interview.**

**(1) Generally.** Unless the parties stipulate otherwise, 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.

**(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.

**(4) Admissibility.** A report or recording of the interview is admissible.

## **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\(2\)](#).

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**(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. This definition excludes court-appointed advisors under Rule 10.1 and experts hired by the parties.

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- (3) **Availability to the Parties.** The parties may stipulate that the court not provide them with a record of the interview. ~~Otherwise~~ 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.
- (4) Admissibility. A report or recording of the interview is admissible.

**(d) Special Precautions.**

~~(1) General Conduct of the Interview. In conducting an in camera interview with a child, the court must take special care to protect the child from embarrassment and must not repeat questions unnecessarily. The court also must take special care to state questions in a form appropriate to the child’s age and intellectual capacity.~~

~~(1) Disclosures. The court must inform the child in an age appropriate manner:~~

- ~~(A) — about the process by which the court will make a decision;~~
- ~~(B) about the limitations on the confidentiality of the child’s communications with the court;~~
- ~~(C) — that information the child provides to the court will be on the record;~~

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~~(D) — that information the child provides to the court will be provided to the parties in the case unless the parties have stipulated otherwise; and~~

~~(E) that whatever the child says will be considered but will not alone be determinative of the issues of legal decision-making and parenting time.~~

~~(1) *Child's Preference.* In the process of listening to and inviting the child's input, the court must allow, but may not require, the child to state a preference regarding legal decision-making and parenting time.~~

#### **COMMENT TO 2015 AMENDMENT**

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\(2\)](#).

#### **COMMITTEE COMMENT**

~~Arizona Revised Statutes § 25-405 allows for an in camera interview of a child to ascertain the child's wishes as to the child's custodian and as to parenting time. A record of the proceeding will be kept to ensure the integrity of the process, to allow for rebuttal information in appropriate cases, and to provide for appropriate appellate review. The definition of “record” is derived from [A.R.S. § 25-1010\(E\)](#).~~

### **Rule 13. Public Access to Proceedings and Records**

- (a) **Generally.** Family court proceedings are presumptively open to the public. However, subject to the requirements in (b), the court may close the courtroom and exclude the public to promote amicable settlement of the issues, to protect the best interest of a minor child, or to protect the parties from physical or emotional harm.
- (b) **Order to Close the Courtroom.** On motion of an interested person or on its own, the court may order the courtroom closed if it finds on the record that:
- (1) there is a compelling interest in closure that outweighs the public interest in attending a hearing or other proceeding;
  - (2) there are no alternatives to closure that will protect the compelling interest; and
  - (3) the court-ordered closure is no broader than necessary to protect the compelling interest.
- (c) **Timing.** An interested person must file and serve a motion under this rule no later than 2 days before the applicable hearing or proceeding.
- (d) **Stipulation to Close the Courtroom.** A stipulation to close the courtroom does not alone constitute justification for closure.
- (e) **Access to Records.**
- (1) **General Restrictions.** The court must maintain and disclose records of family court proceedings in accordance with Rule 123, Rules of the Supreme Court, Rule 7, Arizona Rules of Protective Order Procedure, and Rule 43 of these rules.
  - (2) **Court's Authority.** Unless otherwise provided in Rule 123, Rules of the Supreme Court, or Rule 7, Arizona Rules of Protective Order Procedure, the court may find that the confidentiality or privacy interests of the parties, their minor children, or another person outweigh the public interest in disclosure. After making that finding, the court may order that any record of a family court matter be closed or deemed confidential, or may otherwise limit access to those records.

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### **COMMITTEE COMMENT**

~~A.R.S. § 25-407(E) provides: "If the court finds that to protect the child's welfare, the record of any interview, report investigation, or testimony in a legal decision-making proceeding should be kept secret, the court may then make an appropriate order sealing the record."~~

### **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 39. Meaning of “Service.”**

- (a) **General Rule.** Promptly after filing a document with the court, a party must provide (“serve”) every other party with an exact copy of that document.
- (b) **Meaning of Service.** Different methods of service are required under these rules. The particular method depends on which of the following 3 circumstances applies:
- (1) ***Service of a Summons and Petition.*** The petitioner must “serve” a summons and petition (or an order to appear and a petition) on the respondent as required by Rule 41 for an in-state respondent, and as required by Rule 42 for an out-of-state respondent.
  - (2) ***Service of Documents Filed in the Course of the Case.*** Documents filed with the court after service of the summons and petition must be provided by the filing party to the other party; this requires “service” of the document on the other party as stated in Rule 43.
  - (3) ***Service of Contempt Petitions.*** Contempt petitions must be personally “served” by a process server on the person named in the contempt petition.
- (c) **Waiver or Acceptance of Service.** A party may waive or accept service under (b)(1) or (b)(3) as provided in Rule 41(c) and Rule 42(d)..

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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.

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**(b) Meaning of Service.** Different methods of service are required under these rules. The particular method depends on which of the following 3 circumstances applies:

**(1) Service of a Summons and Petition.** The petitioner must “serve” a summons and petition (or an order to appear and a petition) on the respondent as required by Rule 41 for an in-state respondent, and as required by Rule 42 for an out-of-state respondent.

**(2) Service of Documents Filed in the Course of the Case.** Documents filed with the court after service of the summons and petition must be provided by the filing party to the other party; this requires “service” of the document on the other party as stated in Rule 43.

**(3) Service of Contempt Petitions.** Contempt petitions must be personally “served” by a process server on the person named in the contempt petition.

**(c) Waiver or Acceptance of Service.** A party may waive or accept service under (b)(1) or (b)(3) as provided in Rule 41(c) and Rule 42(d)..

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**Rule 43. Service of Other Documents After Service of the Summons, Petition, and Order to Appear**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) Generally.**

- (1) ~~Rule 43~~ **This rule** governs service on other parties after the **summons, petition, or order to appear response were served.** ~~[Add order to appear?]~~ Rules 41 and 42 govern service of petitions for contempt.
- (2) ~~(2)~~ **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.
- (3) ~~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) **Methods of Service.** 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.

- (d) ~~Serving 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.**

- (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) *Income Withholding Orders and Orders to Stop Income Withholding Orders.***

Income withholding orders and orders to stop income withholding orders 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, income withholding orders, and orders to stop income withholding orders, 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.

|

**Rule 43. Serving Pleadings and Other Documents Service of Other Documents After Service of the Summons, Petition, and Order to Appear** [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.** ~~This rule~~ **Rule 43.** This rule governs service on other parties after service of the summons, and petition, counterclaim, or order to appear response, or third party complaint were served. [Add order to appear?] Rules 41 and 42 govern service of petitions for contempt.

(2) **When Required.** Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in Rule 43(b):

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(d) because there are numerous defendants;

(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)~~ (2) **If a Party Fails to Appear Respond to the Petition.** No service is required on a party who is in default for failing to appear fails to respond to a petition, except as provided in Rules 44 and 44.1. But a pleading that asserts 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)~~ (3) **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. [Note: this provision is not in current Rule 43.]

(b) **Service; Parties Served; Continuance.** If there are several respondents, and some are served with process and others are not, the petitioner may proceed against those who have been served or move to defer disclosure or other case-related activity until additional parties are served.

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~~(e)(b)~~ **Service After Appearance; Service After Judgment; How Made Service of the Summons, Petition, and Response.**

~~(1)~~ **Serving an Attorney.** ~~Except for petitions for contempt, orders of protection, and injunctions against harassment, which 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.

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~~(1)(2)~~ **Personal Service Required.** ~~Petitions for contempt, orders of protection, and injunctions against harassment must be served under Rules 41 and 42.~~

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~~(2)(3)~~ **Service Generally Methods of Service.** A document is served under this rule by ~~any of the following~~:

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(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.

~~(3)(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]*

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[Address of opposing party or attorney]

(4) 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.

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(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, ~~complaint~~, or other pleading requesting ~~modification, vacation, or enforcement of~~ 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.

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(d) **Serving 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.

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(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). ~~[76(D) or both?].~~

**(e) Proposed Orders; Proposed Judgments.**

~~(1) **Required Format.** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 30. On the signature page, there must be at least two lines of text above the signature.~~

**(1) Service and Filing.** 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. ~~A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other~~

~~filing if directed by the court, required by rule, or done to preserve the record on appeal.~~

~~(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) **Required Format.** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or any other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 30. On the signature page, there must be have at least two lines of text above the signature.~~

~~(2)~~

~~(3)(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~~

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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) ~~***Income Withholding Orders of Assignment and Orders to Stop Order of Assignment Income Withholding Orders.***~~ ~~*Orders of assignment and orders to stop order of assignment*~~ Income withholding orders and orders to stop income withholding orders 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 income withholding orders,*~~ and orders to stop ~~*order of assignment income withholding orders,*~~ 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 89. Enforcing a Judgment for a Specific Act**

- (a) A Party's Failure to Act; Ordering Another to Act.** If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.
- (b) Vesting Title.** If the real or personal property is within Arizona, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.
- (c) Obtaining a Writ of Attachment or Sequestration.** On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.
- (d) Obtaining a Writ of Execution or Assistance.** On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.
- (e) Contempt.** The court also may hold the disobedient party in contempt.

#### **COMMITTEE COMMENT**

This rule is based on [Rule 70, Arizona Rules of Civil Procedure](#).

[NOTE] The workgroup made no changes to staff's restyled version above.

## **Rule 91. Modification or Enforcement of a Judgment**

### **(a) Definitions.**

- (1) **Judgment.** When used in this rule and in Rules 91.1 through 91.6, “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 91.6, 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, or 91.6. 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 modify 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) Mediation.** No party may be required to submit to mediation before filing a petition for modification of legal decision-making or parenting time. However, a local rule or court order may require the parties to submit to mediation before the court will

schedule an evidentiary hearing on any legal decision-making or parenting time issues. The court may not order private mediation absent an agreement of the parties.

- (e) **Contempt.** A petition that requests a contempt remedy must comply with this rule and Rule 92.
- (f) **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.
- (g) **Affidavit of Financial Information.** When this rule or Rules 91.1 through 91.6 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.
- (h) **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”).
- (i) **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).
- (j) **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 after receipt of the issued Order to Appear, except for good cause or unless the court orders otherwise.

**(k) 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.

**(l) 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.

**(m) Disclosure.** In any proceeding under Rule 91 or Rules 91.1 through 91.6, 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) 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.

**(o) 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.

**(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) **Spousal Maintenance.** A petition to modify spousal maintenance 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) Child Support.**

(1) **Standard Procedure.** A petition to modify child support must comply with Rule 91. In addition, the petition must include a statement of facts establishing substantial and continuing changes in circumstances that support the requested modification.

(2) **Simplified Procedure.** A party seeking to modify child using the simplified procedure for modification outlined in the Arizona Child Support Guidelines must follow the procedures specified in the Arizona Child Support Guidelines, Appendix to A.R.S. § 25-320.

(3) **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 91.1(c).

(c) **Affidavit of Financial Information.** For a petition filed under Rule 91.1(a) or Rule 91.1(b)(1) 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.

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

(a) **Generally.** A petition to enforce an order to pay spousal maintenance, child support, medical, dental, or vision 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 applicant requests reimbursement of medical, dental, or vision costs, the petition must include a statement of all sums due. In addition, within 30 days after filing the petition, the applicant must disclose to the other party any documentation supporting the claim, including proof of payment.

**Rule 91.3. Post-Judgment Petition to Modify Legal Decision Making or Parenting Time [New]**

**(a) Generally.** A Petition for Modification of Legal Decision-Making or Parenting Time:

- (1) must comply with Rule 91;
- (2) must contain detailed facts supporting the modification;
- (3) must be verified by the applicant or supported by affidavit(s) as required by A.R.S. § 25-411; and
- (4) in actions in which the legal decision-making order or decree was not entered by an Arizona court, must include an affidavit required under A.R.S. § 25-1039.

**(b) Service.** In addition to complying with Rule 91(j), the applicant must comply with A.R.S. § 25-1035.

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

**(a) Relocation.** A petition to relocate a minor child must comply with A.R.S. § 25-408 and Rule 91.3.

**(b) Preventing Relocation.** A petition to prevent the relocation of a minor child must comply with A.R.S. § 25-408 and Rule 91.

**Rule 91.5. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody [New]**

**(a) Enforcement.** A Petition for Enforcement of Legal Decision-Making, Parenting Time, or Visitation Order must comply with Rule 91, and

- (1) must meet all legal requirements, including A.R.S. § 25-1058, if applicable ,
- (2) must include detailed facts supporting a violation of the order or enforcement action and the specific remedy or remedies sought.

**(b) Warrant.** A petition seeking a warrant to take physical custody of a child must comply with Rule 91 and with A.R.S. § 25-1061.

**Rule 91.6. Other Post-Judgment Petitions [New]**

A party seeking any other post-judgment relief not specifically addressed in Rule 91 or Rules 91.1 through 91.5 must file a petition in compliance with Rule 91 that states detailed facts supporting the requested relief; and the specific legal authority that confers subject-matter jurisdiction on the family court, or authorizes it to grant the relief requested.

**Rule 91. Modification or Enforcement of ~~Orders After~~ a Judgment**

**(a) Definitions.**

- (1) **Judgment.** When used in this rule and in Rules 91.1 through 91.76, “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, and 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 91.76, an “applicant” is the party who, after the entry of a judgment, seeks to modify or enforce ~~a prior family court order~~ 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.

~~(2)~~—

**(b) Petition to Modify or Enforce a ~~Prior Order~~Judgment.** An applicant who seeks to modify or enforce all or a portion of a prior court order after the entry of 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 ~~Rule 91 this rule~~ and, as applicable, Rules 91.1, 91.2, 91.3, 91.4, 91.5, or 91.6, or 91.7. ~~The petition must~~ The petition must stateinclude, at a minimum:

- ~~(1)~~ the nature of the proceeding (e.g., “Post Judgment Petition to Modify Spousal Maintenance”); [NOTE: this is the verbiage of the current provision, but what exactly does this mean? See John’s suggested clarification, “e.g.”]
- ~~(2)~~ the following information about the prior order:
  - ~~(a)~~ (1) the date the prior order judgment was entered;
  - ~~(b)~~ (2) the name and location of the court that entered the order judgment; , and
  - ~~(c)~~ (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;
  - ~~(3)~~ (4) the pertinent portion of the prior order — recited verbatim — that the party seeks to modify or enforce, but if the pertinent portion of the prior order is so lengthy that it is impractical to include it verbatim and the order is in the official court file, the petition may incorporate by reference the pertinent portion of the

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~~or a copy of the judgment the applicant seeks to modify or enforce and the applicant shall specifically identify by the page or pages and paragraph numbers that portion of the judgment that contains the provisions the applicant wishes to change, modify or enforce; and~~

~~(4)(5) the relief requested, and~~

~~(5) the estimated time for a hearing.~~

**(c) Oath Verification or Declaration.** ~~The applicant must submit a~~ petition to modify or enforce a ~~prior order under oath~~ judgment must be verified ~~unless the applicant is represented by counsel, in which case the petition may be filed pursuant to under Rule 14(B).~~ However, the State does not need to verify a petition it files in a Title IV-D matter.

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

**(e) Contempt.** A petition that requests a contempt remedy must comply with this rule and Rule 92.

**(f) 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.

**(g) Affidavit of Financial Information.** When this rule or Rules 91.1 through 91.6 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.

~~(e)~~

**(d) Designating the Parties.** ~~The original designation of the parties as “petitioner” and “respondent” in the judgment will remain unchanged in all~~ must be designated in all post-judgment petitions, motions, and documents as they were designated in the judgment.

**(e) Order to Appear.**

**(h) Submission Filing.** ~~With the petition, T~~After filing the petition, the applicant must submit to the assigned judicial officer ~~the original and 3 copies of~~ two copies of an Order to Appear, and ~~3 copies a copy~~ of the petition showing the court’s filing stamp.

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An Order to Appear must be substantially in the form set forth in Rule 97, Form 14 (“Order to Appear Post-Judgment”).

**(i) 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) *Counsel’s 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).

~~(1) — The clerk will file the original Order to Appear when the assigned judicial officer signs it. These provisions do not apply to petitions to Modify Legal Decision-Making filed under Rules 91.3 or 91.4(b), or if a local rule establishes a different procedure.~~

~~(2) — **Form.** An Order to Appear must be substantially in the form set forth in Rule 97, Form 14 (“Order to Appear Post-Judgment”). Any original Order to Appear, other order, or warrant submitted to the court for issuance under these rules must be accompanied by two or more copies — equal to the number of parties in the action — but not less than 3, which the court will return to the applicant for service on all other parties in the action.~~

~~[NOTE: (e)(2) [currently 91(K)] appears to conflict with (e)(1) [currently 91(A)(4) regarding the number of copies. **JWR Note:** I agree. I don’t know how to reconcile the two provisions. —]~~

**(j) Manner and Timing of Service.** The applicant must serve the ~~post judgment~~ petition, and every order, warrant, and affidavit in support of the petition, on all other

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parties in the manner required under Rules ~~40, 40, 41, or 42, or 43,~~ as applicable. ~~[JWR Note: This is really confusing. Doesn't a post judgment petition require Rule 4 service and not Rule 5 service?]~~ The applicant must complete service no later than 10 days ~~before the scheduled conference or hearing~~ after receipt of the issued Order to Appear, except for good cause or unless the court orders otherwise ~~or as otherwise ordered by the court if the hearing is set for less than 10 days.~~

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

~~(3)~~**(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.

~~(f)~~

**(g) 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.

**(l) Responses; Time for Response.** Unless a statute or ~~another~~ rule requires otherwise, a party served with a petition ~~for post-judgment relief~~ may, but is not required to, file a formal response to the petition. ~~[JWR Note: What is the difference between a formal response and a response?]~~ However, if a party chooses to respond or when these rules specifically require a response ~~and affidavit~~, the responding party must file ~~them~~ and ~~serve them on~~ 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 or if unrepresented, the applicant, no later than 10 days after the issued order to appear petition is served, but and no later than at least 3 judicial days ~~[JWR Note: Don’t need this adjective because under the time computation rules, intermediate weekends and holidays don’t count]~~ before the scheduled hearing, ~~unless the court orders otherwise.~~

~~(h)(m) Disclosure.~~ In any proceeding under Rule 91 or Rules 91.1 through 91.6, 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.

~~(i)(a) 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.

(j) **Contempt.** An petition that requests a action for contempt remedy must comply with this rule and Rule 92.

**(k) Hearings on Petitions**Initial Review of Petitions.

(1) ~~**Setting a Return Hearing or Rejecting a Petition.**~~ An Order to Appear must indicate whether a matter will require testimony or an evidentiary hearing. The court may hear oral argument on a post-judgment petition without testimony. Upon receipt of an Order to Appear the petition and proposed Order to Appear, the court must review the petition and take one of the following actions: (a) reject the petition for failure to state a claim 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. If the court issues the Order to Appear, it must set a return hearing where, excepting emergent circumstances, no evidence will be taken. may schedule an evidentiary hearing, a return hearing, oral argument, a Post Judgment Management Conference, mediation, or another proceeding, and it will issue an appropriate Order to Appear. The signed Order to Appear will state the scheduled date, time, and length of the proceeding, and whether the parties may present evidence at the proceeding.

(2) ~~**Represented Parties' Duties.**~~ If the court schedules a return hearing, and both parties are represented by counsel, counsel shall 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. Post Judgment Management Conference, each party, no later than 5 days before the Resolution Management Conference or by a different deadline if ordered by the court, must do the following: ~~[NOTE: current Rule 91(N)(1) uses the acronyms RMC and PMC, which seems confusing.]~~

(a) personally meet and confer with the opposing party or parties and their counsel to resolve as many issues as possible, except that if there is a current court order prohibiting contact between the parties or a significant history of domestic violence between the parties, the parties will not be required to

**Commented [DH2]:** This must be a new rule. We're not sure what it is.

~~personally meet or contact each other in violation of the court order, but the parties and their counsel must take all reasonable steps to resolve as many issues as possible;~~

- ~~(b) comply with all applicable disclosure requirements set forth in (m); and~~
- ~~(c) prepare and file at a time directed by the court a post-judgment Resolution Statement that states any agreements between the parties and a specific position the party proposes for resolving all disputed issues in the case, without argument in support of the position.~~

~~(3) **Scope of Conference/Return Hearing.** At any return hearing, Post Judgment Management Conference, the court may take any action provided in Rule 76(A)(3) that is applicable to a pre-judgment Resolution Management Conference. After any Post Judgment Management Conference, the court must enter an order reciting the action taken. This order controls further proceedings in the action unless the court modifies it in a later order.~~

~~(l) **Pre-Hearing Statement.** Before an evidentiary hearing, the parties must comply with Rule 76(C) and any local rules, including the filing of a file a pre-hearing statement. Unless the court orders otherwise, all pre-hearing statements must be filed within the time and in the form set forth in Rule 76(C) for pretrial statements. **[Note:** This draft provision includes the newly added words “before an evidentiary hearing~~

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~~(m) **Mediation.** for modification of legal decision-making or parenting time. The parties may be required by local rule or court order to submit to mediation before the court will schedule an evidentiary hearing regarding hear any legal decision-making, or parenting time, or visitation issues; however, no party should be required to submit to mediation before filing a petition.~~

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~~(n) **Disclosure. All Cases.** In any proceeding under Rule 91 or Rules 91.1 through 91.7, each party must comply with Rule 49, as applicable, within the time established by the court at the return or other hearing or as agreed by the parties disclose to all other parties; all exhibits the party intends to use at any evidentiary hearing; and~~

~~(o) the names, addresses, and current telephone numbers of any witnesses, and a statement fairly describing the substance of each witness’s expected testimony.~~

~~(p) **[Note:** Should this rule include a provision regarding expert witnesses?]~~

~~(q) **Legal Decision-Making or Parenting Time.** In any proceeding for modification of legal decision-making or parenting time and in addition to the disclosures in (m)(1), each party must provide to all other parties the information~~

~~and documents described in Rule 49(e). **Child Support or Spousal Maintenance.** In any proceeding for modification of child support or spousal maintenance, or for attorney's fees and expenses, each party must provide to the other party or parties, including if applicable the State, copies of the following documents:~~

~~(r) — the party's most recently filed federal and state income tax returns, with all schedules;~~

~~(s) — the party's 4 most recent consecutive wage statements from every source of employment;~~

~~(t) the party's most recent federal tax W-2, 1099, and K-1 forms, as applicable; and~~

~~(u) — in modification of child support proceedings, an employer provided statement of the cost of medical and dental insurance coverage for the parties' minor child(ren).~~

~~(v) — **Additional Disclosure.** On motion or on its own, the court may order additional disclosure.~~

~~(w) — **Discovery.** A party may request additional documents or information through discovery procedures under Rules XX to XX.~~

~~(x) — **Service of Disclosure.** Unless the court orders otherwise, a party must serve the information and documents required in this rule on all other parties within a time that assures receipt of the information and documents by the other parties as soon as possible after the petition's filing and, absent good cause, no later than 3 days before the scheduled conference or hearing.~~

~~(y) — **Sanctions.** On motion or on its own, and unless the party or attorney shows good cause for not imposing a sanction, a judge The court may enter sanctions orders including, without limitation, those listed in in accordance with Rule 76(D). that sanction the following conduct:~~

~~(z) — if a party or attorney fails to obey a scheduling or pre-hearing order or any provision of this rule; if no appearance is made on behalf of a party at a post-judgment conference, an evidentiary hearing, or other scheduled hearing;~~

~~(aa) — if a party or a party's attorney is substantially unprepared to participate in the conference or hearing; or~~

~~(bb) — if a party or party's attorney fails to participate in good faith in a conference or a hearing, or in the preparation of a resolution statement or joint pre-hearing statement.~~

~~(cc) — **Dismissal of Petition for Lack of Prosecution.**~~

~~(1) **Notice of Dismissal.** In the following circumstances, the court may issue a notice that the court will dismiss a post judgment petition after 60 days without further notice, unless within those 60 days the applicant completes service and requests a further hearing, or the court sets the petition for further proceedings:-~~

~~— 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;~~

~~(a) — if a petition to enforce or modify a prior family court judgment is filed but not presented to the assigned division with a proposed Order to Appear in the proper form required by these rules within 120 30 days after filing; or~~

~~(b) if a petition is filed but not served on the opposing party within 120 days after filing, or if the petition is otherwise abandoned by the parties who appeared based on no activity for 120 days, and there are no scheduled hearings or conferences; or~~

~~(c) If the applicant fails to appear at the return hearing, a petition to enforce or modify a prior family court decree, judgment or order is filed but not presented in proper form as required by these rules to the assigned division within one year, is filed but not served on the adverse party within one year after filing, or is otherwise abandoned by the appearing parties with no activity for one year, and there are no hearings or conferences scheduled with respect to the petition. **[NOTE: What is the difference between A+B and C? X ref current Rule 91(R).]**~~

~~(2) **Dismissal Order.** If a notice is issued under (o)(1), the court may dismiss the petition without prejudice if, within 60 days after the notice is issued:~~

~~(a) the applicant fails to complete service and fails to request a further hearing; and~~

~~(3) the court has not set the petition for further proceeding ***Time Extension.*** The court may extend the deadlines in this rule for good cause.~~

~~(dd)(n) **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(D)-76.1 submittals.** **[JWR Note: Is this provision necessary? It repeats what is required in (2) and (3).]**~~

~~(o) **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.~~

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~~*If Sought by an Applicant.* If an applicant seeks attorney's fees, costs, and expenses:~~

~~the applicant must file an Affidavit of Financial Information with the petition and serve it on the opposing party along with a blank copy of the affidavit; and~~

~~the opposing party must respond by completing and filing an Affidavit of Financial Information, and serving it on the applicant's attorney or, if unrepresented, on the applicant, no later than 3 days before the scheduled hearing, unless the court orders otherwise.~~

~~(1) *If Sought by the Opposing Party.* If the applicant did not make a request for attorney's fees, costs, and expenses, but the opposing party makes that request:~~

~~(a) the opposing party must file a completed Affidavit of Financial Information with the court and serve it on the applicant's attorney or, if unrepresented, the applicant within 5 days after the petition is served; and~~

~~(b) the applicant must respond by filing a completed Affidavit of Financial Information and serving it on the opposing party's attorney or, if unrepresented, the opposing party, no later than 3 days before the scheduled hearing, unless the court orders otherwise.~~

~~(ee)(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. (A) if one or both parties are represented by counsel~~

~~(ff) **Rule 91.1. Post-Judgment Petition to Modify Spousal Maintenance or Spousal Maintenance or Child Support** [New]~~

~~(gg)(a) **GeSpousal Maintenance.** A petition to modify spousal maintenance or child support spousal maintenance must comply with Rule 91. In addition, the petition must include a statement of the facts that establish that and also show substantial and continuing changes in circumstances that exist that support the requested modification. The applicant also must file with the original petition a current Affidavit of Financial Information.~~

~~(hh)(a) **Child Support.**~~

~~(ii)(1) **Standard Procedure.** A petition to modify child support must comply with Rule 91. In addition, the petition must include a statement of facts establishing substantial and continuing changes in circumstances that support the requested modification.~~

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~~(j)(1)~~ *Simplified Procedure.* A party seeking to modify child using the simplified procedure for modification outlined in the Arizona Child Support Guidelines must follow the procedures specified in the Arizona Child Support Guidelines, Appendix to A.R.S. § 25-320.

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~~(k)(1)~~ *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~~(k)~~.1(c).

~~(a)~~ **Affidavit of Financial Information.** ~~For a petition filed under Rule 91.1(a) or Rule 91.1(b)(1) he parties 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.~~ **Service.** ~~Within the time provided in Rule 91(f), the applicant must serve on the other party a copy of the petition, the Affidavit of Financial Information, the issued Order to Appear, and a blank copy of an Affidavit of Financial Information.~~

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~~(b) Response.~~ The opposing party must file on the court and serve on the applicant a completed Affidavit of Financial Information within the time provided in Rule 91(h)

~~Disclosure.~~ ~~Within the time provided in Rule 91(f), each party must serve on the other party and bring to the hearing copies of the documents and information set forth in Rule 91(m).~~

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

**(a) Generally.** A petition to enforce an order to pay spousal maintenance, child support, medical, ~~or~~ dental, or vision 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 ~~the amount past due arrears~~ **[NOTE: the current rule says "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 must include a statement of all sums due. In addition, the petition also must include within 30 days after filing the petition, the applicant must disclose to the other party:~~

~~(c) a detailed summary of any documentation supporting the claim, including proof of payment of every claimed medical, dental, and vision bill;~~

~~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.~~

~~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:~~

~~the responding party's most recently filed federal and state income tax returns, with all schedules;~~

~~the responding party's 4 most recent consecutive wage statements from all sources of employment;~~

~~the responding party's most recent W-2, 1099, and K-1 forms, as applicable; and~~

~~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 or Parenting Time [New]**

**(a) Generally.** ~~Generally.~~ A Petition for Modification of Legal Decision-Making or Parenting Time: 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 must comply with Rule 91;~~

~~(2) must contain detailed facts supporting the modification;~~

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~~(1) and either~~ must be verified by the applicant or supported by affidavit(s) ~~under as~~ required by 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;~~

~~(b)(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~~

~~(3)(4) in actions in which the legal decision-making order or decree was not entered by an Arizona court, must include an affidavit required under A.R.S. § 25-1039.~~

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~~(a) 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.~~

~~(e)(b) Service. In addition to complying with Rule 91(j), the~~ The applicant must comply with A.R.S. § 25-1035. 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.]

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~~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.~~

#### ~~Hearing.~~

~~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.~~

~~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.~~

~~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.~~

~~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) Relocation. Generally. A petition to relocate a minor child, or to prevent the minor child's relocation under~~ must comply with A.R.S. § 25-408, is considered a request to modify a prior court order and must comply with and Rule 91.3.

~~(a)(b) Preventing Relocation. A petition to prevent the relocation of a minor child must~~ comply with A.R.S. § 25-408 and Rule 91.

~~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]**

~~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:~~

~~detailed facts supporting the requested modification or clarification;~~

~~the specific parenting time or visitation plan sought;~~

~~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;~~

~~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~~

~~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.~~

~~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.~~

~~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 91.65. Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody [New]**

(a) ~~Generally Enforcement. A Petition for Enforcement of Legal Decision-Making, Parenting Time, or Visitation Order must comply with Rule 91, and A party seeking to enforce an existing legal decision-making, parenting time, or visitation order, must file the following: a Petition for Enforcement of Legal Decision-Making, Parenting Time, or Visitation Order that:~~

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

~~(a)(2)~~ (2) ~~must~~ must include detailed facts supporting a violation of the order or enforcement action and the specific remedy or remedies sought; ~~and.~~

(b) ~~Warrant. A petition seeking a~~ if the applicant seeks a ~~warrant to take physical custody of a child must comply with Rule 91 and,~~ complies ~~with A.R.S. § 25-1061; and.~~

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~~a warrant to take physical custody of a child.~~

~~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.~~

~~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 91.76. 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 91.56 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).~~

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