Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Friday, August 25, 2017
10:00 AM to 4:00 PM
State Courts Building * 1501 West Washington * Conference Room 345 * Phoenix, AZ

Item no. 1	**Call to Order** **Introductory remarks**	*Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs*
Item no. 2	**Approval of the August 4, 2017 meeting minutes**	*Justice Berch and Judge Armstrong*
Item no. 3	**Workgroup reports:** - **Workgroup 1: Rules 5, 5.1, 7, 17, 22, 23, 24 [for reference only], and 33** - **Workgroup 2: Rules 40(f) [further review], 41** - **Workgroup 3: Rule 65**	 *Mr. Woodnick, Ms. Burns, Judge Cohen Mr. Wolfson, Mr. Davis* *Comm'r Christoffel* *Mr. Wolfson*
Item no. 4	**Roadmap** - **Next meeting dates:** Friday, September 29, 2017 [Room 119] Friday, October 20 [Room 345] Monday, November 13 [Room 119] 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 Sabrina Nash at (602) 452-3849. 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: August 4, 2017

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

Absent: Hon. John Assini, Keith Berkshire, Hon. Dean Christoffel, Joi Hollis

Guests: Martin Lynch

Administrative Office of the Courts Staff: Mark Meltzer, Julie Graber, Sabrina Nash, Theresa Barrett

1. Call to order; preliminary remarks by the Chairs; approval of meeting minutes. The Chair called the sixth Task Force meeting to order at 9:30 a.m. She congratulated Judge Eppich on his appointment to the Court of Appeals, Division Two. She reintroduced Julie Graber, who made a presentation about OneDrive at the first Task Force meeting and will be making revisions on OneDrive during today's meeting. The Chair again commended the members for their progress. The Task Force to-date has approved 35 rules. The Task Force reviewed 9 other rules that it returned to workgroups with recommended edits, and two rules are on today's agenda, for a total of 46 rules considered by the Task Force. There are 53 rules remaining, and the Chair believed it would be appropriate to schedule an additional meeting. Most members indicated they were available for another meeting on Monday, November 13, and the Chair requested any members having a conflict with this date to send an email to staff. Adding this meeting date would permit members to utilize the December 15 meeting primarily for a discussion of their rule petition.

The Chair asked members to review the draft July 14, 2017 meeting minutes, and a member made this motion:

> **Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 006**

2. Workgroup 2. The Chair then asked Workgroup 2 to present Rule 40.

Rule 40 ("summons"): Ms. Clark began the presentation by noting the workgroup's intent to keep Rule 40 focused on the summons, including when a summons is required, the contents of a summons, and service and acceptance of a summons.

Rule 40(a) includes a provision on when a summons is required. The workgroup's draft required a summons for "petitions for dissolution, legal separation, annulment, or for paternity or maternity." A judge member noted that petitions to establish legal

decision-making or parenting time also should be served with a summons, and those petitions were added to the text of Rule 40(a). Such a petition might be filed, for example, where the father acknowledged paternity, but legal decision-making or parenting time issues were unresolved. After discussion, the words "by a parent" were included with the additional text. But the implication is that an "in loco parentis" petition for legal decision-making or parenting time under A.R.S. § 25-409, or a petition for third-party visitation under that statute, would require an order to appear ("OTA") rather than a summons. The Chair asked the members to consider at a future time whether an explanatory comment on this distinction might be appropriate. Judge Armstrong added that the 2006 rule revisions changed the term "order to show cause" to "order to appear" because self-represented litigants better understood "order to appear."

Members were unfamiliar with private counsel filing initial petitions solely for the purpose of establishing child support, but they contemplated whether such petitions should be initiated with a summons. Ms. Sell said that in IV-D cases, respondents rarely file a responsive pleading, and an OTA sufficiently instructs respondents in those cases to appear in court and what documents to bring. She also said that a summons in a child support action may impair federal mandates for expedited processing of those petitions. Another member noted that proceedings under Rule 91, which members discussed at the July 14 meeting, are initiated with an OTA. Members briefly discussed the State using an OTA for its child support petitions and private counsel utilizing a summons for theirs, but members concurred that this was not a useful distinction. Another member observed that the overwhelming majority of petitions regarding child support are in the IV-D context, that the OTAs appear to be functioning well in those proceedings, and there was no need to change that. Members then concluded that the restyled rules should allow the use of an OTA rather than a summons for petitions to establish child support. Members preferred to describe petitions that require a summons using narrative text, as the workgroup had done in draft Rule 40(a), rather than in a columnar list. Members also discussed whether Rule 40(a) should include a reference to the preliminary injunction, which also must be served, but they agreed that this requirement was adequately covered by Rules 26 and 27.

Draft Rules 40(b)(1)(D) and (E) used the phrase "appear and defend." Members disfavored the word "defend" and changed the phrase to "appear and respond." The workgroup's draft of Rule 40(b)(2) ("actions for annulment, dissolution of marriage, or legal separation") restated statutory language regarding conciliation to make that language more meaningful for self-represented litigants. The workgroup presented two alternate versions of the restated language. Members preferred Commissioner Christoffel's version, but they deleted the words "or both spouses" to clarify that either spouse may request the conciliation court's assistance. Members reviewed A.R.S. §§ 25-312(2) and 25-381.09 and concluded that the statutes do not guarantee free marriage counselling, and that the workgroup's draft rule complied with statutory requirements. The workgroup revised draft Rule 40(c) ("replacement summons") to make it clearer. In Rule 40(d) ("who may serve a summons") and elsewhere, the workgroup replaced the

phrase "service of process" with "service of a summons." The workgroup also recommended deletion of a section of Rule 40 entitled "statewide certification of process servers" because that topic is addressed by the Arizona Code of Judicial Administration. In Rule 40(e) ("service of summons in Title IV-D cases"), Ms. Sell advised that the Office of Special Investigations, which is the entity named in the current rule, had become "the Inspector General," and members accordingly deleted the words "Office of Special Investigations."

Workgroup 2 discussed the provisions of "accepting" and "waiving" service under Rule 40(f). The workgroup found that the distinction of these two terms made by restyled Civil Rule 4(f) was not useful for family cases. But Task Force members asked whether Rule 40(f) should provide an incentive, such as additional time to respond, for returning an acceptance. Alternatively, should Rule 40(f) provide a sanction for a refusal to accept service? After discussion, members agreed to use the term "accept," which self-represented litigants would understand better than "waiver," rather than both terms; and they declined to provide incentives for accepting service or additional sanctions for refusing to accept service. In Rule 40(f)(2)(A), members agreed to delete "or authorized agent" in the following sentence: "A party on whom service is required may, in person or by an attorney ~~or authorized agent~~, enter an appearance in open court." Members also agreed that there was no need for the rule to distinguish a special appearance from a general appearance. In Rule 40(f)(3), members deleted the word "waiver" and changed "acceptance and appearance" to "acceptance or appearance." In Rule 40(g)(6) ("validity of service"), members changed "make" proof of service to "file" proof of service. In Rule 40(i) ("time limit for service"), the workgroup maintained the 120-day time limit in current Rule 40(I). Members had no further comments or changes regarding Rule 40.

Ms. Clark then returned to Rule 39 ("meaning of service"), a rule the Task Force discussed at the July 14 meeting. Ms. Clark noted that the workgroup added the words "by Rule 40 and" in Rule 39(b)(1) before the references to Rule 41 and Rule 42. To be consistent with the above-noted changes to Rule 40, the workgroup removed the term "waiver" in Rule 39(c). A member took issue with a portion of Rule 39(a) that required the filing party to serve other parties "promptly after" filing a document; the member believed this would preclude mailing a copy before filing the document. This comment led the members to reorganize Rule 39 by combining prior draft sections (a) and (b). Section (a) as reorganized now begins, "(a) General Rule. When filing a document with the court, a party must provide every other party with an exact copy of the filed document. The method by which that document must be provided depends on the type of document filed, as follows: … [Subparts (1), (2), and (3)] …." Members also removed quotation marks in Rule 39 around the words "service" and "serve." They had no further changes to Rule 39.

3. **Workgroup 3.** Mr. Wolfson and other members of Workgroup 3 then presented Rule 49. Mr. Wolfson prefaced this presentation by requesting members' input on the workgroup's draft in-progress.

Rule 49 ("disclosure"): Mr. Wolfson referred to a provision in draft Rule 49(d) concerning the resolution statement—this provision currently is Rule 49(A)—and said the workgroup looked at the role of resolution statements and when parties should file them. The current rule requires the filing of a resolution statement concurrently with the party's initial disclosure. The workgroup believed this timing was impractical for the parties and made the resolution statement less useful for the court. The workgroup recommended decoupling the disclosure and resolution statements, and changing the time for filing the latter to 30 days after exchanging initial disclosure statements, or 5 days before a court hearing. The workgroup further proposed a requirement that the court set a resolution management conference 30 days after the parties exchange disclosures. The workgroup envisioned that the court would take a more hands-on approach to case management at these conferences, and would encourage the parties to reach agreements on issues that might otherwise require temporary orders hearings. This, in turn, would free-up court time spent on those evidentiary hearings, and allow for earlier trial settings.

Judge Swann elaborated on the workgroup's concept. He said that a culture change during the past decade has resulted in more temporary orders hearings than previously contemplated. The scheduling of more temporary orders hearings has the dual effects of duplicating the presentation of evidence the parties would ordinarily present only at trial; and it polarizes the parties rather than getting them to consensus. Judge Swann noted that the original concept of the resolution management conference, as developed by Judge Norman Davis, was to have parties reach agreements on their issues early, expediently, and efficiently. Now, however, with the proliferation of temporary orders hearings, a large number of cases proceed through mini-trials in advance of trial. The workgroup's proposal would have judges take an active role in resolving cases or issues as promptly as possible. A member noted that complex cases often are not amenable to early resolution. Judge Swann responded that trial judges actually see few complex cases, and he is agreeable to excluding those cases; but judges do see a vast number of self-represented litigants who would benefit from prompt and practical resolutions. He added that by resolving these non-complex cases more quickly, judges would have more time to spend on the truly complex ones, which would ameliorate criticism that judges have insufficient time for those cases. Judge Armstrong suggested that the workgroup add a new provision or comment that explains the purposes of a resolution management conference rather than changing the terminology.

Judge Swann further mentioned a pending rule petition that included a recommendation for tiering of civil cases, and that such a system, which would differentiate judicial management of cases having varying levels of complexity, might be useful in family cases, too. A judge member asked whether this would be useful when the parties already can opt out of discovery requirements. Judge Swann responded that it might be of use when the parties cannot agree on discovery issues, but members generally believed that the current system allows the court reasonable discretion in controlling discovery, the current system is simple, and retaining this system eliminates the need for new rules concerning tiering.

If a resolution management conference would occur near the inception of a case, a member questioned how a party would fashion a settlement position before discovery had occurred. Workgroup members responded that a resolution statement need not provide extensive detail to be useful. One member noted that the forms referenced in Yuma Local Rule 6 may provide a workable template for a resolution statement, and in Maricopa County, the family law conference officer has a useful form. Moreover, the resolution statement does not necessarily require a party's position regarding settlement. Rather, it should provide the party's statement about what needs to be done (for example, retain a business valuation expert) to get the case resolved, or at least it should say what should happen next to move the case towards resolution. The resolution statement should not be a reiteration of the party's demands, because those were stated in the petition or response. The workgroup's concept presupposes that parties will file a statement of disputed issues before every court conference. But these conferences, unlike a temporary orders hearing, need not be evidentiary or adversarial. Some members of the workgroup are open to changing the name of a resolution management conference to a different name that refocuses its original purpose, as developed by Judge Davis, but a name change is not necessary as long as his original intent for having a resolution management conference remains intact. Judge Swann added that some self-represented litigants don't comprehend the distinction between family and severance proceedings, and it would be useful if the court made these litigants aware of the less draconian outcomes concerning their children in family court.

Members then proceeded to discuss specific text in draft Rule 49. Draft Rule 49(b)(2)(B) ("time for additional or amended disclosures") was taken from Civil Rule 26.1(d)(2). Some members believed this provision is problematic because it requires a party to disclose information that the opposing party should have previously disclosed, it encourages gamesmanship, and it reduces opportunities to get candid reactions during depositions. A majority of members agreed to remove the word "deposition" from the draft, but others wanted to retain this word; the Chair suggested that the rule petition note this divergence of views and request comments. Draft Rule 49(b)(2)(C) ("disclosure by written discovery or deposition") borrowed a provision from the civil rules that allows disclosure during a deposition or by another form of communication. The provision elevates the substance of disclosure over the form in which it is made. Members agreed to keep this provision but added the word "written" before communication. Workgroup 3 added a note to draft Rule 49(b)(3) ("failure to disclose, false or misleading disclosure, untimely disclosure") that would add to Rule 65 ("failure to make disclosure or discovery; sanctions") the sanction of an adverse inference; members generally agreed with this addition, as long as the sanction was permissive rather than mandatory. But they otherwise deferred this proposal to their discussion of Rule 65.

Members proceeded to discuss draft Rule 49(c) ("signature under oath"). This provision was derived verbatim from Civil Rule 26.1(e), but it has no corollary in current Rule 49. Members were critical of this provision. One member raised the distinction

between disclosing statements of fact, which were amenable to verification, and position statements, which were not. In response, members added the underlined words, "each disclosure of fact …" to the draft. Another member presumed that the verification requirement would exempt document disclosures, although this provision did not expressly say that. And one member asked, if Rule 49(b)(2)(C) would allow disclosures by alternate forms of written communication, whether Rule 49(c) would require verification of counsel's letters. Additionally, parties might disagree whether a statement is one of fact or one of position, or whether it could be both. On a straw vote, the great majority of members favored eliminating Rule 49(c) from the draft, and it was deleted. But the Chair suggested that this issue also be noted in the rule petition and that the petition invite comments.

Returning to draft Rule 49(d), a member questioned the need for a resolution statement if a party requested a temporary orders hearing. The member explained that relevant facts and issues should have been previously noted in the motion for temporary orders, and that a resolution statement would be duplicative. Mr. Wolfson responded that if the temporary orders motion is filed with an initial pleading, the parties would not have had the benefit of disclosure statements that precede preparation of a resolution statement. But he acknowledged the possibility of duplicative filings. He suggested that the rule on resolution statements be a new, stand-alone rule located earlier in the rule sequence, possibly as a new Rule 33. Judge Armstrong observed that the articulation of the parties' positions was fundament to Judge Davis' concept of resolution management, and the draft rule should require parties to present their positions. If the rule requires the filing of a resolution statement at an early stage of the proceedings, a party's statement could simply say such things as the party is not ready to state a position, or the party's position depends on additional discovery. With regard to the organization of Rule 49, a member proposed relocating sections (e) through (k), which are more particular, into a new Rule 49.1, and leaving the general disclosure provisions in Rule 49, but this proposal did not gather support.

Members had suggestions and comments regarding Rule 49(f) ("child support"). In (f)(2)(A), they agreed that the applicable period should be three completed calendar years rather than two. Because the provision refers to completed calendar years, and a tax return or other pertinent tax documents might not be available in January or February, members agreed to add this phrase: "…and year-end information for the most recent calendar year for which tax returns are not yet due." One member inquired whether proof of court-ordered support and maintenance under (f)(3) included arrearages; and whether proof of health insurance premiums under (f)(4) included (a) premiums for stepchildren, and (b) whether health insurance was available, and if so, the cost of coverage. Subparts (f)(5) through (7) also should be reviewed further to assure these provisions are accurate, consistent, and complete.

- Workgroup 3 should clarify these items. The workgroup might find it helpful to review Maricopa's list of what parties should bring to court conferences concerning child support.

The acronym "AFI" was added to refer to the Affidavit of Financial Information following the first reference to the affidavit in Rule 49.

With regard to draft Rule 49(h) ("property"), a member inquired whether it's realistic for a party to disclose the listed documents within 40 days. The member also inquired whether all of the listed information was necessary; for example, whether all of the "escrow documents" are relevant merely to learn a property's purchase price and encumbrances. This member also questioned the need to disclose beneficial interests under (h)(5) and (h)(7), and asked whether the draft would require a party to disclose, for example, wills or trusts in which the party had a contingent and even revocable expectancy. Another member suggested as a starting point deletion of the word "all" in (h)(1), and members agreed to this. In this subpart, the member also recommended that the rule specify information that should be provided, e.g., a legal description or the purchase price, without requiring specific documents that could furnish that information.

- Workgroup 3 should review Rule 49(h) and determine what is necessary, and what could be eliminated. The Chair suggested that the workgroup consider adding language that the listed documents must be produced only when they are relevant to an issue in the case.

Workgroup members explained a change in Rule 49(i) ("debts") that would require disclosure of 11 months of statements rather than 6 months, which the current rule requires. (Online statements are typically available for not more than 12 months; and 6 months would be too brief.) They also explained that draft Rule 49(l) ("disclosure of hard-copy documents and electronically stored information") was taken from restyled Civil Rule 26.1(b). Draft Rule 49(l) includes a provision for resolution of disputes. Draft Rule 49 also includes a new section (o) ("motion to compel disclosure") that corresponds with restyled Civil Rule 26(g). However, this draft section will require integration with other proposed family law rules regarding good faith consultations.

4. **Roadmap; call to the public; adjourn.** The Chair reviewed pending Task Force meeting dates (August 25, September 29, October 20, December 1, and December 15, (all Fridays). The new meeting date is Monday, November 13.

The Chair made a call to the public. Mr. Martin Lynch responded and addressed the Task Force.

The meeting adjourned a**t** 2:09 p.m.

Rule 5. Consolidation

(a) Scope of Consolidation.

(1) ***Generally.*** If pending actions involve a common child, common parties, or a common question of law or fact, the court may order a joint hearing or trial of any or all the matters at issue, or it may consolidate the actions.

(2) ***Assigned Judge.*** The judge assigned to the earliest-filed case will hear a motion to consolidate.

(3) ***Other Orders.*** The court may enter orders to avoid unnecessary costs or delay in consolidated proceedings, or to serve the best interest of a minor child.

(4) ***Orders of Protection.*** The court may not consolidate a case involving ~~only~~ an order of protection with the substantive family law case.

(b) Lowest Case Number. If the court consolidates two or more cases, the case number of the first-filed case is the controlling number of the consolidated cases, and the clerk must file all further filings under that number only. Unless the court specifically orders otherwise, case consolidation is for all purposes and not merely for the purpose of conducting trial.

(c) Duplicate Pleadings. If the court consolidates cases in which a party in one case has previously filed a petition that substantially responds to an opposing party's petition in the other case, the party's petition will constitute that party's response to the opposing party's petition, unless the court orders a further response.

COMMITTEE COMMENT [AMENDED 2007]

This rule is based on Rules 42(a), Arizona Rules of Civil Procedure.

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COMMITTEE COMMENT [AMENDED 2007]

This rule is based on Rules 42(a), Arizona Rules of Civil Procedure.

Rule 5.1. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings

~~**(a) Motion to Consolidate.**~~

~~(1)~~ **(a) ~~Generally~~Transfer to Juvenile Court.** If pending family law and dependency proceedings concern the same parties, ~~any party~~ the family division on its own or any party may move to ~~consolidate them~~transfer jurisdiction over the children to the juvenile division. ~~The court in either proceeding also may order the consolidation of the proceedings on its own motion.~~

~~(2)~~(1) ***Procedure.*** A party who moves to ~~moving for consolidation~~ transfer must file the motion in the juvenile division and provide a copy to the assigned family law division. The juvenile division will rule on the motion.

~~(3)~~(2) ***Effect of Transfer ~~Consolidation~~.*** If the proceedings are ~~consolidated~~ transferred, the juvenile division will hear legal decision-making and parenting time issues~~, unless the juvenile division defers jurisdiction to the family law division~~ until the dependency is dismissed or the juvenile division defers jurisdiction to the family court.

~~**(b) Change of Custody.**~~

~~**(1) *Deferring Jurisdiction.***~~

~~**(A)** *Generally.* The juvenile division may deny a motion to consolidate and defer jurisdiction of an adjudicated dependency proceeding to the family law division in a change of legal decision-making or parenting time proceeding.~~

~~**(B)** *Order Deferring Jurisdiction.* The juvenile division's order must specify that the family law division has jurisdiction to resolve the legal decision-making and parenting time matters.~~

~~**(C)** *Authority to Dismiss.* If the family law division grants a change of legal decision-making or parenting time, it may enter an order dismissing the dependency proceeding. [**JWR NOTE:** The reference in the current rule to ARS 25-411(E) should be to 25-411(L). See Laws 2012, Ch. 309, Section 22, effective Jan 1, 2013.]~~

~~**(2) *Transfer.*** If the juvenile division finds that the matter is more appropriate for the family law division, the juvenile division may transfer the matter to the family law division. [**NOTE:** Is this redundant to (1)? X-ref current Rule 5.1(D).]~~

~~(3)~~ **(b) ~~Referral~~ Referral to Family Court.** If the juvenile division determines that a change of legal _decision-making or parenting time ~~might result in dismissal of an adjudicated dependency case~~ is appropriate, ~~the assigned juvenile division~~ it may ~~refer~~

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refer the ~~dependency~~ matter to the family ~~law~~ law division for ~~change of legal decision-making or parenting time proceedings~~ further proceedings.

(c) Support Orders. During any dependency or guardianship proceeding in the juvenile division, the juvenile division may suspend, modify, or terminate a child support order for current support if the parent entitled to receive the child support no longer has legal decision-making or parenting time of the child. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears, and may direct that a wage assignment be quashed or modified.

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Rule 5.1. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings

(a) Transfer to Juvenile Court. If pending family law and dependency proceedings concern the same parties, the family division on its own or any party may move to transfer jurisdiction over the children to the juvenile division.

(1) ***Procedure.*** A party who moves to transfer must file the motion in the juvenile division and provide a copy to the assigned family law division. The juvenile division will rule on the motion.

(2) ***Effect of Transfer***. If the proceedings are transferred, the juvenile division will hear legal decision-making and parenting time issues until the dependency is dismissed or the juvenile division defers jurisdiction to the family court.

(b) Referral to Family Court. If the juvenile division determines that a change of legal decision-making or parenting time is appropriate, it may refer the matter to the family law division for further proceedings.

(c) Support Orders. During any dependency or guardianship proceeding in the juvenile division, the juvenile division may suspend, modify, or terminate a child support order for current support if the parent entitled to receive the child support no longer has legal decision-making or parenting time of the child. Except in Title IV-D cases, the juvenile division also may make appropriate orders regarding any past due support or child support arrears, and may direct that a wage assignment be quashed or modified.

Rule 7. Protected and Unpublished Addresses

~~**(a) Generally.** On request, a court may designate a party's address as protected if the requesting party shows: [**JWR Note:** The rule refers to "person" but the comment refers to "party." The context of the rest of the rule really sounds like it applies only to parties.]~~

~~**(1)** the other party does not know the party's address; and~~

~~**(a)** the party reasonably believes that without a protected address, the party or a minor child will suffer physical or emotional harm.~~**Order of Protection.** If there is a valid Order of Protection and the clerk can verify its existence, the party's address is automatically protected upon filing a request under (c).

(b) On Request. On request, a court may designate a party's address as protected if the requesting party shows they reasonably believe:

(1) the other party does not know the party's address; and

(2) that without a protected address, the party or a minor child will suffer physical or emotional harm.~~.~~

~~(b)~~(c) **Request Procedure.** A person who files an initial or post-judgment petition, motion, or response may request the court to designate that party's address as protected by:

~~**(1)** filing the substantive petition or motion, or a response to a petition or motion, without including an address in the filing;~~

~~(2)~~(1) filing a written request substantially in the form set forth in Rule 97, Form 15 ("Request for Protected Address"), which must include the party's address on a separate sheet of paper; and [**WG note:** need Aaron's input on this process]

~~(3)~~(2) ~~lodging~~ providing a proposed form of order ~~with~~ to the court substantially in the form set forth in Rule 97, Form 15 ("Order for Protected Address").~~, except that if there is a valid Order of Protection and the clerk can verify its existence, the party's address is automatically protected upon filing a request under (b)(2); and~~

~~[**NOTE:** Not sure what is intended in (b)(3). Does it mean that if there is a valid Order of Protection, there is no need for an Order for Protected Address, and that the filing of Form 15 is self-executing?]~~

~~**(4)** filing the party's address on a separate sheet of paper for court use.~~

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~~[**NOTE:** Don't think (b)(4) should be required because the address information is provided on Form 15.]~~

~~(c)~~(d) **Court Action.**

(1) ***Timing and Procedure.*** No later than 5 days after a request is filed, the court must rule on it without waiting for a response and without holding a hearing, unless the court finds that a hearing is appropriate. If the court decides to hold a hearing, it must hold the hearing no later than 20 days after the request is filed and it must give notice of the hearing to all parties who have appeared in the action.

(2) ***Effect of Ruling.*** If the court grants the request, the clerk must not publicly disclose the person's address, and the requesting party's later filings do not need to include the party's address. If the court denies the request, the requesting party must include the party's address in all later filings.

(3) ***Later Orders.*** At any time, the court may order that a protected address is no longer protected:

(A) on request of the party whose address is protected; or

(B) after a hearing and upon a finding that the party with the protected address does not reasonably believe that ~~the~~ disclosure of the party's address will cause the party or a minor child to ~~suffer physical~~suffer physical or emotional harm.

~~(d)~~(e) **Serving a Document on a Party with a Protected Address.**

(1) ***Generally.*** A party may serve a document on a person with a protected address by delivering a copy of the document to the clerk and paying the fee established by administrative order to cover the cost of service. The clerk then must promptly mail the document by regular first-class mail to the most recent protected address the person has provided to the clerk. The clerk's mailing envelope must show the clerk's return address. [**WG note:** confirm this with Aaron]

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(2) ***Date of Service and Mailing Verification.*** Service on the person is deemed complete when the clerk mails the document. The clerk must promptly file a signed statement that verifies that the document was mailed and the date of mailing.

(3) ***Undelivered Mail.*** The clerk must note in the court file any mail to a protected address that is returned as undelivered.

[**Note:** Believe this sentence in the current rule refers only to the mailing envelop, and not the enclosed document.]

(f) Continuing Duty to Provide the Clerk with Current Address. Any person whose address is ordered protected from disclosure has a continuing duty to provide the clerk with a current and correct mailing address where the person can be served.

~~**(e)** This duty ends when one of the following events occurs: [**JWR Note:** Service of process is something quite different that what we are talking about here. In the Civil Rules lingo, we are talking about Rule 5 service, not Rule 4.1 service.]~~

~~**(1)** the person whose address is protected:~~

~~**(A)** files a notice of published address that sets forth the person's current mailing address for future service, and~~

~~**(B)** mails a copy of the notice by regular first-class mail to the last address of all persons who have previously appeared in the action; or~~

~~**(2)** the court has fully adjudicated the initial or post judgment petition or motion by entering a final appealable order, judgment or decree and the time to appeal has expired, in which case personal service is again required for later petitions under Rule 43(C)(2), as appropriate.~~

~~[**Note:** Rule 43(C)(2) does not seem to be an appropriate reference.] [**JWR Note:** I don't know. It seems right. You need to get Rule 4.1 service.]~~

(g) Protecting the Address in a Title IV-D Case. This rule does not affect a parent's right under federal law to the protection of his or her address in connection with seeking services in a Title IV-D case. [**JWR Note:** This rule is really murky. I think my rewrite is okay, but I suggest having someone make sure I haven't changed the meaning.]

(h) Clerk's Duty: The Clerk's duty to protect the address ends when the person whose address is protected:

(A) files a notice of published address that sets forth the person's current mailing address for future service, and

(B) mails a copy of the notice by regular first-class mail to the last address of all persons who have previously appeared in the action.~~; or~~

~~(C) the court has fully adjudicated the initial or post judgment petition or motion by entering a final appealable order, judgment or decree and the time to appeal has expired, in which case personal service is again required for later petitions under Rule 43(C)(2), as appropriate.~~

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~~**COMMITTEE COMMENT**~~

~~To provide protection to litigants and children subjected to domestic violence, any party may file or respond to a family law proceeding without disclosing that person's address once the court has approved the action and ordered the address protected. This rule is not intended as an alternative to normal service requirements where a party or minor child is not in danger from domestic violence. Any party choosing this alternative is required to continually maintain a current and correct address with the clerk of the court where he or she can be served with process, until the current proceedings are completed with the entry of a final order, judgment or decree and the time for appeal has passed or the person whose address is protected files and serves a written notice of a current unpublished mailing address. In reference to subdivision (A)(3) of this rule, the Committee recognizes that not all courts may have the resources and electronic capability to verify Orders of Protection; however, where verification is possible, address confidentiality should be automatic.~~

Rule 7. Protected and Unpublished Addresses

(a) Order of Protection. If there is a valid Order of Protection and the clerk can verify its existence, the party's address is automatically protected upon filing a request under (c).

(b) On Request. On request, a court may designate a party's address as protected if the requesting party shows they reasonably believe:

(1) the other party does not know the party's address; and

(2) that without a protected address, the party or a minor child will suffer physical or emotional harm.

(c) Request Procedure. A person who files an initial or post-judgment petition, motion, or response may request the court to designate that party's address as protected by:

(1) filing a written request substantially in the form set forth in Rule 97, Form 15 ("Request for Protected Address"), which must include the party's address on a separate sheet of paper; and [**WG note:** need Aaron's input on this process]

(2) providing a proposed form of order to the court substantially in the form set forth in Rule 97, Form 15 ("Order for Protected Address").

(d) Court Action.

(1) ***Timing and Procedure.*** No later than 5 days after a request is filed, the court must rule on it without waiting for a response and without holding a hearing, unless the court finds that a hearing is appropriate. If the court decides to hold a hearing, it must hold the hearing no later than 20 days after the request is filed and it must give notice of the hearing to all parties who have appeared in the action.

(2) ***Effect of Ruling.*** If the court grants the request, the clerk must not publicly disclose the person's address, and the requesting party's later filings do not need to include the party's address. If the court denies the request, the requesting party must include the party's address in all later filings.

(3) ***Later Orders.*** At any time, the court may order that a protected address is no longer protected:

(A) on request of the party whose address is protected; or

(B) after a hearing and upon a finding that the party with the protected address does not reasonably believe that disclosure of the party's address will cause the party or a minor child to suffer physical or emotional harm.

(e) Serving a Document on a Party with a Protected Address.

(1) ***Generally.*** A party may serve a document on a person with a protected address by delivering a copy of the document to the clerk and paying the fee established by administrative order to cover the cost of service. The clerk then must promptly mail the document by regular first-class mail to the most recent protected address the person has provided to the clerk. The clerk's mailing envelope must show the clerk's return address. [**WG note:** confirm this with Aaron]

(2) ***Date of Service and Mailing Verification.*** Service on the person is deemed complete when the clerk mails the document. The clerk must promptly file a signed statement that verifies that the document was mailed and the date of mailing.

(3) ***Undelivered Mail.*** The clerk must note in the court file any mail to a protected address that is returned as undelivered.

[**Note:** Believe this sentence in the current rule refers only to the mailing envelop, and not the enclosed document.]

(f) Continuing Duty to Provide the Clerk with Current Address. Any person whose address is ordered protected from disclosure has a continuing duty to provide the clerk with a current and correct mailing address where the person can be served.

(g) Protecting the Address in a Title IV-D Case. This rule does not affect a parent's right under federal law to the protection of his or her address in connection with seeking services in a Title IV-D case. [**JWR Note:** This rule is really murky. I think my rewrite is okay, but I suggest having someone make sure I haven't changed the meaning.]

(h) Clerk's Duty: The Clerk's duty to protect the address ends when the person whose address is protected:

(A) files a notice of published address that sets forth the person's current mailing address for future service, and

(B) mails a copy of the notice by regular first-class mail to the last address of all persons who have previously appeared in the action.~~; or~~

~~(C) the court has fully adjudicated the initial or post-judgment petition or motion by entering a final appealable order, judgment or decree and the time to appeal has expired, in which case personal service is again required for later petitions under Rule 43(C)(2), as appropriate.~~

~~COMMITTEE COMMENT~~

~~To provide protection to litigants and children subjected to domestic violence, any party may file or respond to a family law proceeding without disclosing that person's address once the court has approved the action and ordered the address protected. This rule is not intended as an alternative to normal service requirements where a party or minor child is not in danger from domestic violence. Any party choosing this alternative is required to continually maintain a current and correct address with the clerk of the court where he or she can be served with process, until the current proceedings are completed with the entry of a final order, judgment or decree and the time for appeal has passed or the person whose address is protected files and serves a written notice of a current unpublished mailing address. In reference to subdivision (A)(3) of this rule, the Committee recognizes that not all courts may have the resources and electronic capability to verify Orders of Protection; however, where verification is possible, address confidentiality should be automatic.~~

Form 15. Request and Order for Protected Address
Arizona Revised Statutes Annotated
Rules of Family Law Procedure

Arizona Revised Statutes Annotated
Rules of Family Law Procedure (Refs & Annos)
Forms

17B A.R.S. Rules Fam.Law Proc., Form 15

Form 15. Request and Order for Protected Address

Currentness

Name: _____
[ ] Petitioner [ ] Respondent

ADDRESS PROTECTED

ARIZONA SUPERIOR COURT, COUNTY OF _____

_____ Case No. _____
Petitioner

ATLAS No. _____

_____ REQUEST FOR PROTECTED ADDRESS
Respondent

I reasonably believe that physical or emotional harm may result to me or my minor child(ren) if my address is not protected from disclosure, and I request that the court order that my address be protected from public disclosure for the following reasons:

[ ] I have a valid Order of Protection against a party in this case issued by the following court (a copy is attached if available): _____

[ ] I have a valid Order of Protection against a party in this case issued by this court: _____

[ ] I have a valid Order of Protection against a person not involved in this case issued by the following court (a copy is attached if available):

[ ] I do not have a valid Order of Protection, but want my address protected for the following reasons: _____
_____
_____
_____

My address is currently unknown to the other party. I have listed my address on a separate sheet of paper for court use.

I understand that I have a continuing duty to provide the clerk of the court with a current and correct mailing address where I can be served with process until one of the following events stated in Rule 7(D), Arizona Rules of Family Law Procedure, occurs.

_____ _____

Date

Requester's Signature

PERSON WHOSE ADDRESS IS PROTECTED:

[ ] Petitioner [ ] Respondent

ADDRESS TO BE PROTECTED:

Street: _____

City: _____

State, Zip Code: _____

Telephone Number: _____

ARIZONA SUPERIOR COURT, COUNTY OF _____

_____ Case No. _____

Petitioner

ATLAS No. _____

_____ ORDER FOR PROTECTED ADDRESS

Respondent

Upon Request of [ ] Petitioner [ ] Respondent, and good cause appearing,

IT IS ORDERED that:

The address of [ ] Petitioner [ ] Respondent shall be protected from public disclosure until further order of this court.

The Clerk of the Court shall protect the address of [ ] Petitioner [ ] Respondent from public disclosure until further order of this court.

The Clerk and the parties hereto shall comply with the requirements of Rule 7, Arizona Rules of Family Law Procedure, as follows:

Any person required under these rules to serve a response or other document upon a person whose address is ordered protected from disclosure under this rule may serve the same by delivering true and correct copies of the documents to be served, together with the proper fee established by administrative order to cover the cost of service, to the clerk of the court. The clerk shall promptly mail the documents by regular first-class mail to the most recent protected address provided to the clerk, and service shall be deemed complete upon mailing. The clerk shall promptly file a written statement verifying the documents that were mailed and the date of mailing to the protected address signed by the clerk or deputy clerk who mailed the documents. All documents mailed to a protected address shall bear the clerk's return address, and a notation of any process returned as undelivered shall be made in the court file.

_____

Date

_____

Judicial Officer

Credits

Added Oct. 19, 2005, effective Jan. 1, 2006. Amended Sept. 5, 2007, effective Jan. 1, 2008.

17B A. R. S. Rules Fam. Law Proc., Form 15, AZ ST RFLP Form 15
Current with amendments received through 7/1/17

END OF DOCUMENT

Rule 17. Lim~~its on Examining a Witness~~ [Reserved]

~~Unless allowed by the court, only one attorney for each party may examine a witness.~~

NOTE: ~~This is modeled on restyled Civil Rule 43(d).~~

Workgroup note: This rule was relocated as Rule 22(c). Rule 17 is now reserved.

Rule 22. Conduct of Proceedings

(a) Time Limits. The court may impose reasonable time limits appropriate to the ~~on~~ proceedings. ~~and may limit the length of a proceeding to what was scheduled.~~ A party may request additional time. ~~file a motion to request additional time.~~

(b) Decorum. All participants must ~~The court will~~ conduct themselves ~~proceedings~~ in an orderly, courteous, and dignified manner. Parties must address their arguments and remarks to the court and not to the ~~opposing~~ other ~~party~~ parties or their counsel.

(c) Examining a Witness. Unless allowed by the court, only one attorney for each party may examine a witness. [Moved from Rule 17]

~~**(b)**~~

COMMITTEE COMMENT

This rule is based on Rule 80(a), Arizona Rules of Civil Procedure.

NOTE: In the civil rules restyling, Civil Rule 80(a) was abrogated because it overlaps Arizona Rule of Evidence 611.

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Rule 22. Conduct of Proceedings

(a) Time Limits. The court may impose reasonable time limits appropriate to the proceedings. A party may request additional time.

(b) Decorum. All participants must conduct themselves in an orderly, courteous, and dignified manner. Parties must address their arguments and remarks to the court and not to the other parties or their counsel.

(c) Examining a Witness. Unless allowed by the court, only one attorney for each party may examine a witness. [Moved from Rule 17]

COMMITTEE COMMENT

This rule is based on Rule 80(a), Arizona Rules of Civil Procedure.

NOTE: In the civil rules restyling, Civil Rule 80(a) was abrogated because it overlaps Arizona Rule of Evidence 611.

Rule 23. ~~Beginning an Action~~ [Reserved]

~~A family law action begins when a person files a petition with the Clerk of the court. During the pendency of an action, 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.~~

COMMITTEE COMMENT

This rule is based on Rule 3, Arizona Rules of Civil Procedure.

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WORKGROUP NOTE: THIS RULE WAS MERGED INTO RULE 24(a).

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Rule 23. [Reserved]

COMMITTEE COMMENT

This rule is based on Rule 3, Arizona Rules of Civil Procedure.

Save yellow highlight for a rule on “duties of parties”

WORKGROUP NOTE: THIS RULE WAS MERGED INTO RULE 24(a).

Rule 24. Pleadings

(a) Petition. A party begins the following actions by filing a verified petition with the superior court clerk seeking:

(1) annulment (A.R.S. § 25-301);

(2) dissolution of a marriage (A.R.S. § 25-312);

(3) legal separation (A.R.S. § 25-313);

(4) third party rights (A.R.S. § 25-409);

(5) dissolution of a covenant marriage (A.R.S. § 25-903);

(6) legal separation in a covenant marriage (A.R.S. § 25-904);

(7) establishment of paternity or maternity (A.R.S. § 25-806);

(8) to establish, enforce, register, or modify ~~custody~~ legal decision-making or parenting time (A.R.S. §§ 25-403, -411, -803(C), and -1055); or

(9) to establish, enforce, register or modify support (A.R.S. §§ 25-320, -503, -1031 and -1033).

(b) Notice of Filing a Foreign Judgment.

(1) A party may file a foreign judgment or decree pertaining to the disposition of marital property or debt under A.R.S. §§ 12-1701 to 1708.

(2) A party may begin an action for disposition of property (A.R.S. § 25-318(A)) or maintenance (A.R.S. § 25- 319(A)) under a foreign court's decree by filing the foreign judgment under A.R.S. §§ 12-1701 to 1708. Once the party has filed the foreign judgment, the party may file a petition for an order to appear specifying the relief sought. This rule does not create any new substantive rights.

(c) Voluntary Acknowledgment of Paternity. A party seeking to voluntarily acknowledge paternity may file with the superior court clerk any of the documents listed in A.R.S. § 25-812.

(d) Appearance of Parties and Child; Warrant to Take Physical Custody of a Child. Under A.R.S. §§ 25-1040 and 25-1061, a party may request a court order for the appearance of parties and children, or may request the court to issue a warrant to take physical custody of a child.

(e) Response. A party other than a petitioner may file a response to any of the pleadings described in (a) through (d).

(f) Other Pleadings. Other pleadings may include a third-party petition and response, or other pre-judgment/pre-decree or post-judgment/post-decree pleadings as otherwise provided in these rules.

(g) Designation of Parties. A "petitioner" is the person or entity that files the first petition. A "respondent" is any opposing party other than the petitioner. The petitioner and respondent are referred to by those designations in all later filings in the same case, including motions and post-decree or post-judgment petitions.

COMMITTEE COMMENT

The procedures in paragraph (d) are based on the Uniform Child Custody Jurisdiction and Enforcement Act, which replace habeas corpus procedures some jurisdictions may have used previously.

Rule 33. Third-Party Rights and Other Claims~~Counterclaims and Third Party Practice~~

~~**(a) Generally.** A party in a family law case may file a claim against an opposing party, or against a third party if the claim arises out of, or is related to, the subject matter of the action. The party may do so by filing a separate claim, a counterclaim, or a third-party claim, as appropriate. The party may file such a claim without prior leave of court if the filing will not unduly delay or prejudice the adjudication of rights of the other parties to the action, and will not deprive the court of subject matter jurisdiction.~~

~~**(b) Service and Response.** Service of these claims is governed by Rule 40, 41, or 42, as applicable. A response to any claim, counterclaim, or third party claim must be filed within the time required by Rule 32(a)(1) and in the manner required by these rules.~~

~~**(c) Joining Additional Parties.** [**JWR Note:** This is new. Same as Civil Rule 19(a)(1) and Rule 20(a). The Task Force should understand that this is not in the current rule and is borrowed from the referenced rules.] On a party's motion, the court may join additional parties who are necessary for the exercise of the court's authority.~~

~~**(1) *Required Joinder.*** A person must be joined as a party if:~~

~~**(A)** in that person's absence, the court cannot accord complete relief among existing parties; or~~

~~**(B)** that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:~~

~~**(i)** as a practical matter impair or impede the person's ability to protect the interest; or~~

~~**(ii)** leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.~~

~~**(2) *Permissive Joinder.*** A person may be joined as a party if the person asserts a right to relief, or a right to relief is asserted against the person, jointly, severally, or with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and there are questions or law or fact that are common to the person and the existing party.~~

~~**(a) Intervention and Interpleader.**~~

~~**(1) *Intervention.*** Upon timely request by a party, the court may allow a third party to intervene in an action if the addition of the third party is necessary for the exercise of the court's authority.~~

~~(2) ***Interpleader.*** Interpleader is a procedure when one holding money or property subject to adverse claims seeks to avoid multiple liability by joining in a single action anyone who asserts or may assert claims to that money or property. Following an interpleader, the court may discharge the interpleading person from liability to the parties upon such terms as the court directs.~~

~~(b) **Misjoinder and Non-Joinder.** Joinder of a party that is not permitted under Rule 20(a) is not a ground to dismiss an entire action. At any time – on terms that are just – the court may dismiss an improperly joined party or join any party who may be properly joined under Rule 33. The court also may sever any claim against a party, and that severed claim may proceed as a separate and independent action. [Note: This section derives from Civil Rule 21.]~~

(a) Third-Party Rights. A person other than a legal parent may intervene in an existing action pursuant to A.R.S. § 25-409.

(b) Other Parties or Claims. Any other request to assert a counterclaim, or for joinder of parties, interpleader, or intervention, must be made according to the procedures provided by Rules 13, 18, 19, 20, 21, and 22 of the Arizona Rules of Civil Procedure

~~**(c) Procedure.**~~

~~**(1) *Motion.*** Except as the law or these rules provide otherwise, a party seeking to join another person, or a person seeking to intervene, must serve a motion to join or a motion to intervene on the parties as provided in Rule 41 or 42, as applicable. The motion must state the grounds and be accompanied by a pleading setting forth the claim, defense, or purpose for which the person seeks joinder or intervention.~~

~~**(2) *Response.*** If the motion to join or intervene is granted, the court must allow petitioner and respondent a reasonable time, but no more than 20 days, in which to respond to the pleading of the intervenor or the newly joined party.~~

~~**(3) *Jury Trial.*** If the court authorizes a party to file a claim or otherwise consolidates a civil cause of action into a family law case that entitles any party to a jury trial as a matter of right, then the Arizona Rules of Civil Procedure govern all further proceedings in the case until judgment is entered on those issues. Thereafter, the Arizona Rules of Family Law Procedure apply.~~

COMMITTEE COMMENT

This rule is based on Rules 13 and 14, Arizona Rules of Civil Procedure. Note that crossclaims have been eliminated from family law practice.

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Workgroup Note:

Civil Rule 13: Counterclaim and Crossclaim

Civil Rule 18: Joinder of Claims

Civil Rule 19: Required Joinder of Parties

Civil Rule 20: Permissive Joinder of Parties

Civil Rule 21: Improper Joinder and Nonjoinder of Parties; Severance

Civil Rule 22: Interpleader

**Staff note: Should FLR 33 also include a reference to Civil Rule 24 (intervention)?

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Rule 33. Third-Party Rights and Other Claims

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~~**(c) Procedure.**~~

~~**(1)** ***Motion.*** Except as the law or these rules provide otherwise, a party seeking to join another person, or a person seeking to intervene, must serve a motion to join or a motion to intervene on the parties as provided in Rule 41 or 42, as applicable. The motion must state the grounds and be accompanied by a pleading setting forth the claim, defense, or purpose for which the person seeks joinder or intervention.~~

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~~**(3)** ***Jury Trial.*** If the court authorizes a party to file a claim or otherwise consolidates a civil cause of action into a family law case that entitles any party to a jury trial as a matter of right, then the Arizona Rules of Civil Procedure govern all further proceedings in the case until judgment is entered on those issues. Thereafter, the Arizona Rules of Family Law Procedure apply.~~

COMMITTEE COMMENT

This rule is based on Rules 13 and 14, Arizona Rules of Civil Procedure. Note that crossclaims have been eliminated from family law practice.

Workgroup Note:

Civil Rule 13:	Counterclaim and Crossclaim
Civil Rule 18:	Joinder of Claims
Civil Rule 19:	Required Joinder of Parties
Civil Rule 20:	Permissive Joinder of Parties
Civil Rule 21:	Improper Joinder and Nonjoinder of Parties; Severance

Civil Rule 22:	Interpleader
**Staff note:	Should FLR 33 also include a reference to Civil Rule 24 (intervention)?

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, or~~.~~ to establish legal decision-making or parenting time by a parent. [consider cross reference to Rule 27 or comment]

(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~~ respond;

(E) ~~-~~notify the party to be served that a failure to appear and ~~defend~~ respond 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.

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~~(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

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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 the Inspector General~~ 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.~~

~~(g)~~(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).

~~(h)~~(A) If the respondent will sign an acceptance of service, the petitioner must include with the documents provided to the respondent a form for acceptance of service and a self-addressed stamped envelope. The form must list the documents that are provided with the acceptance.

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~~(i)~~(B) Petitioner must mail or deliver the petition and other documents to the respondent. The respondent then must sign an acceptance before a notary stating that the respondent has accepted service.

~~(j)~~(C) The respondent must return the acceptance to the petitioner, who must file the acceptance with the clerk to complete service.

~~(1)~~(D) The respondent's signature is not an admission of the allegations of the petition.

(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.

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

~~(k)~~(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:

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(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~~ file proof of service does not affect the validity of service.

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

~~(m)~~(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).

~~(n)~~(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).

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Rule 40. Summons

(a) Issuance; Service.

(1) ***When Required.*** Pleadings that require a summons are petitions for dissolution, legal separation, annulment, ~~for~~ paternity or maternity, or to establish legal decision-making or parenting time by a parent. [consider cross reference to Rule 27 or comment]

(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~~ respond;

(E) notify the party to be served that a failure to appear and ~~defend~~ respond 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 the Inspector General~~ 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).

(A) If the respondent will sign an acceptance of service, the petitioner must include with the documents provided to the respondent a form for acceptance of service and a self-addressed stamped envelope. The form must list the documents that are provided with the acceptance.

(B) Petitioner must mail or deliver the petition and other documents to the respondent. The respondent then must sign an acceptance before a notary stating that the respondent has accepted service.

(C) The respondent must return the acceptance to the petitioner, who must file the acceptance with the clerk to complete service.

(D) The respondent's signature is not an admission of the allegations of the petition.

(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, a~~Acceptance~~,~~ ~~and~~ or appearance under (f)(1) or~~,~~ (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~~ file 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 41. Service ~~of Process~~ within Arizona

(a) ~~Territorial Limits of Effective Service~~ Statewide. ~~All process including a~~A summons ~~–~~may be served anywhere within Arizona.

~~(b)~~ **Serving a Summons and ~~Complaint or Other~~ Pleadings.** The summons, together with the ~~pleading, and~~ other documents being served must be served together~~, and~~ within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made. ~~**Waiving Service. [JWR Note:** Note that the current rule does not have a provision regarding waiver of service. It is contained in Rule 40, which calls for a procedure that is a lot different from the civil rule's procedure. Also note that in the restyled rule, Rule 40(f)(1) governs this subject, and seems duplicative what is shown here.]~~

~~(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 41(d), (h)(1) (3), (h)(4)(A), or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the petitioner may notify the respondent that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:~~

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~~(A) be in writing and be addressed to the respondent and any other person required in this rule to be served with the summons and the pleading being served;~~

~~(B) name the court where the pleading being served was filed;~~

~~(C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in Rule 97, Form XX [Note: The FLR currently does not have an equivalent to Civil Rule 84, Form 2] and a prepaid means for returning the completed form;~~

~~(D) inform the respondent, using text provided in Rule 97, Form XX [Note: Again, there is no equivalent FLR form] of the consequences of waiving and not waiving service;~~

~~(E) state the date when the request is sent;~~

~~(F) give the respondent a reasonable time to return the waiver, which must be at least 30 days after the request was sent; and~~

~~(G) be sent by first class mail or other reliable means.~~

~~(2) *Failure to Waive.* If a respondent fails without good cause to sign and return a waiver requested by a petitioner, the court must impose on the respondent:~~

~~(A) the expenses later incurred in making service; and~~

~~(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.~~

~~(3) *Time to Answer After a Waiver.* A respondent who, before being served with process, timely returns a waiver need not serve a response or otherwise respond to the pleading being served until 60 days after the request was sent.~~

~~(4) *Results of Filing a Waiver.* When the petitioner files an executed waiver, proof of service is not required and, except for the additional time in which a respondent may answer or otherwise respond as provided in Rule 4.1(e)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.~~

(b) ~~*Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or ven~~

~~(5)~~

(c) Serving an Individual. Unless Rule ~~41(e),~~ 41(f), or (g)~~, or (h)~~ applies, an individual may be served by: [**WG note:** Cheri will s/w Maricopa commissioner re Sevicemembers Civil Relief Act]

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service~~ of process.~~

(d) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within ~~outside~~ Arizona ~~but within the United States~~, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, ~~that~~ which requests restricted delivery to the respondent and requires a ~~signed and returned~~ receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

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(A) the person being served is known to be located inside ~~outside~~ Arizona, ~~but within the United States;~~

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as ~~by any form of mail~~ described in Rule ~~42~~41(~~e~~d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and ~~which~~ that confirms ~~indicates~~ ~~that~~ the designated person received the described documents; and

(D) the date of receipt by the person being served.

(e) Serving a Minor. ~~Unless Rule 41(g) applies, a~~ A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(~~d~~c) for serving an individual ~~and also~~and delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

~~**(f) Serving a Minor Who Has a Guardian or Conservator.** If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 41(d) for serving an individual, and separately serving the minor in that same manner.~~

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~~(g)~~(f) **Serving a Person ~~Adjudicated Incompetent~~ Who Has a Court-Appointed Guardian or Conservator.** If a ~~court has declared a~~ person has a court-appointed guardian or conservator, ~~to be insane, gravely disabled, incapacitated, or mentally incompetent to manage that person's property and has appointed a guardian or conservator~~ ~~for the person, the person~~ the guardian or conservator must also be served ~~by serving the guardian or conservator in the manner~~ as required by ~~set forth in~~ Rule 41(~~d~~c) for serving an individual, ~~and~~ separately from serving the person. ~~in that same manner.~~

~~(h)~~(g) **Serving a Governmental Entity.**

(1) ***Generally.*** ~~If a~~ A governmental entity having~~s~~ the legal capacity to be sued ~~and it has not waived service under Rule 41(e), it~~ may be served by delivering a copy of the summons and the pleading: ~~being served to; the following individuals:~~

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation; and,

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.][**WG note:** Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]

(A) *Generally.* If a county ~~, by administrative order,~~ authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona ~~in such a case~~ by the following the procedure~~s~~: ~~in this rule rather than the procedure in (a)(1).~~

~~(B)~~ (B) *Procedure.* ~~-~~A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

~~(C)~~ (C) *Clerk's Duties:* ~~Upon~~On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit ~~accurate~~ copies of the documents and the Notice of State Interest to the ~~electronic address that the~~ State designate~~d~~s electronic address. ~~in response to the implementing administrative order.~~

~~(D)~~ (D) *Effective Date of Service.* Service is complete when ~~upon~~ the clerk file~~s~~~~ing~~ a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

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~~(i)~~(h) **Serving a Corporation, Partnership, or Other Unincorporated Association.** If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued ~~and has not waived service under Rule 41(c),~~ it may be served by delivering a copy of the summons and the pleading ~~being served~~ to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service ~~of process~~, and ~~—~~if ~~the agent is one authorized by statute and the~~ required by statute, ~~so requires —~~by also mailing a copy ~~of each~~ to the party ~~respondent~~.

~~(j)~~(i) **Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.**

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~~(1) *Generally.* If a domestic corporation does not have an officer or an agent within Arizona on whom a summons process can be served, the corporation may be served by delivering depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.~~

(1) ~~*Evidence*~~*Diligent Search*. If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return ~~that, after diligent search or inquiry, the sheriff has been~~ an inability ~~unable~~ to find an officer or agent of the ~~such~~ corporation to ~~on whom process may~~ be served, the sheriff's statement is ~~constitutes prima facie~~ rebuttable evidence that the corporation does not have ~~such~~ an officer or agent in Arizona.

(2) *Corporation Commission.* If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

~~(2)~~

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(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission will ~~must retain~~ keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from ~~from the corporation's articles of incorporation, other~~ the Corporation Commission records, or ~~any~~an other source.

~~(k)~~(j) **Alternative Means of Service.**

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(1) ***Generally.*** If a party shows ~~that~~ the ~~means of~~ service provided in Rule 41(c) through Rule 41(~~j~~i) is ~~are~~ impracticable, the court may—on motion and without

notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. ~~In any event, t~~The serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of ~~Rule 41~~Rule 41 (~~l~~k) ~~41(l), 41(m), 42(f), or 42(g)~~ are met. ~~and the procedures provided in those rules are followed.~~ [**Workgroup note:** Dean will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

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~~(l)~~(k) **Service by Publication.**

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(1) ***Generally.*** ~~A party may serve a person~~ Service by publication is permitted ~~only~~ if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to ~~ascertain~~ determine the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.

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~~(2)~~(3) ***Procedure.***

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(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

~~(3)~~(4) ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

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~~(4)~~(5) ***Return.***

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(A) *Required Affidavit.* The party or person making service must ~~prepare, sign and~~ file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring ~~warranting~~ service by publication. The affidavit must also state ~~I~~if no mailing was made because ~~the serving~~ of lack of knowledge ~~party did not know~~ of ~~the~~ the current address of the person being served., ~~the affidavit must state that fact.~~

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

~~(C)~~ *Effect.* A~~n~~ properly completed affidavit ~~that complies with these requirements constitutes prima facie~~ will be rebuttable evidence of compliance with the requirements for service by publication.

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~~**(m) Service by Publication on an Unknown Heir in a Real Property Action.** [Note: This section is not included in current Rule 41.] An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 41(l), if:~~

~~**(1)** the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and~~

~~**(2)** the heir must be a party to the action to permit a complete determination of the action.~~

~~(n)~~(l) **Serving an Incarcerated Person.** [**Note:** This section was placed at the end of the rule to allow the rule to conform to the organization of Civil Rule 4.1.] **[JWR Note:** If you delete (c) (waiver of service), you might consider reinserting this earlier.] A person who is incarcerated in a jail or prison ~~of~~ within the State of Arizona ~~or a political subdivision of the State, or in another correctional facility located in Arizona,~~ may be served ~~in the manner provided in (c). However, if service is~~ by mail or national courier service ~~,~~with the return or confirmation of service ~~may be~~ completed by an official of the jail, prison or correctional facility, and the signature of an official of the jail, prison or correctional facility ~~-~~ on the return receipt or signature confirmation is sufficient proof of service on the person being served, as of the date of the signature.

~~**COMMITTEE COMMENT**~~

~~This rule is based on Rule 4.1, Arizona Rules of Civil Procedure. Rules 41(M) and 42(D) are intended to require personal service prior to the court adjudicating issues of paternity, child support, spousal maintenance, division of marital property or any other issue that does require personal jurisdiction over the parties. Taylor v. Jarrett, 191 Ariz. 550, 959 F. 2d 807 (App. 1998). Service by publication is sufficient for the court to dissolve a marriage, enter custody orders and resolve any other in rem or quasi in rem issue that does not require personal jurisdiction. This rule does not follow the holding in Master Financial, Inc. v. Woodburn, 208 Ariz. 70, 90 P.3d 1236 (App. 2004), applicable to Rule 4.1, Arizona Rules of Civil Procedure.~~

Rule 41. Service within Arizona

(a) Statewide. A summons may be served anywhere within Arizona.

(b) Serving a Summons and Pleadings. The summons, together with the other documents being served must be served together within the time allowed under Rule 40(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Serving an Individual. Unless Rule 41(f), or (g) applies, an individual may be served by: [**WG note:** Cheri will s/w Maricopa commissioner re Sevicemembers Civil Relief Act]

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service.

(d) Service by Mail or National Courier Service. [**Note:** Civil Rule 4.1 does not include a corresponding provision, but current Family Law Rule 41 does, so it is included in this draft.]

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is within Arizona, the party may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by any form of postage-prepaid mail, including a national courier service, which requests restricted delivery to the respondent and requires a receipt signed by the addressee.

(2) ***Affidavit of Service.*** When the post office or national courier service returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located inside Arizona,

(B) the serving party mailed the summons and a copy of the pleading or other request for relief to the person as described in Rule 41(d)(1);

(C) the serving party received a signed return receipt, which is attached to the affidavit and that confirms the designated person received the described documents; and

(D) the date of receipt by the person being served.

(e) Serving a Minor. A minor less than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 41(c) for serving an individual and delivering a copy of each in the same manner:

(1) to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(f) Serving a Person Who Has a Court-Appointed Guardian or Conservator. If a person has a court-appointed guardian or conservator, the guardian or conservator must also be served as required by Rule 41(c) for serving an individual, separately from serving the person.

(g) Serving a Governmental Entity.

(1) ***Generally.*** A governmental entity having the legal capacity to be sued may be served by delivering a copy of the summons and the pleading:

(A) for service on the State of Arizona, to the Attorney General or any person designated by the Attorney General; [**JWR Note:** the words following "or" were part of the 2008 amendment to the rule.]

(B) for service on a county, to the Board of Supervisors clerk for that county;

(C) for service on a municipal corporation, to the clerk of that municipal corporation; and,

(D) for service on any other governmental entity:

(i) to the individual designated by the entity, as required by statute, to receive service of process; or

(ii) if the entity has not designated a person to receive service of process, then to the entity's chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(2) ***Alternative Procedure for Serving the State in a Title IV-D Case.*** **[JWR Note:** This is from a 2008 amendment.][**WG note:** Does this subpart belong in a rule concerning the summons? Ask Janet to weigh in.]

(A) *Generally.* If a county authorizes electronic service on the State of Arizona in a Title IV-D case, a party may serve the State of Arizona by the following the procedure.

(B) *Procedure.* A party seeking to serve the State must file the documents to be served and a written Notice of State Interest that:

(i) requests electronic service of the documents on the State under this rule and the administrative order authorizing electronic service;

(ii) separately lists the title or description of each document to be served; and

(iii) indicates the State has or may have a right be served with the documents.

(C) *Clerk's Duties:* On receipt, the clerk must promptly file, scan (if necessary), and electronically transmit copies of the documents and the Notice of State Interest to the State designated electronic address.

(D) *Effective Date of Service.* Service is complete when the clerk files a Proof of Service by Electronical Transmittal verifying that the documents and Notice of State Interest were transmitted and received by the State.

(h) Serving a Corporation, Partnership, or Other Unincorporated Association. If a domestic or foreign corporation, partnership, or other unincorporated association has the legal capacity to be sued it may be served by delivering a copy of the summons and the pleading to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service, and if required by statute, by also mailing a copy to the party .

(i) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) ***Diligent Search.*** If after diligent search and inquiry, the sheriff of the county in which the action is pending states in the return an inability to find an officer or agent of the corporation to be served, the sheriff's statement is rebuttable evidence that the corporation does not have an officer or agent in Arizona.

(2) ***Corporation Commission.*** If a domestic corporation does not have an officer or an agent within Arizona on whom a summons can be served, the corporation may be served by delivering two copies of the summons and the pleading being served to the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission will keep one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporation's officers or directors, using any address obtained from the Corporation Commission records, or another source.

(j) Alternative Means of Service.

(1) ***Generally.*** If a party shows the service provided in Rule 41(c) through Rule 41(i) is impracticable, the court may—on motion and without notice to the person to be served—order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the action's commencement. The serving party must also mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last-known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements and procedure of Rule 41 (k) are met. [**Workgroup note:** Dean will inquire whether the Task Force believes this provision is necessary. Cross-reference Civil Rule 4.1(k).]

(k) Service by Publication.

(1) ***Generally.*** Service by publication is permitted if:

(A) the last-known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has been unable to determine the person's current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the action's commencement.

(2) ***Jurisdiction:*** Service by publication is not sufficient to confer jurisdiction upon the court to determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.

(3) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons, and a statement describing how a copy of the pleading being served may be obtained, at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last-known address of the person to be served is in a different county, also in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 40(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(4) ***Mailing.*** If the serving party knows the [**Note:** Add "last"?] address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(5) ***Return.***

(A) *Required Affidavit.* The party or person making service must file an affidavit stating the manner and dates of the publication and mailing, and the circumstances requiring service by publication. The affidavit must also state if no mailing was made because of lack of knowledge of the current address of the person being served.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

Effect. A properly completed affidavit will be rebuttable evidence of compliance with the requirements for service by publication.

(l) Serving an Incarcerated Person. [**Note:** This section was placed at the end of the rule to allow the rule to conform to the organization of Civil Rule 4.1.] **[JWR Note:** If you delete (c) (waiver of service), you might consider reinserting this earlier.] A person who is incarcerated in a jail or prison within the State of Arizona may be served by mail or national courier service with the return or confirmation of service completed by an official of the jail, prison or correctional facility, and the signature of an official of the jail, prison or correctional facility on the return receipt or signature

confirmation is sufficient proof of service on the person being served, as of the date of the signature.

Rule 65. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule XX.

~~**(2)** ***Appropriate Court.*** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.~~

~~(3)~~(2) ***Specific Motions.***

(1) *To Compel Disclosure.* If a party fails to ~~make a disclosure~~ disclose information required by Rule 49, ~~another~~ the other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if any person or entity has not complied with a discovery rule.~~:~~

~~**(A)** a deponent fails to answer a question asked under Rule 57 or 58;~~

~~**(B)** a corporation or other entity fails to make a designation under Rule 57(b)(6) or 58;~~

~~**(C)** a party fails to answer an interrogatory served under Rule 60;~~

~~**(D)** a party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 62; or~~

~~**(E)** a person fails to produce materials requested in a subpoena served under Rule 52.~~

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may ~~complete~~ complete, continue with, or adjourn the examination before moving for an order to compel an answer.

~~(4)~~(3) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

~~(5)~~(4) ***Payment of Expenses~~; Protective Orders~~.***

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is

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provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, ~~the party or attorney advising that conduct, or both,~~ to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. ~~But the~~ The court may not order this payment if:

(A) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(B) the opposing party's nondisclosure, response, or objection was ~~substantially justified~~ in good faith; or

(C) other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the court ~~court may issue any protective order authorized under Rule 53 and~~ may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. ~~But the~~ The court may not order this payment if the motion was ~~substantially justified~~ filed in good faith or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court ~~may issue any protective order authorized under Rule 53 and~~ may—after giving an opportunity to be heard—apportion the reasonable expenses, including attorney's fees, for the motion.

(b) Failure to Comply with ~~a~~ Court Order, Discovery or Disclosure Rule; Sanctions.

~~**(1) *Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.~~

~~**(2) *Sanctions by the Court Where the Action Is Pending.***~~

(1) *For Not Obeying a Discovery Order or Rule.* If a ~~party or a party's officer, director, or managing agent—or a witness designated under Rule 57(b)(6) or 58—fails~~ person fails to obey an order to provide or permit discovery, ~~,~~ or fails to comply with a disclosure or discovery rule, ~~including an order under Rule 63 or 65(a),~~ the court ~~where the action is pending~~ may enter ~~further just orders. They may include~~ sanctions including the following:

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(A) directing that ~~the matters described in the order or other~~ designated facts be taken as established for purposes of the action~~, as the prevailing party claims~~;

(B) prohibiting the disobedient party from supporting or opposing designated ~~claims or defenses~~ arguments, or from introducing designated matters in evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part, unless dismissal would be contrary to the best interests of a child;

(F) rendering a default judgment, in whole or in part, against the disobedient party; or

(G) ~~treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.~~ scheduling a proceeding to treat the violation as contempt of court,

~~**(2)** *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 63(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 65(b)(2)(A)(i) through (vi), unless the disobedient party shows that it cannot produce the other person.~~

~~(3)~~(2) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient ~~party~~person~~,~~ or the person's ~~the~~ attorney ~~advising that party~~, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was~~was substantially justified~~ in good faith or other circumstances make an award of expenses unjust.

~~**(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.**~~

~~**(1)** ***Failure to Timely Disclose.*** Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 49 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or with respect to a motion.~~

~~**(2)** ***Inaccurate or Incomplete Disclosure.*** On motion, the court may order a party or attorney who makes a disclosure under Rule 49 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for~~

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~~the reasonable cost, including attorney's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.~~

~~(3) ***Other Available Sanctions.*** In addition to or instead of the sanctions under Rule 65(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:~~

~~(1) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;~~

~~(2) may inform the jury of the party's failure; and~~

~~(3) may impose other appropriate sanctions, including any of the orders listed in Rule 65(b)(2)(A)(i) through (vi).~~

~~(4)~~ **(c) Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than ~~60~~ 30 Days Before Trial.** A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or—in the absence of such a deadline—30 days before trial, must obtain leave of court by motion. [**JWR Note**: Currently, Family Law Rule 65(C)(2) says 30 days, which departed from the old Civil Rule, which (like here) said 60 days. I assume the difference was intentional, and so I have replaced 60 with 30.] The motion must be supported by affidavit and must show that:

(1) the information, witness, or document would be allowed under the standards of Rule 65(c)(1); and

(2) the party disclosed the information, witness, or document as soon as practicable after its discovery.

~~(5)~~**(d)** ***Use of Information, Witness, or Document Disclosed During Trial.*** A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(1) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(2) the party disclosed the information, witness, or document immediately upon its discovery.

~~(d)~~**(e) Failure to Timely Disclose Unfavorable Information.** If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 49, the court may impose serious sanctions, up to and including dismissal of the action—or rendering of a default judgment—in whole or in part.

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~~(e)~~(f) **Expenses on Failure to Admit.** If a party fails to admit what is requested under Rule 64 and if the requesting party later proves the matter true—including the genuineness of a document—the requesting party may move that the non-admitting party pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 64(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) ***there was other good reason for the failure to admit.***

~~(f)~~(g) **Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.**

(1) ***Generally.***

(1) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(A) a party or a party's officer, director, or managing agent—or a person designated under Rule 57(b)(6) or 58—fails, after being served with proper notice, to appear for his or her deposition; or

(B) a party—after being properly served with interrogatories under Rule 60 or requests for production under Rule 62—fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule XX.

(2) ***Unacceptable Excuse for Failing to Act.*** A failure described in Rule 65(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 51(c).

(3) ***Types of Sanctions.*** Sanctions may include any of the orders listed in Rule 65(b)(2)(A)(i) through (vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses--including attorney's fees--caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

~~(g)~~(h) **Failure to Preserve Electronically Stored Information.**

(1) ***Duty to Preserve.***

(1) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(2) *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

(A) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(B) it seriously contemplates commencing an action or takes specific steps to do so.

(3) *Reasonable Steps to Preserve.*

(A) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(B) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a party--either before or after an action's commencement--failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order under Rule 51(b)(2). If the information cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

COMMITTEE COMMENT

This rule is based upon Rule 37, Arizona Rules of Civil Procedure.

[**JWR Note:** The Task Force Workgroup will need to consider whether to incorporate the Civil Justice Reform Committee recommendations with respect to Rule 37. I haven't attempted to incorporate them here, and perhaps the Task Force might want to wait until next September to consider the issue, after the Supreme Court acts on the proposed changes.]

Rule 65. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule XX.

(2) ***Specific Motions.***

(1) *To Compel Disclosure.* If a party fails to disclose information required by Rule 49, the other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if any person or entity has not complied with a discovery rule.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete, continue with, or adjourn the examination before moving for an order to compel an answer.

(3) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(4) ***Payment of Expenses.***

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. The court may not order this payment if:

(A) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(B) the opposing party's nondisclosure, response, or objection was in good faith; or

(C) other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the court may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or

both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. The court may not order this payment if the motion was filed in good faith or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may—after giving an opportunity to be heard—apportion the reasonable expenses, including attorney's fees, for the motion.

(b) Failure to Comply with Court Order, Discovery or Disclosure Rule; Sanctions.

(1) *For Not Obeying a Discovery Order or Rule.* If a person fails to obey an order to provide or permit discovery, or fails to comply with a disclosure or discovery rule, the court may enter sanctions including the following:

(A) directing that designated facts be taken as established for purposes of the action;

(B) prohibiting the disobedient party from supporting or opposing designated arguments, or from introducing designated matters in evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part, unless dismissal would be contrary to the best interests of a child;

(F) rendering a default judgment, in whole or in part, against the disobedient party; or

(G) scheduling a proceeding to treat the violation as contempt of court,

(2) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient person or the person's attorney, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was in good faith or other circumstances make an award of expenses unjust.

(c) Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than ~~60~~ 30 Days Before Trial. A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or—in the absence of such a deadline—30 days before trial, must obtain leave of court by motion. [**JWR Note**: Currently, Family Law Rule 65(C)(2) says 30 days, which

departed from the old Civil Rule, which (like here) said 60 days. I assume the difference was intentional, and so I have replaced 60 with 30.] The motion must be supported by affidavit and must show that:

(1) the information, witness, or document would be allowed under the standards of Rule 65(c)(1); and

(2) the party disclosed the information, witness, or document as soon as practicable after its discovery.

(d) ***Use of Information, Witness, or Document Disclosed During Trial.*** A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(1) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(2) the party disclosed the information, witness, or document immediately upon its discovery.

(e) Failure to Timely Disclose Unfavorable Information. If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 49, the court may impose serious sanctions, up to and including dismissal of the action—or rendering of a default judgment—in whole or in part.

(f) Expenses on Failure to Admit. If a party fails to admit what is requested under Rule 64 and if the requesting party later proves the matter true—including the genuineness of a document—the requesting party may move that the non-admitting party pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 64(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) ***there was other good reason for the failure to admit.***

(g) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.

(1) ***Generally.***

(1) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(A) a party or a party's officer, director, or managing agent—or a person designated under Rule 57(b)(6) or 58—fails, after being served with proper notice, to appear for his or her deposition; or

(B) a party—after being properly served with interrogatories under Rule 60 or requests for production under Rule 62—fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule XX.

(2) ***Unacceptable Excuse for Failing to Act.*** A failure described in Rule 65(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 51(c).

(3) ***Types of Sanctions.*** Sanctions may include any of the orders listed in Rule 65(b)(2)(A)(i) through (vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses--including attorney's fees--caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(h) Failure to Preserve Electronically Stored Information.

(1) ***Duty to Preserve.***

(1) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(2) *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

(A) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(B) it seriously contemplates commencing an action or takes specific steps to do so.

(3) *Reasonable Steps to Preserve.*

(A) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(B) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a party--either before or after an action's commencement--failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order under Rule 51(b)(2). If the information cannot be restored or replaced through additional discovery, the court:

(1) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(A) presume that the lost information was unfavorable to the party;

(B) instruct the jury that it may or must presume the information was unfavorable to the party; or

(C) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

COMMITTEE COMMENT

This rule is based upon Rule 37, Arizona Rules of Civil Procedure.

[**JWR Note:** The Task Force Workgroup will need to consider whether to incorporate the Civil Justice Reform Committee recommendations with respect to Rule 37. I haven't attempted to incorporate them here, and perhaps the Task Force might want to wait until next September to consider the issue, after the Supreme Court acts on the proposed changes.]