Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Friday, August 4, 2017
9:30 AM to 2:30 PM
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order** **Introductory remarks**	*Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs*
Item no. 2 Page 3	**Approval of the July 14, 2017 meeting minutes**	*Justice Berch and Judge Armstrong*
Item no. 3 Page 15 Page 25	**Workgroup reports:** - **Workgroup 2: Rule 40** - **Workgroup 3: Rule 49**	 *Ms. Clark* *Mr. Wolfson*
Item no. 4	**Roadmap** - **Next meeting dates:** 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]	*Justice Berch and Judge Armstrong*
Item no. 5	**Call to the Public** **Adjourn**	*Justice Berch*

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

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda. Persons with a disability may request reasonable accommodations by contacting Karla Williams at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

Task Force on the Arizona Rules of Family Law Procedure

State Courts Building, Phoenix

Meeting Minutes: July 14, 2017

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

Absent: Hon. Peter Swann

Guests: Lindsay Cohen, Nick Brown, Julie Coleman, Ed Pizarro Sr.

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

1. Call to order; preliminary remarks by the Chairs; approval of meeting minutes. The Chair called the fifth Task Force meeting to order at 10:01 a.m. She welcomed the members and introduced a new member, Mr. Horowitz. Workgroups have met 26 times to-date, including 6 occasions since the June 12 Task Force meeting. The Chair discussed the Task Force's progress and commended the members' dedication to this project. The August 4 Task Force meeting represents the "halfway" point, and the Chair will determine at the conclusion of that meeting whether to add one more plenary meeting to the Task Force schedule. Judge Armstrong requested the workgroups to prepare explanations of changes the Task Force is making to each rule, and to note in those explanations whether changes are substantive or are restyling only. The Task Force rule petition will include an appendix with those rule-by-rule explanations, similar to appendices filed by the Civil and Criminal Rules Task Force with their rule petitions. Judge Armstrong emphasized that it's easier for members to keep track of those changes as the work progress, rather than compiling them retrospectively. Judge Armstrong also noted that if the Task Force proposes a new comment, it should be titled, "Comment to the 2019 Amendment."

The Chair then asked members to review the draft June 12, 2017 meeting minutes, and a member made this motion:

> **Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 005**

2. Workgroup 4. The Chair asked Workgroup 4 to begin today's presentations.

Rule 91 ("modification or enforcement of a judgment"): Judge McMurdie and Ms. Davis made an initial presentation of Rule 91 at the June 12 meeting. Ms. Davis today continued the presentation of Rule 91 and new ancillary Rules 91.1 through 91.6. She observed that current Rule 91 is unnecessarily repetitive and cumulative, that its provisions made compliance difficult for attorneys as well as self-represented litigants, and as a result, portions of the current rule were commonly ignored. To address these issues, the workgroup reduced the size of the rule, and made it more practical and accessible for attorneys and self-represented litigants. The workgroup also reorganized the rule by placing provisions applicable to any post-judgment petition in Rule 91, and by adding separate Rules 91.1 through 91.6 that contain provisions applicable to specific types of modification or enforcement actions. Ms. Davis said that the increased clarity of these draft rules remove "hurdles to the courthouse." She gave these examples:

- An applicant does not need to file an Affidavit of Financial Information ("AFI") with a petition, a practice that now results in a considerable amount of blank answers and "unknowns." Instead, the AFI completion date would be keyed to the return hearing date.

- Petitions for unreimbursed medical expenses would not require the considerable information specified by the current rule, but would instead require a meaningful amount of supporting detail.

- Parties may now be required to engage in pre-petition mediation for legal decision-making disputes, which can be counter-productive and may delay resolution. The workgroup's draft would require mediation at a later time, i.e., before an evidentiary hearing on the petition.

  The Chair opened the draft rule for member comments.

- A member asked how the rule would treat parenting plans that require mediation before filing a petition. Ms. Davis suggested that a new comment to the rule could further explain the mediation requirement.

- Another member raised a concern with a requirement in draft Rule 91(b) that the petition include a copy of the judgment the applicant seeks to modify or enforce. If the judgment is already in the court's file, the judge should be able to locate it when the applicant provides the filing date. On the other hand, the court will need an attachment when the petition involves a judgment from another venue or jurisdiction.

  - Members agreed to carve out a "IV-D" exception to this requirement in Rule 91(b)(3), and the workgroup will prepare revised language. Meanwhile,

members discussed and inserted in Rule 91(b)(4) text that would require a reference to the page number and section of the underlying judgment.

- A member asked whether the rule should require the attachment of a child support worksheet when the petition concerns child support. Members deferred this inquiry to their discussion of Rule 91.1; see page 4 of these minutes.

- In Rule 91(d) ("mediation"), a member suggested changing the phrase "schedule an evidentiary hearing" to "hold an evidentiary hearing." Members agreed with the suggestion.

- Members also commented on the last sentence of Rule 91(d) ("the court may not order private mediation absent an agreement of the parties.") They discussed the interaction of this provision with Rule 66, which concerns alternative dispute resolution, and the availability of mediation services in particular counties. Members agreed to remove this sentence pending their discussion of Rule 66.

Rule 91.1 ("post-judgment petition to modify spousal maintenance or child support") and the issue of return hearings: Members proceeded to an extensive discussion of the "return hearing," which is a term used throughout Rule 91; see, for example, Rule 91(i)(1) ("setting a return hearing or rejecting a petition"). The issue was precipitated by a member's observation that Rule 91.1(c) ("affidavit of financial information") bases the time for the parties to exchange this document on the date of the return hearing, but there is no return hearing in a IV-D case. In other counties, notably Yuma and Pima, courts set orders to appear ("OTA") for an evidentiary hearing rather than a return hearing because they may have insufficient resources to conduct both hearings. A member also suggested that a single hearing is practical because self-represented litigants are less likely to appear if the court sets more than one hearing on a petition. If mediation is required before an evidentiary hearing, the court would be reluctant to set a return hearing solely to order mediation, because the court could do that by a written order sent to the parties. But other members had different points of view and expressed a preference that courts set OTAs for return hearings. They observed that return hearings facilitate due process by permitting responses and disclosures before an evidentiary hearing. These members emphasized that brief return hearings are useful for confirming service on the respondent and for resolving cases, and they help avoid the need for a longer evidentiary hearing. A "return hearing" simply means the parties will "return to court," and the term does not imply an evidentiary proceeding.

Regardless, members agreed that the OTA should specify whether the court will consider evidence at the hearing. But there was a split among the members about whether the hearing must be non-evidentiary. About half the members agreed with the proposed text of Rule 91(i) ("initial review of petitions and return hearing") that states, "If the court

issues the Order to Appear, it must set a return hearing where, excepting emergent circumstances, no evidence will be taken." But the other half of the members preferred a rule that allows the court to set either a non-evidentiary return hearing or an evidentiary hearing according to local practice. The Chair advised that the Task Force's rule petition would note the split of opinion and solicit comments from stakeholders on this subject. Members agreed that if the rule ultimately provides for a non-evidentiary return hearing (absent exigent circumstances), judicial education would be necessary to assure its implementation as a uniform statewide procedure. They also agreed that a rule that eventually permits an OTA for an evidentiary hearing would require several additional changes to Rule 91.

Members also discussed a new provision in Rule 91(j) ("manner and timing of service"). The version introduced at the June 12 meeting required service of the petition "at least 10 days before the scheduled conference or hearing." The workgroup's revised version would require service "no later than 10 days after receipt of the issued Order to Appear…." A member suggested that in IV-D cases, respondents may move frequently and it may be difficult to serve the respondent this quickly as proposed; the member suggested "20 days before the hearing" as a compromise. Members disfavored an exception in this rule for IV-D cases that would allow a state agency more time to effect service than a private litigant. After a further discussion of alternatives, members concurred with bracketing the service time in Rule 91(j) as follows: "The applicant must make good faith efforts to complete service promptly and within 10 days after the receipt of the issued order to appear, but must complete service in no event later than 20 days before the hearing." In proposing this language, members expressed concern about making the rule more complicated rather than simpler. They discussed whether different times for completing service should apply if the OTA was for an evidentiary hearing rather than a return hearing. During the course of the discussion they reconsidered the Rule 91(i) issue discussed above, but they again concluded they would identify that issue in their petition and request comments. Although a member proposed language that the applicant must complete service 20 days before a return hearing and 30 days before an evidentiary hearing, members declined to adopt this proposed change at today's meeting.

While on the subject of Rule 91.1(b)(1), which concerns a petition for child support in a "standard procedure" case, members resumed their discussion on appending to the petition a copy of a child support worksheet. Members acknowledged that the worksheet might not always be available, but the worksheet would be useful for showing how the existing number was derived and what the applicant was asking the court to modify. Members agreed to this addition, and to describe the appropriate worksheet, they used this language: that the applicant must "attach a copy of the most recent child support worksheet that supports the existing child support order, if available." They agreed that

it was not necessary to include a worksheet for a "simplified procedure" case (Rule 91.1(b)(2)), which is governed by the Arizona Child Support Guidelines.

Rule 91.2 ("post-judgment petition to enforce spousal maintenance or child support"): The workgroup draft of this rule required "a current summary calculation of the arrears derived from the Clearinghouse records of the Department of Child Support Enforcement…." Members discussed the practice of obtaining an arrearage calculation and the distinction between that calculation and a "payment history," which may not show the amount due. One member also noted that in Maricopa County, the court does an independent calculation of the arrearage. Because an applicant may need to submit a clearinghouse calculation from out-of-state, the members agreed to use lower case letters, which are more generic, rather than capital letters, and they made other modifications to this provision. Their agreed-upon language for this portion of Rule 91.2(a) is, "The petition also must include a current summary calculation of arrears derived from support payment clearinghouse records…."

Rule 91.3 ("Post-Judgment Petition to Modify Legal Decision Making or Parenting Time"), Rule 91.4 ("Post-Judgment Petition to Relocate or Prevent Relocation"), and Rule 91.5 ("Post-Judgment Petition for Enforcement of Legal Decision-Making or Parenting Time; Warrant to Take Physical Custody"): Members discussed these rules but they had no significant revisions to the workgroup's drafts.

*Rule 91.6 ("other post-judgment petition*s"): The workgroup's draft of this rule required the petition to state "the specific legal authority that confers subject matter jurisdiction on the family court, or authorizes it to grant the relief requested." One member observed that the "family" court is actually the "superior court," so members deleted the word "family." The also removed the words "subject matter jurisdiction" from the remaining part of this provision and revised it to say, "the specific legal authority that permits the court to grant the relief requested."

Rule 89 ("enforcing a judgment for a specific act"): Judge Eppich presented this rule. He advised that it was modeled on restyled Civil Rule 70. Members approved the rule without any changes to the draft.

3. **<u>Workgroup 1.</u>** Workgroup 1 then presented several of its rules.

Rule 6 ("change of judge as a matter of right") and Rule 6.1 ("change of judge for cause"): Ms. Henderson advised that these rules are based on restyled civil rules, but the workgroup made appropriate modifications for family law proceedings. She reminded the members that they had reviewed these rules at a previous Task Force meeting. One issue then was who was a "judge" under these rules. The workgroup added a definition of "judge" in Rule 6(a) ("definitions") that defined this word, as used in Rule 6 and Rule 6.1, as "any judge, judge pro tem, or court commissioner." Rule 6 clarified that there is

only one change as a matter of right. On the "time limits" in Rule 6(d), members discussed a 60-day requirement for holding a temporary orders hearing and concluded that no change to the draft of Rule 6 was warranted. But in Rule 6(f) ("actions remanded from an appellate court"), the members concurred that a remand for a "new trial" did not encompass a remand of a "contested hearing," and they added "contested hearing" to this provision.

Rule 8 ("telephonic appearance and testimony"): Mr. Woodnick noted that the workgroup took a pragmatic approach to this rule but it had concerns with the manner of supplying exhibits to a witness who testified telephonically. If a party provided only a limited number of exhibits to the witness, the party could signal a cross-examination strategy; but producing for the witness all of the exhibits in the case could be burdensome. The members agreed that it's difficult for the rule to anticipate a myriad of scenarios, yet section (c) permits the court to use its discretion as these scenarios arise. Members discussed A.R.S. § 25-1256(F) and made minor modifications to section (c) to accommodate the statute. They revised the titles of Rule 8 and sections (a) and (d) for more consistent and clearer meaning, and made other conforming changes to the text of the rule. The members then approved the draft of Rule 8.

Rule 9 ("duties of parties or counsel"): Ms. Henderson observed that the workgroup consolidated various provisions, such as the second and third sentences of current Rule 23 regarding a mailing address, into its draft of Rule 9. However, members took issue with the phrasing of draft Rule 9(b) ("responsibility to the court") that requires parties to keep the court "informed of material changes in the status of their cases." "Material changes" is too vague, and the workgroup will prepare revised language. Ms. Henderson reviewed the substitution provisions of section (d), including subpart (2)(C) that continues to require a signed order approving a substitution of counsel.

Staff based the initial restyling of Rule 9 on restyled Civil Rule 5.3. Task Force members noted the omission in staff's restyling of a provision that is in the current family rule, but which has no Civil Rule 5.3 counterpart. That current provision, in Family Rule 9(A)(1), provides that counsel of record is deemed responsible "until the time for appeal from a judgment has expired or a judgment has become final after appeal…." Members agreed to reinsert this. Then they discussed whether, after the time for appeal has expired or a judgment has become final after appeal, the court should automatically remove counsel from the record as representing the party, or whether the rule should require counsel to file a motion to formally disengage from the client in the court record. Judge Armstrong noted that Maricopa County Local Rule 6.2(e) contains a procedure where, in these circumstances, counsel may file a "notice of withdrawal of attorney of record." The current Family Rule is silent on whether a notice is required, but members concurred that

this local "notice" procedure would be useful. Ms. Henderson will draft additional language for Rule 9(d) regarding a notice of withdrawal.

Members discussed a provision added by staff to Rule 9(d), also prompted by a recent change to Civil Rule 5.3, concerning change of counsel within the same firm or office. This provision also applies to governmental entities, but given the volume of family cases in the Attorney General's office and the absence of difficulties in locating the assigned assistant attorney general, members agreed to delete "governmental law office" from the draft rule.

Rule 10 ("representation of children") and Rule 10.1 ("court-appointed advisor"): Ms. Burns noted that the workgroup divided current Rule 10 into two draft rules, one for the child's attorney and best interests attorney; and a new Rule 10.1 for a court-appointed advisor. Current Rule 10(A) contains a list of reasons for appointing an attorney for the child, which includes "any other reason deemed appropriate by the court." Draft Rule 10(b) ("grounds") shortens the list by simply saying, "any reason the court deems appropriate." The body of draft Rule 10(c) ("qualifications") contains a reference to American Bar Association standards, which are referenced in a comment to current Rule 10. Provisions in section (F) of the current rule, which concern fees and expenses, were relocated to section (d) ("appointment order") of the draft rule. The workgroup did not include in its Rule 10 draft any provisions that correspond to current Rules 10(H) and 10(I) ("minors and incompetent persons" and "appointment of guardian") because it believed Rule 37 ("substitution of parties") is a more appropriate place for those provisions, and that rule is assigned to Workgroup 2.

Judge Cohen reviewed Rule 10.1. The draft rule reflects text and organizational changes similar to changes the workgroup made to Rule 10. The body of Rule 10.1(b) includes a reference to a relevant act of the Uniform Law Commission concerning child abuse, neglect, and custody. The draft rule includes a provision, similar to current Rule 10(E), which distinguishes permissible actions a court-appointed advisor may take from actions that an attorney may take. A member suggested that a court-appointed advisor's report should include a discussion of A.R.S. § 25-403 factors. Members declined to include a specific reference to this statute, but they agreed to add to section (d) ("participation"), subpart (5), that the report should discuss "applicable statutory factors." Members had no other comments and approved draft Rules 10 and 10.1.

Rule 12 ("court interviews of children"): Judge Cohen and Mr. Woodnick jointly presented this rule. They noted that the workgroup deleted current Rule 10(B) ("special precautions") because this section appeared to be more in the nature of a "how-to-do" provision than a court rule. However, Judge Armstrong advised that this provision was prepared after a lengthy study by a State Bar workgroup, and that workgroup expressly recognized that its proposed rule did not contain "typical rule language." Judge

Armstrong also advised that the Court adopted these "special precautions" relatively recently (2015). Accordingly, he recommended reinserting this provision, and the members agreed with his recommendation.

The workgroup's draft of Rule 12 says, in part, that "unless the parties stipulate otherwise, the court must record the interview…." This is different from the current rule, which provides that "the interview must be recorded…." A member proposed reverting to the current language. One judge member suggested that parties should be able to waive a recording, but another expressed caution about not having a record of an interview that a judge may rely upon. Another member noted that even if the parties waive a record, they would nonetheless receive a report of the interview, and that judges customarily rely on the report more than they rely on the actual interview. Another member observed that if the judge does the interview, the judge probably wouldn't prepare a report. Judge Armstrong proposed keeping in the rule the language shown in the first sentence of this paragraph above, but adding to section (c) ("record of the interview") the words, "except that the court must record any interview conducted by the judicial officer." Members agreed with this compromise language. Judge Armstrong further explained that "sealing" as used in this rule means the interview is not available to the public, but it is available to the parties. To clarify this concept, members added in Rule 12(c)(2) ("sealing") three words: "…the court may seal <u>from the public</u> part or all of the record of the interview." They also agreed that draft Rule 10(d)(4) ("admissibility") was redundant to Rule 2, and they removed this provision.

Rule 13 ("public access to proceedings and records"): Judge Cohen reviewed the draft rule and explained that the workgroup made no substantial changes to staff's initial restyling. However, the workgroup deleted the comment to this rule. Members had no questions concerning the draft and they approved the rule as presented.

4. **<u>Workgroup 2.</u>** Workgroup 2 presented Rules 39, 43, and 43.1.

Rule 39 (formerly "reserved," now "meaning of 'service'"): Commissioner Christoffel explained that current Rule 39 is titled, "proof of authority by attorney for respondent not personally served." At a previous Task Force meeting, the workgroup recommended deleting this rule and maintaining it as "reserved." Thereafter, the workgroup decided to utilize Rule 39 to describe the different meanings of "service," a term-of-art that Rules 40, 41, and 42 use. Draft Rule 39(a) (the "general rule"), requires service "promptly after filing." Section (b) ("meaning of service") describes the different meanings of service in three broad circumstances: service of a summons and petition; service of documents filed in the course of a case; and service of contempt petitions. Section (c) introduces the concepts of waiver and acceptance of service. One member noted that section (b)(1) says, in part, that "the petitioner" must serve an OTA with a petition, but that person might be the "respondent" in the case. To avoid confusion, this should refer to "the applicant."

Members concurred, and they will consider at a later time bifurcating this provision for pre- and post-decree situations.

Rule 43 ("service of other documents after service of the summons, petition, and order to appear") and Rule 43.1 ("filing of pleadings and other documents"): Ms. Clark noted that the Task Force returned Rule 43 to the workgroup for reasons noted at page 2 of the June 12, 2017 meeting minutes. The workgroup made the revisions suggested by the Task Force. The workgroup also included, as the Task Force suggested, an explanation regarding the meaning of "service;" see Rule 39 above. A member inquired about the meaning of the term "service is complete" as used in Rule 43(b), but use of this term conforms to its use in the restyled civil rules, and members can consider whether further clarification of the term is appropriate when they review Rule 4 ("time"). Members had no additional comments and approved Rule 43 as presented.

Mr. Nash presented Rule 43.1. He advised that the draft rule is modeled on restyled Civil Rule 5.1. There is a new provision in draft Rule 43.1(b)(4) regarding filing by an incarcerated party. For the sanctions provision of section (d)(4), the workgroup inserted Rule 71(a) as the appropriate cross-reference. Section (e), which concerns proposed orders and judgments, modified provisions of the restyled civil rule so they conform to family law procedures. A new "exception" was added in section (e)(3) that allows the filing of a proposed order or judgment to preserve the record on appeal. Section (f) governs "sensitive data." Ms. Sell discussed recent changes to federally mandated forms, and she agreed to prepare additional conforming language for section (f) that accommodates those forms. Mr. Nash noted that section (f)(3) now refers to "income withholding orders," which is the revised federal term, rather than to "orders of assignment," which current Rule 43(G) uses. The workgroup recommended the deletion of a lengthy comment to current Rule 43. Except as otherwise noted, members approved draft Rules 43 and 43.1.

5. <u>Roadmap; call to the public; adjourn.</u> The Chair reminded members of pending Task Force meeting dates (August 4, August 25, September 29, October 20, December 1, and December 15, all Fridays), which are shown on today's meeting agenda. A show of hands indicated the Task Force would have a quorum of members present for the August 4 meeting.

The Chair made a call to the public. There was no response. The meeting adjourned a**t** 4:04 p.m.

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.

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

~~**b.**~~**(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 40 and Rule 41 for an in-state respondent, and as required by Rule 40 and Rule 42 for an out-of-state respondent. (come back to 39B1)

~~**(1)**~~**(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 person authorized to serve process on the individual named in the contempt petition.

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

[NOTE] moved to section IV

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(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.

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

[NOTE] moved to section IV

Rule 40. Summons

(a) Issuance; Service.

~~**(1) *Pleading Defined.*** As used in this rule, Rule 41, and Rule 42, "pleading" means any of the pleadings authorized by Rule 24 that bring a party into an action.~~

(1) *When Required.* Pleadings that require a summons are petitions for dissolution, legal separation, annulment, or for paternity or maternity.

(2) ~~*Issuance*~~ *Issuance*. ~~On or after filing a pleading, t~~The ~~filing~~ party filing one of the pleadings described in (a)(1) ~~may~~ must present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the filing party for service. A summons—or a copy of the summons if addressed to multiple parties--must be issued for each party to be served.

(3) *Service.* A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 41, or Rule 42, as applicable.

(b) Contents~~; Replacement Summons~~.

(1) ~~*Contents*~~ *What a Summons Must Include*. A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or—if unrepresented—the party's name and address;

(D) state the time within which the ~~defendant~~respondent must appear and defend;

(E) notify the party to be served that a failure to appear and defend will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding";

(G) be signed by the clerk; and

(H) bear the court's seal.

~~**(2) *Actions for Annulment, Dissolution or of Marriage, or Legal Separation.***~~ ~~In an action for annulment, dissolution of marriage, or legal separation, the summons also must contain a statement that either spouse, or both spouses, may~~

~~file in the conciliation court a petition invoking the court's jurisdiction for the purpose of preserving the marriage by effecting conciliation between the parties, or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issues raised in the pleading.~~ If a county has established a conciliation court, the summons in an action for dissolution, legal separation, or annulment that was filed in that county must also contain a statement that either spouse, or both spouses, may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies. [Dean's alternative language: "A summons in an action for dissolution, legal separation, or annulment filed in a county with an established conciliation court must also contain a statement that either spouse, or both spouses, may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies."]

(2)

~~(3)~~ (c) **Replacement Summons.** If a summons is returned without being served, or if it has been lost, a party may ~~ask~~ present a replacement summons for the clerk to issue ~~a replacement summons~~ in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 40(i) for service of the original summons.

~~(c)~~(d) **Who May Serve ~~Process~~ a Summons.**

(1) ***Generally.*** Service of ~~process~~ a summons must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204 ~~and Rule 40(d)~~, or any other person specially appointed by the court. Service of ~~process~~ a summons may also be made by a party or that party's attorney ~~if expressly authorized by these rules~~ as expressly authorized under Rules 41 or 42.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause

specified in the motion, and do not constitute an appointment as a certified private process server.

~~**(d) Statewide Certification of Private Process Servers.** A person seeking certification as a private process server must file with the clerk an application under Arizona Code of Judicial Administration § 7-204. Upon approval of the court or presiding judge of the county in which the application is filed, the clerk will register the person as a certified private process server, which will remain in effect unless and until the certification is withdrawn by the court. The clerk must maintain a register for this purpose. A certified private process server will be entitled to serve in that capacity for any state court within Arizona.~~

(e) Service of Summons in Title IV-D Cases. If certified under Rule 40(d), a Field Locate Investigator employed by the Department of Economic Security's Office of Special Investigations may complete service in the manner set forth in Rule 41(c) in any action initiated by the State for the determination of paternity, or for the establishment, modification, or enforcement of an order of support.

(f) Accepting ~~or Waiving~~ Service; Voluntary Appearance. ~~There are two ways to accomplish service with the assent of the served party—waiver and acceptance~~ A party may accept service. A party also may voluntarily appear without being served.

~~**(1) *Waiving Service.*** A party subject to service under this rule, Rule 41, or Rule 42 may waive issuance or service. The waiver of service must be in writing, signed by that party or that party's authorized agent or attorney, be notarized, and be filed in the action. A party who waives service has 60 days after the request for a waiver was sent, or 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States, to serve a responsive pleading.~~

~~(2)~~**(1)** ***Accepting Service.*** A party subject to service under this rule, Rule 41, or Rule 42 may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney, be notarized, and be filed in the action. A party who accepts service must serve a responsive pleading within the time provided in Rule 32(a)(1).

~~(3)~~**(2)** ***Voluntary Appearance.***

(A) *In Open Court.* A party on whom service is required may, in person or by an attorney ~~or authorized agent~~, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 24 constitutes an appearance by the party.

~~(4)~~(3) ***Effect.*** Waiver, acceptance, and appearance under (f)(1), (f)(2), and (f)(3) have the same force and effect as if a summons had been issued and served.

(g) Return; Proof of Service.

(1) ***Timing.*** If service is not accepted ~~or waived~~, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to ~~process~~ summons and petition.

(2) ***Service by the Sheriff.*** If a summons is served by a sheriff or deputy sheriff, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) ***Service by Others.*** If served by a person other than a sheriff or deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) ***Service by Publication.*** If the summons is served by publication, the return of the person making such service must be made as provided in Rules 41(X) and 42(X).

(5) ***Service Outside the United States.*** Service outside the United States must be proved as follows:

(A) if effected under Rule 42(X) as provided in the applicable treaty or convention; or

(B) if effected under Rule 42(X), by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Validity of Service***. Failure to make proof of service does not affect the validity of service.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Time Limit for Service. If a ~~defendant~~ respondent is not served with process within ~~90~~ 120 days after the ~~complaint~~ petition is filed, the court—on motion, or on its own after notice to the petitioner—must dismiss the action without prejudice against that

respondent or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for service for an appropriate period. This Rule 40(i) does not apply to service in a foreign country under Rules 42(i), (j), (k), and (l), or to the service of a paternity action described in (j).

(j) Time Limit for Service in Paternity Actions Involving Adoption. A potential father who has been served with notice of a planned adoption under A.R.S. § 8-106(G) must file with the court and serve on the mother—or an attorney or agency that is licensed in Arizona and is representing the mother—a copy of the verified petition to establish paternity and summons no later than 30 days after the notice of the planned adoption is served. The court must dismiss any proceeding that is barred under A.R.S. § 8-106(J).

NOTE: Subparts (a), (b)(1) & (3), (c), (d), (f), (g), (h), and (i) are drawn from restyled Civil Rule 4. Subparts (b)(2), (e), and (j) are drawn from the current Family Law Rules 40(B), (E), and (J).

Rule 40. Summons

(a) Issuance; Service.

(1) ***When Required.*** Pleadings that require a summons are petitions for dissolution, legal separation, annulment, or for paternity or maternity.

(2) ***Issuance.*** The party filing one of the pleadings described in (a)(1) must present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the filing party for service. A summons—or a copy of the summons if addressed to multiple parties--must be issued for each party to be served.

(3) ***Service.*** A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 41, or Rule 42, as applicable.

(b) Contents.

(1) ***What a Summons Must Include.*** A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons or—if unrepresented—the party's name and address;

(D) state the time within which the respondent must appear and defend;

(E) notify the party to be served that a failure to appear and defend will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding";

(G) be signed by the clerk; and

(H) bear the court's seal.

(2) ***Actions for Annulment, Dissolution of Marriage, or Legal Separation.*** If a county has established a conciliation court, the summons in an action for dissolution, legal separation, or annulment that was filed in that county must also contain a statement that either spouse, or both spouses, may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies. [Dean's alternative language: "A summons in an action for dissolution, legal separation, or annulment filed in a county with an

established conciliation court must also contain a statement that either spouse, or both spouses, may file a petition that requests the conciliation court's assistance in preserving the marriage or resolving marital controversies."]

(c) Replacement Summons. If a summons is returned without being served, or if it has been lost, a party may present a replacement summons for the clerk to issue in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 40(i) for service of the original summons.

(d) Who May Serve a Summons.

(1) ***Generally.*** Service of a summons must be made by a sheriff, a sheriff's deputy, a constable, a constable's deputy, a private process server certified under the Arizona Code of Judicial Administration § 7-204, or any other person specially appointed by the court. Service of a summons may also be made by a party or that party's attorney as expressly authorized under Rules 41 or 42.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person must be at least 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

(e) Service of Summons in Title IV-D Cases. If certified under Rule 40(d), a Field Locate Investigator employed by the Department of Economic Security's Office of Special Investigations may complete service in the manner set forth in Rule 41(c) in any action initiated by the State for the determination of paternity, or for the establishment, modification, or enforcement of an order of support.

(f) Accepting Service; Voluntary Appearance. A party may accept service. A party also may voluntarily appear without being served.

(1) ***Accepting Service.*** A party subject to service under this rule, Rule 41, or Rule 42 may accept service. The acceptance of service must be in writing, signed by that party or that party's authorized agent or attorney, be notarized, and be filed

in the action. A party who accepts service must serve a responsive pleading within the time provided in Rule 32(a)(1).

(2) ***Voluntary Appearance.***

(A) *In Open Court.* A party on whom service is required may, in person or by an attorney, enter an appearance in open court. The appearance must be noted by the clerk on the docket and entered in the minutes.

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 24 constitutes an appearance by the party.

(3) ***Effect.*** Waiver, acceptance, and appearance under (f)(1), (f)(2), and (f)(3) have the same force and effect as if a summons had been issued and served.

(g) Return; Proof of Service.

(1) ***Timing.*** If service is not accepted, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to summons and petition.

(2) ***Service by the Sheriff.*** If a summons is served by a sheriff or deputy sheriff, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) ***Service by Others.*** If served by a person other than a sheriff or deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) ***Service by Publication.*** If the summons is served by publication, the return of the person making such service must be made as provided in Rules 41(X) and 42(X).

(5) ***Service Outside the United States.*** Service outside the United States must be proved as follows:

(A) if effected under Rule 42(X) as provided in the applicable treaty or convention; or

(B) if effected under Rule 42(X), by a receipt signed by the addressee, or other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Validity of Service***. Failure to make proof of service does not affect the validity of service.

(h) Amending Process or Proof of Service. The court may permit process or proof of service to be amended.

(i) Time Limit for Service. If a respondent is not served with process within 120 days after the petition is filed, the court—on motion, or on its own after notice to the petitioner—must dismiss the action without prejudice against that respondent or order that service be made within a specified time. But if the petitioner shows good cause for the failure, the court must extend the time for service for an appropriate period. This Rule 40(i) does not apply to service in a foreign country under Rules 42(i), (j), (k), and (l), or to the service of a paternity action described in (j).

(j) Time Limit for Service in Paternity Actions Involving Adoption. A potential father who has been served with notice of a planned adoption under A.R.S. § 8-106(G) must file with the court and serve on the mother—or an attorney or agency that is licensed in Arizona and is representing the mother—a copy of the verified petition to establish paternity and summons no later than 30 days after the notice of the planned adoption is served. The court must dismiss any proceeding that is barred under A.R.S. § 8-106(J).

NOTE: Subparts (a), (b)(1) & (3), (c), (d), (f), (g), (h), and (i) are drawn from restyled Civil Rule 4. Subparts (b)(2), (e), and (j) are drawn from the current Family Law Rules 40(B), (E), and (J).

Rule 49. Disclosure

(a) Generally. [New]

(1) ***Purpose.*** This rule's disclosure requirements are intended to ensure that each party to an action ~~for dissolution or legal separation~~ arising under A.R.S. Title 25 is fairly informed of the facts, data, legal theories, witnesses, documents, and other information that is relevant to the case.

(2) ***Scope.*** A party must disclose information in the party's possession and control, as well as information that the party can determine or acquire by reasonable inquiry and investigation.

(3) ***Limitation.*** For good cause, the court may limit disclosure under (e) through (i).

~~(4)~~ ~~***Exclusion.*** The requirements of this rule do not apply to default or consent proceedings under Rules 44, 44.1, and 45.~~ [**NOTE:** Workgroup 3 recommends reinserting this provision in Rules 44 and 45.]

[Based on Civil Rule 26.1(c)]

(b) Time for Disclosure; Continuing Duty.

(1) ***Initial Disclosures.*** Unless the parties agree or the court orders otherwise, every party must serve an initial disclosure of information required under (d) through (k) no later than 40 days after the filing of the first responsive pleading to a petition.

(2) ***Additional or Amended Disclosures.***

(A) *Continuing Duty.* The duty of disclosure is a continuing duty, and each party must serve additional or amended disclosures when new or additional information is discovered by, or revealed to, the party.

(B) *Time for Additional or Amended Disclosures.* A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is discovered by, or revealed to, the disclosing party. If a party obtains or discovers information that the party knows or reasonably should know is relevant to a hearing or deposition scheduled to occur in less than 30 days, the party must disclose that information reasonably in advance of the hearing or deposition.

(C) *Disclosure by Written Discovery or Deposition.* If information is disclosed in a written discovery response, another form of written ~~or~~communication, or during a deposition in a manner that reasonably informs all parties of the

information, the information need not be presented in a supplemental disclosure statement.

(3) ~~***Untimely***~~ ***Failure to Disclose, False or Misleading Disclosure, Untimely Disclosure.*** ~~A party seeking to use information that it first disclosed later than the deadline set by the court – or in the absence of such a deadline, less than 60 days before trial – must obtain leave of court to extend the time for disclosure as provided in Rule XX.~~ A party prejudiced by a failure to disclose, false or misleading disclosure, or untimely disclosure, may seek the remedies identified in Rule 65. [**NOTE:** Workgroup 3 would add an adverse inference to Rule 65 for a failure to disclose, and strengthen the other remedies in that rule]

(c) Signature Under Oath. Each disclosure of fact must be in a written statement that is signed under oath by the disclosing party. ~~[**JWR Note:** I suggest deleting this because the forms are supposed to be verified. I also added that into (d).]~~

(d) Resolution Statement. Each party must file a verified Resolution Statement substantially in the form set forth in Rule 97, Form 4 or 5, as applicable~~, within the time provided in (b)(1)~~ 30 days after exchanging their initial disclosure, or 5 days before a hearing, whichever is earlier.. The Resolution Statement must include any agreements between the parties and a specific, detailed position that the party proposes to resolve all issues in the case, without argument in support of the position. Each party must file a resolution statement with the court and serve the other party with a copy of the resolution statement. Unless the court orders otherwise, a Resolution Statement is not required in proceedings filed under A.R.S. § 25-409 (third party rights). [**NOTE:** Workgroup 3 proposes relocating this provision after the rule on responses to petitions, possibly in Rule 33, and before the rules on amended and supplemental pleadings and motions]

(e) Legal Decision-Making or Parenting Time. In a case in which legal decision-making or parenting time is an issue, the following documents and information must be served on the other party with the initial disclosure~~ with the Resolution Statement~~:

(1) a copy of any past or current protective orders and underlying petitions involving a party or member of the party's household;

(2) the name and address of each treatment provider and period of treatment involving any party for psychiatric or psychological issues, anger management, substance abuse or domestic violence, occurring within 5 years before the petition's filing;

(3) the date, description, location and documentation of any criminal charge against or conviction of any party or member of the party's household occurring within 10 years before the petition's filing;

(4) the date, description, location and documentation of any Department of Child Safety investigation or proceeding involving any party or member of the party's household occurring within 10 years before the petition's filing.

(f) Child Support. In a case in which child support is an issue, the following documents must be served on the other party with the ~~Resolution Statement~~ initial disclosure:

(1) a fully completed affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information");

(2) proof of the party's income from all sources, including:

(A) complete tax returns, W-2 forms, 1099 forms, and K-1 forms, for the past two completed calendar years; , and

(B) year-to-date income information for the current calendar year for all income sources, including year-to-date pay stub, salaries, wages, commissions, bonuses, self-employment income, dividends, severance pay, pensions, interest, trust income, income from businesses and properties, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance;

(3) proof of court-ordered child support and spousal maintenance actually paid by the party in any case other than the one in which disclosure is being provided;

(4) proof of all medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;

(5) proof of any child care expenses paid by the party for any child listed or referenced in the petition;

(6) proof of any expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and

(7) proof of any expenses paid by the party for the special needs of a gifted or handicapped child listed or referenced in the petition.

(g) Spousal Maintenance and Attorneys' Fees and Costs. If either party has requested an award of spousal maintenance or an award of attorney's fees and costs, the following documents must be served on the other party with the ~~Resolution Statement~~ initial disclosure:

(1) a fully completed affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information"); and

(2) the documents and information described in (f)(2).

(h) Property. Unless there is no property at issue in the case, or the parties have entered into a written agreement disposing of every property issue, the following documents must be served on the other party with the ~~Resolution Statement~~ initial disclosure:

(1) copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal description, purchase price and encumbrances of all real property owned by any party;

(2) copies of all monthly or periodic bank, checking, savings, brokerage and security account statements and all electronically stored information concerning such accounts in which any party has or had an interest for a period beginning 6 months before the petition's filing and through the disclosure date;

(3) copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option (reflecting grant date, vesting, exercise price and prior exercises), and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for a period beginning 6 months before the petition's filing and through the disclosure date, and, if a claim for premarital accumulation is made as to a defined contribution plan, copies of all monthly or periodic statements and documents showing values, contributions, withdrawals, loans, earnings and losses from the date of marriage to the disclosure date, or if no monthly or quarterly statements are available during these time periods, the most recent statements or documents that disclose the information;~~.~~

(4) copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has an interest for a period beginning 6 months before the petition's filing and through the disclosure date, or if no monthly or quarterly statements are available for this time period, the most recent statements or documents that disclose the information;

(5) copies of all documents and all electronically stored information that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for a period beginning 6 months before the petition's filing

and through the disclosure date, including any documents that the party may rely on in placing a value on any item of real or personal property;

(6) copies of all business tax returns, balance sheets, profit and loss statements, and all documents and all electronically stored information that may assist in identifying or valuing any business or business interest for the last ~~two~~ 5 completed calendar or fiscal years and through the latest available date before the disclosure statement with respect to any business or entity in which any party has an interest or had an interest for a period beginning ~~24 months~~ 5 years before the petition's filing through the disclosure date; ~~and~~

~~(6)~~(7) copies of all documents related to any trust in which the party has a beneficial interest; and

~~(7)~~(8) a list of all items of personal property, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

(i) Debts. Unless the parties have entered into a written agreement disposing of all debt issues in the case, the following documents must be served with the ~~Resolution Statement~~ initial disclosure:

(1) copies of all monthly or periodic statements and documents and all electronically stored information showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for a period beginning ~~6~~ 11 months before the petition's filing and through the disclosure date, or if no monthly or quarterly statements or electronically stored information are available during this time period, the most recent statements or documents or electronically stored information that disclose the information; and

(2) copies of credit card statements and debt statements for all months for a period beginning ~~6~~ 11 months before the petition's filing and through the disclosure date.

(j) Disclosure of Witnesses. [**JWR Note:** We might consider asking whether the Task Force would like to adopted the revisions to Civil Rule 26.1(a)(3). I think the original intent was to have the same disclosure standard as the one found in the Civil Rules.] Each party must disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony. The court may not

allow a party to call witnesses who the party did not disclose at least 60 days before trial or by a different deadline ordered by the court.

(k) **Disclosure of Expert Witnesses.** Each party must disclose the name, address and telephone number of any person the party expects to call as an expert witness at trial. The party also must disclose the subject matter on which the expert will testify, the substance of the facts and opinions on which the expert will testify, a summary of the grounds for each opinion, the expert's qualifications, and the name and address of any custodian of reports the expert prepared. The court may not allow a party to call an expert witness who the party did not disclose at least 60 days before trial or by a different deadline ordered by the court.

(l) [**Note:** this newly added section comes from Civil Rule 26.1(b)] **Disclosure of Hard-Copy Documents and Electronically Stored Information.**

(1) *Hard-Copy Documents*. Subject to the limits of Rule ~~26(b)(1)~~ or other good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule ~~26.1(a)(8), (9), and (10).~~ If a party withholds any such hard-copy document from production, it must in its disclosure identify the document along with the name, telephone number, and address of the document's custodian. A party who produces hard-copy documents for inspection must produce them as they are kept in the usual course of business.

(2) *Electronically Stored Information*.

(A) Duty to Confer. When the existence of electronically stored information is disclosed or discovered, the parties [counsel?] must promptly confer and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;
(ii) the form in which the information will be produced; and
(iii) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(B) Resolution of Disputes. If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information and seek a resolution from the court, they must present the dispute in a single joint motion. The joint motion must include the parties' positions and the separate certification from all counsel required under Rule ~~26(g).~~ In resolving any dispute regarding electronically stored information, the court may shift costs, if appropriate.

(C) Production of Electronically Stored Information. Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule ~~26.1(a)(8) and (9)~~. Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) Presumptive Form of Production. Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

(E) Limits on Disclosure of Electronically Stored Information. Rule ~~26(b)(2)~~ applies to the disclosure of electronically stored information.

~~**(k)**~~

~~**(l)**~~ **(m) No Filing of Disclosures.** The disclosures described in (e) through (k) must be served on all parties, but may not be filed with the court.

(n) Additional Discovery. Nothing in this rule precludes a party from conducting additional discovery under Rule 51.

~~**(m)**~~ **(o) Motion to Compel Disclosure.** A motion to compel disclosure must include a good faith consultation certificate under Rule 9X.

COMMITTEE COMMENT

This rule is based on Rule 26.1, Arizona Rules of Civil Procedure.

Workgroup Notes: 07.27.17

JFC: Judicial Facilitation Conference [new name for RMC?] - purposes:

- Attempt to facilitate settlement on every issue possible
- Encourage agreements of the parties
- Set a trial date

But the rule should be clear that a judge cannot decide disputed issues without taking evidence

Discuss with the Task Force whether the rule should permit the parties to opt out of particular disclosure requirements by written agreement, or should allow parties to modify certain requirements [e.g., 3 months of records instead of 11 months]

Consider a tiering system where the court, not the parties, places the case in a tier based on the court's evaluation of the complexity of the case, and without a presumption set by the rule. The tier assignment would provide specified discovery limits.

Rule 55: Consider adding guidance concerning the attendance of non-parties and non-attorneys at depositions.

Rule 49. Disclosure

(a) Generally. [New]

(1) ***Purpose.*** This rule's disclosure requirements are intended to ensure that each party to an action arising under A.R.S. Title 25 is fairly informed of the facts, data, legal theories, witnesses, documents, and other information that is relevant to the case.

(2) ***Scope.*** A party must disclose information in the party's possession and control, as well as information that the party can determine or acquire by reasonable inquiry and investigation.

(3) ***Limitation.*** For good cause, the court may limit disclosure under (e) through (i).

~~***Exclusion.*** The requirements of this rule do not apply to default or consent proceedings under Rules 44, 44.1, and 45.~~ [**NOTE:** Workgroup 3 recommends reinserting this provision in Rules 44 and 45.][Based on Civil Rule 26.1(c)]

(b) Time for Disclosure; Continuing Duty.

(1) ***Initial Disclosures.*** Unless the parties agree or the court orders otherwise, every party must serve an initial disclosure of information required under (d) through (k) no later than 40 days after the filing of the first responsive pleading to a petition.

(2) ***Additional or Amended Disclosures.***

(A) *Continuing Duty.* The duty of disclosure is a continuing duty, and each party must serve additional or amended disclosures when new or additional information is discovered by, or revealed to, the party.

(B) *Time for Additional or Amended Disclosures.* A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is discovered by, or revealed to, the disclosing party. If a party obtains or discovers information that the party knows or reasonably should know is relevant to a hearing or deposition scheduled to occur in less than 30 days, the party must disclose that information reasonably in advance of the hearing or deposition.

(C) *Disclosure by Written Discovery or Deposition.* If information is disclosed in a written discovery response, another form of written communication, or during a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement.

(3) ***Failure to Disclose, False or Misleading Disclosure, Untimely Disclosure.*** A party prejudiced by a failure to disclose, false or misleading disclosure, or untimely disclosure, may seek the remedies identified in Rule 65. [**NOTE:** Workgroup 3 would add an adverse inference to Rule 65 for a failure to disclose, and strengthen the other remedies in that rule]

(c) Signature Under Oath. Each disclosure of fact must be in a written statement that is signed under oath by the disclosing party.

(d) Resolution Statement. Each party must file a verified Resolution Statement substantially in the form set forth in Rule 97, Form 4 or 5, as applicable 30 days after exchanging their initial disclosure, or 5 days before a hearing, whichever is earlier.. The Resolution Statement must include any agreements between the parties and a specific, detailed position that the party proposes to resolve all issues in the case, without argument in support of the position. Each party must file a resolution statement with the court and serve the other party with a copy of the resolution statement. Unless the court orders otherwise, a Resolution Statement is not required in proceedings filed under A.R.S. § 25-409 (third party rights). [**NOTE:** Workgroup 3 proposes relocating this provision after the rule on responses to petitions, possibly in Rule 33, and before the rules on amended and supplemental pleadings and motions]

(e) Legal Decision-Making or Parenting Time. In a case in which legal decision-making or parenting time is an issue, the following documents and information must be served on the other party with the initial disclosure:

(1) a copy of any past or current protective orders and underlying petitions involving a party or member of the party's household;

(2) the name and address of each treatment provider and period of treatment involving any party for psychiatric or psychological issues, anger management, substance abuse or domestic violence, occurring within 5 years before the petition's filing;

(3) the date, description, location and documentation of any criminal charge against or conviction of any party or member of the party's household occurring within 10 years before the petition's filing;

(4) the date, description, location and documentation of any Department of Child Safety investigation or proceeding involving any party or member of the party's household occurring within 10 years before the petition's filing.

(f) Child Support. In a case in which child support is an issue, the following documents must be served on the other party with the initial disclosure:

(1) a fully completed affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information");

(2) proof of the party's income from all sources, including:

(A) complete tax returns, W-2 forms, 1099 forms, and K-1 forms, for the past two completed calendar years; , and

(B) year-to-date income information for the current calendar year for all income sources, including year-to-date pay stub, salaries, wages, commissions, bonuses, self-employment income, dividends, severance pay, pensions, interest, trust income, income from businesses and properties, annuities, capital gains, social security benefits, worker's compensation benefits, unemployment insurance benefits, disability insurance benefits, recurring gifts, prizes, and spousal maintenance;

(3) proof of court-ordered child support and spousal maintenance actually paid by the party in any case other than the one in which disclosure is being provided;

(4) proof of all medical, dental, and vision insurance premiums paid by the party for any child listed or referenced in the petition;

(5) proof of any child care expenses paid by the party for any child listed or referenced in the petition;

(6) proof of any expenses paid by the party for private or special schools or other particular education needs of a child listed or referenced in the petition; and

(7) proof of any expenses paid by the party for the special needs of a gifted or handicapped child listed or referenced in the petition.

(g) Spousal Maintenance and Attorneys' Fees and Costs. If either party has requested an award of spousal maintenance or an award of attorney's fees and costs, the following documents must be served on the other party with the initial disclosure:

(1) a fully completed affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information"); and

(2) the documents and information described in (f)(2).

(h) Property. Unless there is no property at issue in the case, or the parties have entered into a written agreement disposing of every property issue, the following documents must be served on the other party with the initial disclosure:

(1) copies of all deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, and all other documents that disclose the ownership, legal

description, purchase price and encumbrances of all real property owned by any party;

(2) copies of all monthly or periodic bank, checking, savings, brokerage and security account statements and all electronically stored information concerning such accounts in which any party has or had an interest for a period beginning 6 months before the petition's filing and through the disclosure date;

(3) copies of all monthly or periodic statements and documents showing the value of all pension, retirement, stock option (reflecting grant date, vesting, exercise price and prior exercises), and annuity balances, including Individual Retirement Accounts, 401(k) accounts, and all other retirement and employee benefits and accounts in which any party has or had an interest for a period beginning 6 months before the petition's filing and through the disclosure date, and, if a claim for premarital accumulation is made as to a defined contribution plan, copies of all monthly or periodic statements and documents showing values, contributions, withdrawals, loans, earnings and losses from the date of marriage to the disclosure date, or if no monthly or quarterly statements are available during these time periods, the most recent statements or documents that disclose the information;

(4) copies of all monthly or periodic statements and documents showing the cash surrender value, face value, and premiums charged for all life insurance policies in which any party has an interest for a period beginning 6 months before the petition's filing and through the disclosure date, or if no monthly or quarterly statements are available for this time period, the most recent statements or documents that disclose the information;

(5) copies of all documents and all electronically stored information that may assist in identifying or valuing any item of real or personal property in which any party has or had an interest for a period beginning 6 months before the petition's filing and through the disclosure date, including any documents that the party may rely on in placing a value on any item of real or personal property;

(6) copies of all business tax returns, balance sheets, profit and loss statements, and all documents and all electronically stored information that may assist in identifying or valuing any business or business interest for the last 5 completed calendar or fiscal years and through the latest available date before the disclosure statement with respect to any business or entity in which any party has an interest or had an interest for a period beginning 5 years before the petition's filing through the disclosure date;

(7) copies of all documents related to any trust in which the party has a beneficial interest; and

(8) a list of all items of personal property, including, but not limited to, household furniture, furnishings, antiques, artwork, vehicles, jewelry, and similar items in which any party has an interest, together with the party's estimate of current fair market value (not replacement value) for each item.

(i) Debts. Unless the parties have entered into a written agreement disposing of all debt issues in the case, the following documents must be served with the initial disclosure:

(1) copies of all monthly or periodic statements and documents and all electronically stored information showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for a period beginning 11 months before the petition's filing and through the disclosure date, or if no monthly or quarterly statements or electronically stored information are available during this time period, the most recent statements or documents or electronically stored information that disclose the information; and

(2) copies of credit card statements and debt statements for all months for a period beginning 11 months before the petition's filing and through the disclosure date.

(j) Disclosure of Witnesses. [**JWR Note:** We might consider asking whether the Task Force would like to adopted the revisions to Civil Rule 26.1(a)(3). I think the original intent was to have the same disclosure standard as the one found in the Civil Rules.] Each party must disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony. The court may not allow a party to call witnesses who the party did not disclose at least 60 days before trial or by a different deadline ordered by the court.

(k) Disclosure of Expert Witnesses. Each party must disclose the name, address and telephone number of any person the party expects to call as an expert witness at trial. The party also must disclose the subject matter on which the expert will testify, the substance of the facts and opinions on which the expert will testify, a summary of the grounds for each opinion, the expert's qualifications, and the name and address of any custodian of reports the expert prepared. The court may not allow a party to call an expert witness who the party did not disclose at least 60 days before trial or by a different deadline ordered by the court.

(l) [**Note:** this newly added section comes from Civil Rule 26.1(b)] **Disclosure of Hard-Copy Documents and Electronically Stored Information.**

(1) *Hard-Copy Documents*. Subject to the limits of Rule ~~26(b)(1)~~ or other good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule ~~26.1(a)(8), (9), and (10).~~ If a party withholds any such hard-copy document from production, it must in its disclosure identify the document along with the name, telephone number, and address of the document's custodian. A party who produces hard-copy documents for inspection must produce them as they are kept in the usual course of business.

(2) *Electronically Stored Information*.

(A) Duty to Confer. When the existence of electronically stored information is disclosed or discovered, the parties [counsel?] must promptly confer and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;
(ii) the form in which the information will be produced; and
(iii) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(B) Resolution of Disputes. If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information and seek a resolution from the court, they must present the dispute in a single joint motion. The joint motion must include the parties' positions and the separate certification from all counsel required under Rule ~~26(g).~~ In resolving any dispute regarding electronically stored information, the court may shift costs, if appropriate.

(C) Production of Electronically Stored Information. Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule ~~26.1(a)(8) and (9)~~. Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) Presumptive Form of Production. Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

(E) Limits on Disclosure of Electronically Stored Information. Rule ~~26(b)(2)~~ applies to the disclosure of electronically stored information.

(m) No Filing of Disclosures. The disclosures described in (e) through (k) must be served on all parties, but may not be filed with the court.

(n) Additional Discovery. Nothing in this rule precludes a party from conducting additional discovery under Rule 51.

(o) Motion to Compel Disclosure. A motion to compel disclosure must include a good faith consultation certificate under Rule 9X.

COMMITTEE COMMENT

This rule is based on Rule 26.1, Arizona Rules of Civil Procedure.

Workgroup Notes: 07.27.17

JFC: Judicial Facilitation Conference [new name for RMC?] - purposes:

- Attempt to facilitate settlement on every issue possible
- Encourage agreements of the parties
- Set a trial date

But the rule should be clear that a judge cannot decide disputed issues without taking evidence

Discuss with the Task Force whether the rule should permit the parties to opt out of particular disclosure requirements by written agreement, or should allow parties to modify certain requirements [e.g., 3 months of records instead of 11 months]

Consider a tiering system where the court, not the parties, places the case in a tier based on the court's evaluation of the complexity of the case, and without a presumption set by the rule. The tier assignment would provide specified discovery limits.

Rule 55: Consider adding guidance concerning the attendance of non-parties and non-attorneys at depositions.