Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Monday, November 13, 2017
10:00 AM to 4:00 PM
State Courts Building * 1501 West Washington * Conference Room 119 * Phoenix, AZ

Item no. 1	**Call to Order** **Introductory remarks**	*Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs*
Item no. 2 Page 3	**Approval of the October 30, 2017 meeting minutes**	*Justice Berch and Judge Armstrong*
Item no. 3 Pages 11-28 Pages 29-41 Pages 43-48	**Workgroup reports:** - **Workgroup 1: Rules 3, 4, 21, and 35** - **Workgroup 2: Rule 44.1 [new]** - **Workgroup 4: Rules 83 and 84** **Other rules issues**	 *Ms. Boyte-Henderson, Ms. Burns, Mr. Woodnick* *Comm'r Christoffel* *Mr. Berkshire* *All*
Item no. 4	**Roadmap** - **Next meeting dates:** 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: October 30, 2017

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

Absent: Hon. Dean Christoffel, Helen Davis, Hon. Paul McMurdie

Guests: Terry Decker, Ed Pizarro Sr., Martin Lynch, Misty Williams

Administrative Office of the Courts Staff: Mark Meltzer, Sabrina Nash, Jodi Jerich, Theresa Barrett

1. Call to order; remarks by the Chair; approval of meeting minutes. The Chair called the ninth Task Force meeting to order at 10:00 a.m. and introduced the proxies. She noted that workgroups have met 44 times to-date, including 6 times after the September 29th Task Force meeting. She commended the workgroups for their progress and encouraged them to continue to meet early and often. The Chair asked members to review the draft September 29, 2017 meeting minutes, and a member made this motion:

> **Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 009**

The Chair then requested workgroup reports, beginning with Workgroup 1.

2. Workgroup 1. Ms. Henderson and Ms. Burns presented two rules on behalf of Workgroup 1.

Rule 1 (currently, "scope of rules," and as proposed, "scope and applicability of these rules"): Ms. Henderson advised that the workgroup shortened and revised the applicability language in the current rule as follows: "in ~~all~~ family law cases~~, including paternity,~~ and all ~~other~~ matters arising ~~out of~~ under Title 25…." The workgroup added as a new Rule 1(c) a provision currently found in Rule 2(A) concerning the applicability of the Rules of Civil Procedure. It included in proposed Rule 1(c) a provision derived from the second sentence of the Committee Comment to current Rule 1. It also added as a new Rule 1(d) another provision that is currently in Rule 2(C) regarding the applicability of local rules. Members had no questions or comments concerning the workgroup's revisions, and they approved the rule as revised.

Rule 2 (currently, "applicability of other rules," and as proposed, "applicability of the Arizona Rules of Evidence"): Ms. Burns began with an observation that the current rule is

unduly complicated and the language is awkward. She then noted modifications to the title of Rule 2 because of the changes to Rule 1 discussed above. Because proposed Rule 2 focuses on the Rules of Evidence, she also noted changes to its section titles. Revised section (a) deals with the effect of, and time for filing, a Rule 2(a) notice. The timing is the same as the current rule. Revised section (b) discusses the effect of not filing a notice. The language in the revised section is shorter than the current rule and is more user-friendly. The revisions contain the same cross-references to certain Rules of Evidence as current Rule 2. The revisions succinctly state that "the court may admit relevant evidence except when it is unreliable or not adequately and timely disclosed…." A member suggested that section (b) would be more understandable if its provisions were separated into 3 subparts, and during the meeting, Workgroup 1 conferred and made the suggested modification.

Revised Rule 2(c) is like the current provision concerning records of regularly conducted activity, which are admissible without a custodian's testimony. Ms. Burns then presented an issue under section (d) ("court-ordered reports, documents, and forms"). The workgroup's proposed version would permit the court to consider a report, document, or form that was required by a rule or a statute, and any report that the court ordered prepared pursuant to a rule or statute. Members agreed that forms, such as an affidavit of financial information ("AFI"), or certain reports, such as a report of a court-ordered interview of a child, should be admitted. But they were concerned whether other court-ordered reports, such as a business valuation report, should be admissible under the proposed rule, especially when there was no statutory authority for the report. After a discussion of alternatives, members agreed to delete section (d), and to add to section (c), after the reference to the Arizona Rules of Evidence, the words "or reports prepared pursuant to Rules 68 or 73." Because this phrase is now included in section (c), those reports are subject to the section's requirements of "relevant, reliable, and…timely disclosed." Members approved the rule with these modifications.

3. <u>Workgroup 3.</u> Workgroup 3 presented Rules 66, 67 (including proposed new Rules 67.3 and 67.4), and 71. Mr. Wolfson prefaced the discussion by observing that the workgroup's task concerning Rules 66, 67, and 68 was complicated by distinct alternative dispute resolution ("ADR") processes in different counties.

Rule 66 (currently, "alternative dispute resolution: purpose, definitions, initiation, and duty," and as proposed, "duties to consider and attempt settlement by alternative dispute resolution ('ADR')"): Mr. Wolfson reviewed the draft of Rule 66. In the definition of "arbitration," members added a reference to Rule 67.2, the newly adopted rule on arbitration. They also removed the word "binding" in the definition because some aspects of arbitration are subject to court approval. Members discussed and agreed to retain the provision concerning "open negotiation" as a form of ADR. They distinguished this process from mediation under Rule 67.3 because open negotiation is not private. Open negotiation is also distinguishable from the family law conference officer procedure

under Rule 70. They also discussed and agreed to remove staff's notes in this and other rules.

Members discussed sections (d) ("initiation of ADR"), (e) ("duty to consider ADR"), and (f) ("duty to attempt settlement and report to court"). A member expressed concern that a rule permitting the court to order the parties to participate in ADR may open the possibility of the court ordering the parties to participate in proceedings under Rules 72 or 74. In response, members agreed to modify the first sentence of (d) as follows: "On ~~a party's~~ the parties' request ~~or on its own~~…." The member also noted that if the court orders mediation, the rule should provide an option that is available without cost to the parties. After further discussion, members agreed to delete section (d) entirely. Regarding (e), members noted the absence of any provision that would excuse the draft rule's requirement that the parties confer if there is an existing order of protection or domestic violence concerns. Members will consider incorporating text from draft Rule 67.3(i) or current Rule 76(a)(2)(A). Language concerning domestic violence situations should be consistent throughout the rules, including the rule on protected addresses. A statutory reference to a "significant history" of domestic violence might be useful, but the workgroup should consider the context of that statute before utilizing that phrase in the rules. Members raised additional concerns regarding draft section (f), including the requirement that parties submit a report (Rule 97, Form 6) to the court regarding ADR. It appears that in practice, parties rarely submit the form, and even if reports are submitted, members agreed they have minimal benefit to the court. Although one member thought the report encouraged parties to consider ADR, members after further discussion agreed to delete section (f)(2), a reference in (f)(1) that would require parties to report the outcome of their discussion to the court, and a reference to a report in the title of (f). They also agreed to add to the revised section the sentence, "the court may impose sanctions under Rule 71 for any party's failure to participate in good faith in such discussions." Members approved Rule 66 subject to the additional modifications noted above.

Rule 67 (currently, "mediation, arbitration, settlement conferences, and other dispute resolution processes outside of conciliation court services," and as proposed, Rule 67, "types of alternative dispute resolution," Rule 67.3, "private mediation," and Rule 67.4, "settlement conferences"): Mr. Wolfson presented these rules. He began by noting two rules, Rules 67.1 and 67.2, that are related and that originated with the Uniform Law Commission. Rule 67.1, which concerns a collaborative law process, became effective on January 1, 2017. Rule 67.2, which becomes effective on January 1, 2018, concerns arbitration. Revised Rule 67 identifies these and other ADR processes in a list format. Members revised the list so it now identifies four types of ADR and separately identifies conciliation court services under Rule 68.

The Chair noted that additional wordsmithing by the Task Force on this and other rules was not necessary, and if the members are in substantial agreement on a rule, the chairs and staff can refine the language with non-substantive changes. This process will

mitigate the need to return rules to the workgroups and the Task Force, and will expedite preparation of a complete set of rules by the December 15 meeting.

Mr. Wolfson proceeded to Rule 67.3. A member was concerned that proposed language in Rule 67.3(a) ("generally") allowing the court to assign a private mediator could require the parties to pay for a mediator when they might not have the ability to do so. Members addressed this concern by saying, "…a private mediator may be selected by the court under Rule 67.3(e)." Similarly, in draft Rule 67.3(h) ("discretion to order mediation"), members deleted words that would have allowed the court to refer a matter to mediation "on its own," and added that the court could enter such an order only "on agreement of the parties." A member questioned the need for Rule 67.3(f) ("payment for a private mediator's services") when the parties agree to mediation. Members noted that parties can discuss the mediator's fee in advance of the mediation, or it can be a subject during the mediation. The mediator is probably also going to ask parties to sign a fee agreement. But Rule 67.3(f) provides a fallback if there is no agreement: the cost is shared equally by the parties. With the modification noted above, members approved this rule.

Mr. Horowitz reviewed Rule 67.4. Members had no questions or comments concerning that rule, and it was approved without changes.

Rule 68 (currently, "conciliation court services; counseling, mandatory mediation, assessment or evaluation and other services," and as proposed, "conciliation court"): Mr. Horowitz, joined by other workgroup members, reviewed the sections of draft Rule 68. Members had a general concern that draft section (b) ("conciliation counseling") did not include a provision for objecting to a petition requesting conciliation. A procedure for objecting should consider the effect of an objection on the 60-day stay that the rule provides, and other timing issues. Judge Cohen and Ms. Clark offered to draft a new subpart for section (b) concerning objections. In section (b)(5) and elsewhere, members discussed use of the word "counseling." Counseling is a term used in Title 25, and while some counties use licensed counselors, not all of them do, so "counseling" would be inaccurate if it was used in the rules on a statewide basis. Members discussed alternative terms to use in Rule 68, such as "services" or "conferences," but did not achieve consensus on which was most appropriate. The Chair and staff will review this provision and propose revisions for the terminology.

Mr. Horowitz suggested that a provision in Rule 68(c) ("mediation/ADR") that allows the court or conciliation services to determine whether services are appropriate in a case, be revised so it reserves the issue solely for the court's determination, but members disagreed and kept the provision as drafted. Elsewhere in section (c), members discussed revisions to a subpart on domestic violence to make the subpart consistent with what members discussed earlier today. Mr. Horowitz also proposed a revision to the draft section that would permit a party access to an unsigned mediation agreement, which would allow the party to review the agreement with counsel. Some counties already follow that practice, but others do not, and a party is bound by the agreement once the party signs it. This leads some attorneys to advise clients to not sign any conciliation

court agreement. The Chair found merit in the suggestion that a party have an opportunity to obtain the advice of counsel before signing an agreement, and she recommended that the petition include this alternative as well as the contrary one. Rule 68(d) is titled, "assessment or evaluation." The members' discussion of whether there is any distinction between these two terms was unresolved, and the Chair requested the workgroup to consider this further.

Rule 71 ("sanctions; sealing"): Mr. Horowitz noted that the workgroup removed a sanction in the current rule of reassigning the case to a deferred position on the inactive calendar because the workgroup did not believe that delay was an appropriate sanction. The workgroup also removed the substance of current Rule 71(B), "sealing the file," which is now limited to sealing defamatory information about a court-appointed professional. Members reviewed existing Maricopa Local Rules 2.19 and 2.20, and Civil Rule 5.4 that becomes effective on January 1, 2018. They agreed to adopt provisions of the Local Rules, and to locate them toward the front of the rules in one of the "reserved" locations. Members otherwise approved Rule 71 as proposed by the workgroup.

4. **Workgroup 4.** Judge Eppich and Mr. Berkshire presented Rules 77, 78, and 81.

Rule 77 (currently, "trial procedures," and as proposed, "trials"): Judge Eppich advised of the workgroup's recommendation to delete staff's proposed Rule 77(a) ("time limits and decorum") because the substance of that provision is covered by draft Rule 22. He added that the workgroup did not believe the proposed 45-day time limit for requesting more time was realistic, because the need for additional time may not become apparent until the parties are in trial. An errant reference to custody was changed to legal decision-making or parenting time. (There should be a global search of the rules before filing the rule petition to catch similar outdated references to custody and visitation.) Members approved the rule with these modifications.

Rule 78 (currently, "judgment; costs; attorneys' fees," and as proposed, "judgment; attorney fees, costs, and expenses;" and Rule 81 (currently, "entry of judgment," and as proposed, "reserved"): Although the Task Force previously approved Rule 78, Mr. Berkshire reported that the workgroup had subsequently worked on merging the provisions of Rule 81 into Rule 78, and he presented Rule 78 again to discuss the merged rules. He noted that Rule 78's new sections (f) ("form of judgment, objections to form"), (g) ("entering judgment"), and (h) ("notice of entry of judgment") were based on Civil Rule 58 and were relocated to Family Rule 78 from Family Rule 81. Members requested staff to double-check cross-references in the relocated sections to assure they were accurate. A judge member noted that family courts generally resolve "issues" more than "claims," and suggested revising the wording in Rule 78, sections (b) and (c) accordingly. Members agreed with this suggestion, and noted that the titles of those two sections also will need to be revised to be consistent with this wording change.

Members proceeded to discuss section (e) ("attorney fees, costs, and expenses"), and whether the requirement that a claim under this section be included in the pretrial

statement was an unnecessary belt-and-suspenders approach because the draft rule already required a party to make the claim in the pleadings or by motion. Some members preferred retaining the additional requirement, but others thought it might be a trap for the unwary. Members compromised by adding language that a claim not in compliance with this provision is waived absent good cause. Another member had a concern with a provision in draft section (f) that would require service of proposed forms of judgment on the parties. The concern was whether this would apply to judgments prepared by the court. Members added an exception for judgments originally prepared by the court. Members again discussed section (i), which concerns offers of judgment, and why its inclusion was necessary if the family rules don't incorporate Rule 68. Members concluded that practitioners would wonder why the restyled rules removed this provision, which is in the current rules, and they agreed to retain it in the restyling draft.

5. **Workgroup 2.** Workgroup 2 split current Rule 44 into two rules, a revised Rule 44 and a new Rule 44.1.

Rule 44 (currently, "default decree," and as proposed, "default"): Ms. Clark noted that the workgroup shortened "failed to respond or otherwise defend" to simply "failed to respond." The workgroup recommended deleting references to "entry" of default because the clerk isn't required to enter default. The workgroup also recommended that a notice of the default application be mailed to the defaulting party's last known address, which would include that party's current address.

Members discussed whether the notice needs to be mailed to an attorney who has not formally appeared in the dissolution case. They believed that the term "related matter" as used in the corresponding civil rule might not fit well in family law cases. For example, a juvenile dependency action might be related, but because counsel in those cases are court-appointed should they get a default notice in a family action? Members also were concerned that merely knowing a party talked to an attorney is too tenuous to conclude that the party is represented; and knowing that an attorney formerly represented a party does not mean that the party is currently represented. But members agreed that subpart (B) concerning notice to the attorney sufficiently clarifies this provision, and they concluded after considering the consequences of a default that the preferable alternative is to provide rather than not provide notice to counsel. Accordingly, they retained the requirement without modification.

Other provisions of section (c) concerning notice were reorganized for clarity. Ms. Clark advised that the workgroup used the term "defaulting party" in draft Rule 44, rather than the current term, "a party claimed to be in default." One member proposed using the term "party in default," and the rule was revised to reflect this suggestion. Members approved Rule 44 with these modifications.

6. **Call to the public.** Mr. Terry Decker and Mr. Martin Lynch responded to a call to the public and presented remarks to members of the Task Force.

7. **Roadmap; adjourn.** The Chair reviewed the number of rules remaining for workgroup review. Because of the shortened time between today's meeting and the next meeting, which is set for Monday, November 13, and subsequent meetings set for Friday, December 1, and Friday, December 15, paper packets probably will not be available. Members therefore will need to access materials for these upcoming meetings in an electronic format.

The meeting adjourned a**t** 4:01 p.m.

Rule 3. Definitions

~~**(a) Guardian.** "Guardian" is a person appointed under Title 14 of the Arizona Revised Statutes.~~

~~(b)~~(a) **In Camera Review**. "In camera" means a ~~court's~~ judicial officer's review of a document ~~, or a court's interview of a child or witness, that~~ that occurs in chambers and not in open court. If the court orders that a document be reviewed in camera, the party who possesses the document must submit it ~~ex parte~~directly to the ~~court~~judicial officer without disclosing it to the other party. The judicial officer~~. The court~~ must then privately review the document ~~to~~ and determine whether it should be ~~further~~ disclosed under the applicable law and rules.

~~(c)~~(b) ~~**Motion.** A "motion" is a written request, other than a request made in a pleading, which is filed with the court.~~ [Save for Rule 35]

~~(d)~~(c) ~~**Moving Party.** The "moving party" is the party who files a written request for relief, whether or not that party is the petitioner or respondent.~~ [Save for Rule 35]

~~(e)~~(d) **Party.** A "party" is an individual, or a private or public entity, designated in a pleading as a petitioner~~, or~~ respondent, or third party ~~in a pleading~~. The State of Arizona may be designated as a party.

~~(f)~~(e) **Petition.** A "petition" is the initial pleading that begins a family law case or a post-decree matter, as described in Rule 24.

~~(g)~~(f) ~~**Pleading.** A "pleading" is a petition for annulment, dissolution of marriage, legal separation, child custody by parent, dissolution of a covenant marriage, legal separation in a covenant marriage, paternity or maternity, or a response to a petition.~~ [This is in Rule 24.]

~~(h)~~(g) **Sealing.** "Sealing" is an action taken by the clerk to restrict access to a paper or electronic record. If the court orders that a paper or electronic record or portion of a record is to be sealed, the clerk must seal it and allow access to it only by those persons designated in the court's order. This provision is not intended to affect the substantive rights of any party. [Relocate in reserved Rule 21 on sealing with Maricopa LR 2.19 + 2.20]

~~(i)~~(h) **Title IV-D.** "Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 et seq., which is administered in Arizona by the Division of Child Support Services (DCSS) of the Arizona Department of Economic Security.

~~(j)~~(i) **Witness.** A "witness" is a person whose testimony under oath or affirmation is offered as evidence for any purpose, whether by oral examination, deposition, or affidavit.

COMMITTEE COMMENT [AMENDED IN 2008]

The definition of "witness" in subdivision B(10) is based on Rule 43(a), Arizona Rules of Civil Procedure. Guardian is defined in order to distinguish a guardian from a guardian ad litem or best interests attorney.

Rule 3. Definitions

(a) In Camera Review. "In camera" means a judicial officer's review of a document that occurs in chambers and not in open court. If the court orders that a document be reviewed in camera, the party who possesses the document must submit it directly to the judicial officer without disclosing it to the other party. The judicial officer must then privately review the document and determine whether it should be disclosed under the applicable law and rules.

(b) [Save for Rule 35]

(c) [Save for Rule 35]

(d) Party. A "party" is an individual, or a private or public entity, designated in a pleading as a petitioner, respondent, or third party. The State of Arizona may be designated as a party.

(e) Petition. A "petition" is the initial pleading that begins a family law case or a post-decree matter, as described in Rule 24.

(f) [This is in Rule 24.]

(g) Sealing. "Sealing" is an action taken by the clerk to restrict access to a paper or electronic record. If the court orders that a paper or electronic record or portion of a record is to be sealed, the clerk must seal it and allow access to it only by those persons designated in the court's order. This provision is not intended to affect the substantive rights of any party. [Relocate in reserved Rule 21 on sealing with Maricopa LR 2.19 + 2.20]

(h) Title IV-D. "Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. §§ 651 et seq., which is administered in Arizona by the Division of Child Support Services (DCSS) of the Arizona Department of Economic Security.

(i) Witness. A "witness" is a person whose testimony under oath or affirmation is offered as evidence for any purpose, whether by oral examination, deposition, or affidavit.

COMMITTEE COMMENT [AMENDED IN 2008]

The definition of "witness" in subdivision B(10) is based on Rule 43(a), Arizona Rules of Civil Procedure. Guardian is defined in order to distinguish a guardian from a guardian ad litem or best interests attorney.

~~**Note:** Suggest substituting restyled civil rule 6, with modifications, as follows, except that current rule 4(c) ["orders to appear"] must be relocated. [**JWR Note:** Agree. That provision has nothing to do with the computation of time. Perhaps it belongs in Rule 35.]~~

Rule 4. Computing and Extending Time

a. **Computing Time.** The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

1. ***Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period.

2. ***Exclusions if the Deadline Is Less Than 11 Days.*** Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

3. ***Last Day.*** Include the last day of the period unless it is a Saturday, Sunday, or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday, or legal holiday.

4. ***Next Day.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

b. **Extending Time.**

1. ***Generally.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

A. with or without motion or notice ~~if the court acts, or~~where the request is made ~~,~~ before the ~~original time or its extension~~ expiration of the time set to act~~s~~; or

B. on motion made after the time has expired where~~if~~ the party has failed to act because of excusable neglect.

2. ***Exceptions.*** A court may extend the time to act under Rules 83(D), 84, and 85(C) ~~[JWR Note: This will need to be updated. The numbering conventions will change.]~~ as those rules allow.~~,~~ ~~or alternatively,~~The court may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

A. the moving party files the motion within 30 days after the specified time to act expires ~~under these rules~~ or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act ~~under these rules~~, whichever is earlier;

B. the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

C. the court finds that no party would be prejudiced by extending the time to act. [Mary will discuss this provision with the full TF. WG did not determine if this should be retained or removed.]

c. **Additional Time After Service Under Rule 43(C)(2)(c) or (d).** When a party may or must act within a specified time after service and service is made under Rule 43(C)(2)(c) or (d), [JWR Note: This will need to be updated. The

numbering conventions will change. Mary will explain that it is any service except hand-delivery] 5 calendar days are added after the specified period would otherwise expire under Rule 4(a). This rule does not apply to the clerk's distribution of notices—including notice of entry of judgment under Rule 81(d)—minute entries, or other court-generated documents.

d. **Minute Entries and Other Court-Generated Documents.** Notices, minute entries, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date the order is filed is "the day of the act, event or default" under Rule 4(a)(1).

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4. ***Next Day.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

b. **Extending Time.**

1. ***Generally.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

A. with or without motion or notice where the request is made before the expiration of the time set to act; or

B. on motion made after the time has expired where the party has failed to act because of excusable neglect.

2. ***Exceptions.*** A court may extend the time to act under Rules 83(D), 84, and 85(C) as those rules allow. The court may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

A. the moving party files the motion within 30 days after the specified time to act expires or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act, whichever is earlier;

B. the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

C. the court finds that no party would be prejudiced by extending the time to act. [Mary will discuss this provision with the full TF. WG did not determine if this should be retained or removed.]

c. **Additional Time After Service Under Rule 43(C)(2)(c) or (d).** When a party may or must act within a specified time after service and service is made under Rule 43(C)(2)(c) or (d), [JWR Note: This will need to be updated. The numbering conventions will change. Mary will explain that it is any service except hand-delivery] 5 calendar days are added after the specified period would otherwise expire under Rule 4(a). This rule does not apply to the clerk's distribution of notices—including notice of entry of judgment under Rule 81(d)—minute entries, or other court-generated documents.

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may or must be done within a specified time after the order is entered, the date the order is filed is "the day of the act, event or default" under Rule 4(a)(1).

Rule 21. ~~[Reserved]~~ **Sealing, Redacting, and Unsealing Court Records**

NOTE: The Supreme Court abrogated Rule 21, which concerned local rules, by its Order in R-16-0033. The promulgation of local rules is now governed by Supreme Court Rule 28.1.

[The following provisions are taken from Maricopa County Local Rule 2.19.]

(a) Request to Seal or Redact Court Records; Service. Any person may request that the court seal or allow the filing of a redacted court record for a case that is subject to these rules by filing a written motion, or the court may, upon its own motion, initiate proceedings to seal or allow the filing of a redacted court record. A motion to seal or allow the filing of a redacted court record must disclose in its title that sealing or redaction is being sought. The motion must be served on all parties in accordance with the applicable rules of service for the case type.

(b) Hearing. The court may conduct a hearing on a motion to seal or allow the filing of a redacted court record.

(c) Grounds to Seal or Redact; Written Findings Required. The court may order the court files and records, or any part thereof, to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling interests that outweigh the public interest in access to the court record. The findings should include the following:

(1) there exists a compelling interest that overcomes the right of public access to the record;
(2) the compelling interest supports sealing or redacting the record;
(3) a substantial probability exists that the compelling interest will be prejudiced if the record is not sealed or redacted;
(4) the proposed sealing or redaction is narrowly tailored; and
(5) no less restrictive means exist to achieve the compelling interest.

[The following provisions are taken from Maricopa County Local Rule 2.20, but the section numbering is changed so it is continuous with the above sections.]

(d) Access. Court records that are sealed may be examined by judicial officers. Access by the public to sealed records will only be allowed after entry of a court order in accordance with this rule.

(e) Motion; Service. A sealed court record will be unsealed only upon stipulation of all the parties, upon the court's own motion, or upon a motion filed by a named party or

another person. A motion to unseal a court record must be served on all parties to the action in accordance with the applicable rules of service for the case type. If the movant cannot locate a party for service after making a good faith effort to do so, the movant may file an affidavit setting forth the efforts to locate the party and requesting that the court waive the service requirements of this rule. The court may waive the service requirement if it finds that further good faith efforts to locate the party are not likely to be successful.

(f) Hearing. Any party opposing the motion [to unseal] must appear and show cause why the motion should not be granted. The responding party must show that compelling circumstances continue to exist or that other grounds provide a sufficient legal or factual basis for keeping the record sealed.

Rule 21. Sealing, Redacting, and Unsealing Court Records

NOTE: The Supreme Court abrogated Rule 21, which concerned local rules, by its Order in R-16-0033. The promulgation of local rules is now governed by Supreme Court Rule 28.1.

(a) [The following provisions are taken from Maricopa County Local Rule 2.19.]**Request to Seal or Redact Court Records; Service.** Any person may request that the court seal or allow the filing of a redacted court record for a case that is subject to these rules by filing a written motion, or the court may, upon its own motion, initiate proceedings to seal or allow the filing of a redacted court record. A motion to seal or allow the filing of a redacted court record must disclose in its title that sealing or redaction is being sought. The motion must be served on all parties in accordance with the applicable rules of service for the case type.

(b) Hearing. The court may conduct a hearing on a motion to seal or allow the filing of a redacted court record.

(c) Grounds to Seal or Redact; Written Findings Required. The court may order the court files and records, or any part thereof, to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling interests that outweigh the public interest in access to the court record. The findings should include the following:

(1) there exists a compelling interest that overcomes the right of public access to the record;
(2) the compelling interest supports sealing or redacting the record;
(3) a substantial probability exists that the compelling interest will be prejudiced if the record is not sealed or redacted;
(4) the proposed sealing or redaction is narrowly tailored; and
(5) no less restrictive means exist to achieve the compelling interest.

(d) [The following provisions are taken from Maricopa County Local Rule 2.20, but the section numbering is changed so it is continuous with the above sections.]**Access.** Court records that are sealed may be examined by judicial officers. Access by the public to sealed records will only be allowed after entry of a court order in accordance with this rule.

(e) Motion; Service. A sealed court record will be unsealed only upon stipulation of all the parties, upon the court's own motion, or upon a motion filed by a named party or another person. A motion to unseal a court record must be served on all parties to the

action in accordance with the applicable rules of service for the case type. If the movant cannot locate a party for service after making a good faith effort to do so, the movant may file an affidavit setting forth the efforts to locate the party and requesting that the court waive the service requirements of this rule. The court may waive the service requirement if it finds that further good faith efforts to locate the party are not likely to be successful.

(f) Hearing. Any party opposing the motion [to unseal] must appear and show cause why the motion should not be granted. The responding party must show that compelling circumstances continue to exist or that other grounds provide a sufficient legal or factual basis for keeping the record sealed.

Rule 35. Family Law Motion Practice

a. **Requirements.**

1. ***Generally.*** ~~An application~~ A party must request ~~to the court for an~~ a court order ~~must be~~ by ~~motion~~ motion. ~~which, unless made during a hearing or trial, must be in writing, state with particularity the grounds for granting the motion, and set forth the relief or order sought.~~

2. ~~***Supporting***~~ ***Contents.*** ~~***Memorandum.***~~ ~~All~~ ~~Except where filed pursuant to a procedure established under subpart c.3.,~~ ~~motions~~ Motions must state with particularity the grounds for granting the motion and the relief or order sought. ~~be accompanied by a memorandum setting forth the reasons for granting the motion, along with citations to the specific parts or pages of supporting authorities and evidence.~~ Unless the court orders otherwise, a motion ~~and supporting memorandum may~~ must not exceed 17 pages, ~~exclusive of~~ not including attachments. ~~and any required statement of facts~~.

3. ~~***Responsive***~~ ***Response and Reply*** ~~***Memoranda***~~***.*** ~~Unless a specific rule states otherwise~~Except where otherwise provided in these rules, ~~an opposing party must file any~~a r~~esponsive~~esponse ~~memorandum~~ must be filed within 10 days after service of the motion ~~motion and supporting memorandum are served.~~; ~~and,~~A reply ~~memorandum~~ must be filed by the moving party within 5 days after service of the response~~a responsive memorandum is served, the moving party may file a reply memorandum~~. The reply ~~, which~~ may address only those matters raised in the ~~responsive memorandum~~ response. Unless ~~the court orders~~ otherwise ordered, a ~~responsive memorandum~~ response may not exceed 17 pages, ~~exclusive of attachments and any required statement of facts,~~ and a reply ~~memorandum~~ may not exceed 11 pages, ~~exclusive of~~ not including attachments. A party may not file a sur-reply unless authorized by the court.

4. ***Affidavits and Other Evidence.*** Except where otherwise provided in these Rules or ordered by the court, a~~A~~ffidavits and other evidence submitted in support of any motion ~~or memorandum~~, response, or reply must be filed at the same time ~~with the motion or memorandum, unless the court orders otherwise~~.

5. ***Motions in Open Court.*** The court may waive any of ~~these~~ the requirements of this Rule ~~for~~ when considering motions made in open court.

6. ***Service.*** The date and~~time and~~ manner of service of every motion, response, and reply must be noted on each document. If the ~~precise~~ manner ~~in which service has actually been made~~of service is not noted, it ~~will be conclusively~~ is presumed that the filing was served by mail, and the provisions of Rule 4(d) will apply.

b. **Effect of Noncompliance or Waiver.** The court may summarily grant or deny a motion if:

1. ~~the~~ a motion or response ~~, supporting memorandum, or responsive memorandum~~ does not substantially comply with Rule 35(a);

2. ~~the opposing party does not file a~~no ~~responsive memorandum~~ response is filed; or

Commented [MKH1]: What is a "required" statement of fact? Required by what?

Commented [MKH2]: New Trial rule permits parties to file the motion and then supplement with points and authorities later.

Commented [MKH3]: Check Rule 43 – Does Rule 43 also require the precise manner of service to be noted? Compare these 2 rules.

3. ~~counsel for any~~a ~~moving or opposing~~ party fails to appear, personally or through counsel, at the time and place designated for oral argument.

~~c. **Rulings on Motions.**~~

~~1. ***Generally.*** Except as these rules otherwise provide, the court at any time or place, and on such notice, if any, as the court considers reasonable, may make orders for the advancement, conduct, and hearing, and resolution of motions.~~

~~2. ***Law and Motion Day.*** The court may establish by local rule or order a regular day, time and place to hear, consider, and resolve motions.~~

~~3. ***Summary Motions.*** The court may provide by local rule or order for the submission and determination of summary motions without oral argument and based on the filing of brief written statements setting forth reasons in support or opposition to a motion.~~

c. **Oral Argument.** Any party may request~~,~~ or the court may order ~~on its own motion, a time and a place for~~ oral argument on any motion. ~~The setting of oral argument is at the discretion of the court.~~ The court ~~by local rule or order~~ may limit the length of oral argument~~, which may not be exceeded without prior court approval. Subject to Rule 79(c)(1),Except where otherwise provided in these Rules,~~. The court also ~~the court~~ may decide motions without oral argument, even if ~~oral argument is~~ requested.

~~d.~~

~~e. **Motions for Reconsideration.** [**JWR Note:** Isn't this governed by Family Law Rule 84? This rule originally had a provision governing reconsideration, but it was moved to Rule 84 and substantially modified, effective Jan. 1, 2015. I would delete this provision here in deference to the 2015 rule change.]~~

~~1. ***Generally.*** A party seeking reconsideration of a court order or ruling may file a motion for reconsideration.~~

~~2. ***Procedure.*** All such motions, however denominated, must be submitted without oral argument and without the filing of a responsive or reply memorandum, unless the court orders otherwise. No motion for reconsideration may be granted, however, without the court providing all other parties an opportunity to respond.~~

~~3. ***No Effect on Appeal Deadline.*** A motion for reconsideration is not a substitute for a motion filed under Rule 82(b), 83, or 85, and will not extend the time within which a notice of appeal must be filed.~~

~~f. **Limits on Motions to Strike.** [**Note:** Is this provision necessary for family cases?]~~

~~1. ***Generally.*** Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order.~~

Commented [MKH4]: This was removed from Family Law Rules in 2006. Has been migrated over in restyling b/c they used civil rule as a model. I think we don't need this since, presumptively, motions are ruled upon without oral argument in FLP Rules.

2. ***Procedure.*** Unless the motion to strike permitted by Rule 7.1(f)(1) is expressly authorized by rule or statute:

A. it may not exceed two pages in length, including its supporting memorandum;

B. any responsive memorandum must be filed within 5 days after service of the motion and may not exceed two pages in length; and

C. no reply memorandum may be filed unless the court orders otherwise.

3. ***Objections to Admission of Evidence on Written Motions.***

A. *Objections.* Any objections to, and any arguments regarding the admissibility of, evidence offered in support of or in opposition to a motion (other than a summary judgment motion) must be presented in the objecting party's responsive or reply memorandum and may not be presented in a separate motion to strike or other separate filing. Rule 56(c)(4) provides the procedure for raising objections to the admissibility of evidence offered in support of, or in opposition to, a summary judgment motion.

B. *Response to Objections.* Any response to an objection must be included in the responding party's reply memorandum and may not be presented in a separate responsive memorandum.

C. *Objections to Evidence Offered in a Reply Memorandum.* If the evidence at issue is offered for the first time in connection with a reply memorandum, an objecting party may file a separate objection limited to addressing the new evidence and not exceeding 3 pages in length, within 5 days after the reply memorandum is served. No responsive memorandum may be filed unless the court orders otherwise.

g.d. **Agreed Extensions of Agreements to Extend Time for Filing Memoranda.**

3. ***Generally.*** Subject to the court's power to reject any such agreementapproval of the court, parties may agree to extend the dates on whichthat the response and reply memoranda are due if the extension does not otherwise conflict with other deadlines set by the court or these rules.

1.

2. ***Notice Procedure.*** To make an extension effective, theParties who have agreed to extend due dates of memoranda parties musmayt file a notice setting forth stating the agreed upon dates on which the response or reply briefs will be dueagreed briefing schedule. The notice must set forth inidentify within its title the number of extensions agreed upon by the partiesto with respect to that filing (e.g., "Notice of First Agreed Extension of Time to File Response on Motion to Dismiss. . .").

2.

4.3. ***Limitations.*** NoAn extension of time will not be effective without prior court approval if it purports to make the filing of a reply or other final memorandum due briefing is concluded fewer than 5 days before a date for a hearing or oral argument previously set, by the court, or if the notice of the extension is filed after thepurports to extend the time to file a memorandum for which the is due date has passed.

4. ***Effective Date.*** ~~No order is necessary to obtain an extension under this rule. The~~An agreed extension is effective upon the proper filing of ~~the~~ a notice of extension, unless ~~and until~~ the court enters an order disapproving the ~~time~~ extension.

~~4.~~

~~**Good Faith Consultation Certificate.** When these rules require that a "good faith consultation certificate" accompany a motion or that the parties otherwise consult in good faith, the movant moving party must attach to the motion a separate statement certifying and demonstrating that tthe movant hashey have tried in good faith to resolve the issue by conferring with, or attempting to confer with, the party or person against whom the motion is directed. The consultation required by this rule must be in person or by telephone, and not merely by letter or email.~~

~~h. **Orders to Appear.** Upon motion, verified or supported by affidavit showing cause, a court may issue an order requiring a party to appear and answer at a date time designated by the court. Such order to appear must be served in accordance with the requirements of Rule 40, 41, 42, 43 or Rule 91 as applicable within such time as the judge shall direct.~~

Rule 35. Family Law Motion Practice

a. **Requirements.**

1. ***Generally.*** A party must request a court order by motion.

2. ***Contents.*** Motions must state with particularity the grounds for granting the motion and the relief or order sought. Unless the court orders otherwise, a motion must not exceed 17 pages, not including attachments.

3. ***Response and Reply.*** Except where otherwise provided in these rules, a response must be filed within 10 days after service of the motion. A reply must be filed by the moving party within 5 days after service of the response. The reply may address only those matters raised in the response. Unless otherwise ordered, a response may not exceed 17 pages, and a reply may not exceed 11 pages, not including attachments. A party may not file a sur-reply unless authorized by the court.

4. ***Affidavits and Other Evidence.*** Except where otherwise provided in these Rules or ordered by the court, affidavits and other evidence submitted in support of any motion, response, or reply must be filed at the same time.

5. ***Motions in Open Court.*** The court may waive any of the requirements of this Rule when considering motions made in open court.

6. ***Service.*** The date and manner of service of every motion, response, and reply must be noted on each document. If the manner of service is not noted, it is presumed that the filing was served by mail, and the provisions of Rule 4(d) will apply.

b. **Effect of Noncompliance or Waiver.** The court may summarily grant or deny a motion if:

1. a motion or response does not substantially comply with Rule 35(a);
2. no response is filed; or
3. a party fails to appear, personally or through counsel, at the time and place designated for oral argument.

c. **Oral Argument.** Any party may request or the court may order oral argument on any motion. The court may limit the length of oral argument. The court also may decide motions without oral argument, even if requested.

d. **Agreements to Extend Time for Filing Memoranda.**

1. ***Generally.*** Subject to the approval of the court, parties may agree to extend the dates that the response and reply are due.

2. ***Notice Procedure.*** Parties who have agreed to extend due dates may file a notice stating the agreed briefing schedule. The notice must identify within its title the number of extensions agreed upon by the parties with respect to that filing (e.g., "Notice of First Agreed Extension of Time to File . . .").

3. ***Limitation.*** An extension of time will not be effective without prior court approval if briefing is concluded fewer than 5 days before a hearing or oral argument previously set, or if the notice of the extension purports to extend the time to file a memorandum for which the due-date has passed.

4. ***Effective Date.*** An agreed extension is effective upon the proper filing of a notice of extension, unless the court enters an order disapproving the extension.

Rule 44. Default

(a) ~~Entry~~ Application for Default.

(1) ***Generally.***

If a party against whom a decree or a judgment for affirmative relief is sought fails to respond ~~or otherwise defend~~answer ~~as~~ provided ~~in these rules~~, ~~the clerk, on application by~~ the party seeking relief~~, must enter the~~at ~~other party's default~~ may file an application for default.

~~The filing of the application for default constitutes the entry of default.~~

~~(1) An application for the entry of default must be filed with the clerk in the county where the matter is pending.~~

(2) ***Application ~~for Default~~.*** A party seeking ~~entry of~~ default must file a written application that:

(A) states the name of the party against whom default is sought;

(B) states that the party has failed to ~~plead~~ respond ~~or otherwise defend~~ ~~answer~~ within the time allowed by these rules;

(C) provides ~~a current mailing~~the last known mailing address for the party claimed to be in default~~;~~, ~~or~~or states that the party requesting the ~~entry of~~ default does not know the whereabouts of the defaulting party ~~claimed to be in default~~;

(D) identifies an~~y~~ attorney known to represent the defaulting party ~~claimed to be in default~~, either in the action in which default is sought or in a related matter, whether or not the attorney has formally appeared~~;~~, or does not know the identity and address of any such attorney ~~known to represent the party in the action or a related action~~; and

~~(D)~~

~~(E) if applicable, states that the party requesting the entry of default does not know the whereabouts of the party claimed to be in default, or the identity and address of an attorney known to represent the party in the action or a related action; and~~

~~(F)~~(E) attaches a copy of the ~~Rule XX~~ proof of service, establishing the date and manner of service on the defaulting party ~~claimed to be in default~~.

(3) ***Notice.*** The party applying for default must provide notice as follows:

(A) *To the Party.* If the party requesting ~~the entry of~~ default knows the whereabouts of the defaulting party ~~claimed to be in default~~, a copy of the application for ~~entry of~~ default must be mailed to the defaulting party ~~claimed to be in default~~, even if the party is represented by an attorney who has entered an appearance in the action.

(B) *To the Attorney.* If the party requesting ~~the entry of~~ default knows that the defaulting party ~~claimed to be in default~~ is represented by an attorney either in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting ~~the entry of~~ default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the defaulting party ~~claimed to be in default~~.

(C) *Time of Notice.* The notice required under (~~c~~3)(~~1~~a) or (~~2~~b) must be mailed on the date that the application is filed, or as soon as practicable after its filing.

(D) *To Other Parties.* An application for ~~entry of~~ default must be served on all other parties who have appeared in the action~~, as provided in Rule XX~~.

(4) A Default's Effective Date. A default is effective 10 days after the application for ~~entry of~~ default is filed.

(5) ~~Effect of a Responsive Pleading~~. A default will not become effective if the defaulting party ~~claimed to be in default~~ ~~pleads~~ responds ~~or otherwise defends~~ ~~answers~~ ~~as provided in these rules~~ within 10 days after the application for ~~entry of~~ default is filed.

(b) Setting Aside a Default or a Final Default Judgment. The court may set aside a ~~n~~ ~~entry of~~ default for good cause, and it may set aside a final default judgment ~~under~~ Rules 83 or 85~~under Rule XX~~.

(c) Judgment Against the State. The court may enter a default judgment against the State of Arizona or one of its officers or agencies only if, after a hearing, ~~the~~ ~~[claimant?]~~ a party establishes a claim or right to relief by evidence that satisfies the court.

(d) Party Status. The provisions of this rule apply whether the party entitled to the judgment by default is a petitioner or respondent.

Rule 44.1. Default Decree or Judgment [New]

~~**Default Judgment by Motion and Without a Hearing for Separation, Dissolution, Annulment, or Paternity.**~~

~~The court may not enter a default judgment by motion and without a hearing if the defaulting party is a minor or an incompetent person.~~

~~**(b)**~~**(a) Default Judgment by Motion and Without a Hearing.** ~~T~~The court ~~otherwise~~ may enter a default judgment based on documents in the court's file, on motion and without the parties appearing at a hearing, in the circumstances described below. But the court may not enter a default judgment by motion and without a hearing that is different from what the petition requested, or for amounts greater than requested in the petition, unless the parties have entered into a written separation agreement under A.R.S. § 25-317. The court also may not enter a default judgment by motion and without a hearing if the defaulting party is a minor or an incompetent person.

(1) ***Decree of Separation, Dissolution, or Annulment.***

(~~A~~B~~A~~) *Generally.* ~~On a petition for~~ The court may enter a decree of legal separation, dissolution, or annulment of marriage~~, the court may enter a decree~~ on motion and with an affidavit from either or both parties to the marriage, if:

(i) there are no minor children from the relationship between the parties who were born before or during the marriage, or who were adopted by the parties during the marriage, and the wife is not pregnant to the best knowledge of the person signing the affidavit; and

(ii) neither party requests spousal maintenance.

(~~B~~C~~B~~) *Affidavit Contents.* The affidavit must state facts showing ~~that~~

i. jurisdictional requirements have been met ~~and that the~~

ii. conciliation provisions of A.R.S. § 25-381.09 have been met or do not apply~~. The affidavit also must state facts~~

iii. ~~-~~support~~ing~~ for the requested relief, including, if applicable, an award of attorney's fees.

(~~C~~D~~C~~) *Default.* A default decree is not available if the other party has appeared, unless the parties have agreed that the matter may proceed as if by default. ~~[~~**~~NOTE:~~** ~~If the parties agree, how is this different from a consent decree? They are agreeing to proceed by default, not agreeing to the contents of the~~

~~petition. In effect the resulting decree is probably the same but the remedies, process, or timelines may be different.???]~~

(2) ***Judgment of Maternity or Paternity.***

(A) *Generally.* If a petition to establish maternity or paternity does not request an order ~~of custody~~regarding legal decision-making or parenting time, the court may enter a judgment on motion and with an affidavit ~~(s) or~~ ~~affidavits~~ of the State, the mother, or the father.

(B) *Affidavit Contents.*

(i) The affidavit~~(s)~~ must state facts showing that jurisdictional requirements have been met and that a default order is appropriate under A.R.S. § 25-813.

(ii) If the State requests the default judgment, an affidavit of the mother or the father must establish the factual basis for the finding of paternity.

(iii) If the petition requests entry of an order for current and past support, a child support worksheet that establishes the amounts requested must accompany the motion; and an affidavit must state the basis for determining the gross income of the defaulting parent.

(iv) The affidavit ~~also~~ must state facts substantiating any other requested relief.

(b) Judgment by Motion for Money Damages Other Than Child Support~~.~~

(1) ***Generally.*** If a claim is for a certain sum of money or for a sum of money that can be determined by computation, other than child support, the court may enter judgment on motion with an affidavit and other documentation that establishes the amount due. [**NOTE:** Is child support (and/or spousal support) separate from this section? If so, does that need to be stated?]

~~**(3)(2)** ***Spousal Maintenance.*** The court will not enter a default judgment for any amounts of spousal maintenance accruing before the filing date of a petition to establish spousal maintenance.~~

~~**(4)**~~**(3)** ***Attorney's Fees.*** If the claim requests an award of attorney's fees, the judgment may include such an award, if the law allows an award and an affidavit establishes a reasonable amount. When the claim includes a specific amount of attorney's fees if the court enters a default judgment, the award may not exceed the amount demanded.

(c) Default Judgment by Hearing.

~~(5)~~(1) ***Hearing Required.*** If a party does not meet the requirements for obtaining a default judgment by motion without a hearing, the party must request a default judgment hearing.

~~(6) *Minor or Incompetent Person.* The court will not enter a default judgment against a minor or an incompetent person unless a guardian or other representative who has properly appeared represents the minor or incompetent person in the action.~~

~~(7)~~(2) ***Notice of Hearing.*** If the defaulted party ~~against whom judgment by default is sought~~ has appeared in the ~~action~~ matter, that party or, if appearing by a representative, that party's representative, must be served with written notice of the hearing no later than 3 days before the hearing.

~~(8)~~(3) ***Conduct of Hearing.*** The court may conduct the hearing as ~~it deems~~ necessary ~~to receive evidence~~ to resolve factual issues, ~~to~~ determine the relief to be granted, ~~or~~ and to enable the court to enter an appropriate decree or judgment ~~or to carry it into effect~~.

~~(9)~~(4) ***Rights of a Defaulted Party***. ~~The~~ A defaulted party is deemed to have admitted every material allegation of the petition. However, if a defaulted party has made a motion under this rule, the court must allow that party to participate in the hearing to determine what relief is appropriate~~, if any,~~ or to establish the truth of any statement.

(d) Support Judgment.

~~(10)~~(1) ***~~Previously Accruing Support~~Past Child Support.*** The court will not enter a default judgment for any amount of child support accruing before the filing date of a petition to establish the first order for child support unless, in the petition or in the notice required under Rule 44(a)(3), the party seeking support has notified the defaulting party ~~from whom support is sought~~:

(A) of the time period for which ~~such~~ past support is sought; and

(B) ~~that~~ the amount of support ~~will be~~ as calculated by retroactive application of the Arizona Child Support Guidelines.

~~(11)~~(2) ***Previously Owed ~~Support~~Arrears.*** The court will not enter a default judgment for any amounts of ~~past~~ child support arrears owed before the filing of a petition for an order to appear under Rule 26(c), unless, in the petition or in a separate written notice filed and served on the responding

party no later than 14 days before the hearing, the party filing the petition has notified the responding party of:

(A) the specific time period for which such past support is sought; and

(B) ~~that~~ the amount of support will be calculated by retroactive application of the Arizona Child Support Guidelines.

~~**[Note regarding (d)(1) and (2):** Current Rule 44(B)(3) consists of two sentences with 195 words. The above revisions are a first attempt to restate the provisions of that current rule, but further clarification may be necessary. The workgroup considered deletion of subpart (2) but left it in the draft pending TF discussion.]~~

~~(12)~~(3) ***Informing Defaulted Party.*** If a decree or judgment is entered by default, except in those cases resulting in default after service by publication, the party obtaining the decree or judgment must certify on the decree or judgment that, within 3 days [**JWR Note:** Don't need to refer to judicial days because the time computation rule provides that weekends and holidays don't count] of the party's receipt of the decree or judgment, the party obtaining the decree or judgment will mail [**NOTE:** the current rule says "will mail" – **JWR Response:** I think "will" is appropriate. It will be going on the judgment being submitted to the court.] a copy of the decree or judgment to the party in default at that party's last known address. Failure to comply with this rule does not affect the validity of the decree or judgment entered or the time to appeal, or relieve a party from any obligations set forth in the decree or judgment. [**NOTE:** If failure to follow the rule has no consequence, what is the motivation to adhere to it?]

(e) **Judgment if Service ~~Is~~ by Publication~~; Statement of Evidence~~.** If service ~~of process is~~ was made by publication and no ~~answer~~ response has been timely filed ~~within the time prescribed by law~~, a decree or judgment may be ~~rendered~~ entered. ~~as in other cases, but, unless the court orders otherwise, t~~The clerk must maintain a verbatim record of the ~~default hearing. proceedings in a court-approved form~~. **[NOTE**: The civil rule on defaults no longer includes this provision.]

~~**(c) Request for Judgment.** [**NOTE:** should this section be part of Rule 44 rather than 44.1 or as a General section/statement at the beginning of Rule 44.1?]~~

~~A judgment by default may not be different in kind from or exceed the amount requested in the pleadings.~~

~~**(f)** A final judgment must grant the relief to which a party is entitled, consistent with the best interests of the children of the parties, even if the party has not requested~~

~~such relief in the party's pleadings. However, a party must specifically request spousal maintenance or attorney's fees before the court may award them by default judgment.~~

Rule 44. Default

(a) Application for Default.

(1) ***Generally.***

If a party against whom a decree or a judgment for affirmative relief is sought fails to respond, the party seeking relief may file an application for default.

(2) ***Application.*** A party seeking default must file a written application that:

(A) states the name of the party against whom default is sought;

(B) states that the party has failed to respond within the time allowed by these rules;

(C) provides the last known mailing address for the party claimed to be in default, or states that the party requesting the default does not know the whereabouts of the defaulting party;

(D) identifies an attorney known to represent the defaulting party, either in the action in which default is sought or in a related matter, whether or not the attorney has formally appeared, or does not know the identity and address of any such attorney; and

(E) attaches a copy of the proof of service, establishing the date and manner of service on the defaulting party.

(3) ***Notice.*** The party applying for default must provide notice as follows:

(A) *To the Party.* If the party requesting default knows the whereabouts of the defaulting party, a copy of the application for default must be mailed to the defaulting party, even if the party is represented by an attorney who has entered an appearance in the action.

(B) *To the Attorney.* If the party requesting default knows that the defaulting party is represented by an attorney either in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the defaulting party.

(C) *Time of Notice.* The notice required under (3)(a) or (b) must be mailed on the date that the application is filed, or as soon as practicable after its filing.

(D) *To Other Parties.* An application for default must be served on all other parties who have appeared in the action.

(4) A Default's Effective Date. A default is effective 10 days after the application for default is filed.

(5) A default will not become effective if the defaulting party responds within 10 days after the application for default is filed.

(b) Setting Aside a Default or a Final Default Judgment. The court may set aside a default for good cause, and it may set aside a final default judgment under Rules 83 or 85.

(c) Judgment Against the State. The court may enter a default judgment against the State of Arizona or one of its officers or agencies only if, after a hearing, a party establishes a claim or right to relief by evidence that satisfies the court.

(d) Party Status. The provisions of this rule apply whether the party entitled to the judgment by default is a petitioner or respondent.

Rule 44.1. Default Decree or Judgment [New]

(a) Default Judgment by Motion and Without a Hearing. The court may enter a default judgment based on documents in the court's file, on motion and without the parties appearing at a hearing, in the circumstances described below. But the court may not enter a default judgment by motion and without a hearing that is different from what the petition requested, or for amounts greater than requested in the petition, unless the parties have entered into a written separation agreement under A.R.S. § 25-317. The court also may not enter a default judgment by motion and without a hearing if the defaulting party is a minor or an incompetent person.

(1) ***Decree of Separation, Dissolution, or Annulment.***

(A) *Generally.* The court may enter a decree of legal separation, dissolution, or annulment of marriage on motion and with an affidavit from either or both parties to the marriage, if:

(i) there are no minor children from the relationship between the parties who were born before or during the marriage, or who were adopted by the parties during the marriage, and the wife is not pregnant to the best knowledge of the person signing the affidavit; and

(ii) neither party requests spousal maintenance.

(B) *Affidavit Contents.* The affidavit must state facts showing

i. jurisdictional requirements have been met

ii. conciliation provisions of A.R.S. § 25-381.09 have been met or do not apply

iii. support for the requested relief, including, if applicable, an award of attorney's fees.

(C) *Default.* A default decree is not available if the other party has appeared, unless the parties have agreed that the matter may proceed as if by default.

(2) ***Judgment of Maternity or Paternity.***

(A) *Generally.* If a petition to establish maternity or paternity does not request an order regarding legal decision-making or parenting time, the court may enter a judgment on motion and with an affidavit of the State, the mother, or the father.

(B) *Affidavit Contents.*

(i) The affidavit must state facts showing that jurisdictional requirements have been met and that a default order is appropriate under A.R.S. § 25-813.

(ii) If the State requests the default judgment, an affidavit of the mother or the father must establish the factual basis for the finding of paternity.

(iii) If the petition requests entry of an order for current and past support, a child support worksheet that establishes the amounts requested must accompany the motion; and an affidavit must state the basis for determining the gross income of the defaulting parent.

(iv) The affidavit must state facts substantiating any other requested relief.

(b) Judgment by Motion for Money Damages Other Than Child Support

(1) ***Generally.*** If a claim is for a certain sum of money or for a sum of money that can be determined by computation, other than child support, the court may enter judgment on motion with an affidavit and other documentation that establishes the amount due. [**NOTE:** Is child support (and/or spousal support) separate from this section? If so, does that need to be stated?]

~~**(2)** ***Spousal Maintenance.*** The court will not enter a default judgment for any amounts of spousal maintenance accruing before the filing date of a petition to establish spousal maintenance.~~

(3) ***Attorney's Fees.*** If the claim requests an award of attorney's fees, the judgment may include such an award, if the law allows an award and an affidavit establishes a reasonable amount. When the claim includes a specific amount of attorney's fees if the court enters a default judgment, the award may not exceed the amount demanded.

(c) Default Judgment by Hearing.

(1) ***Hearing Required.*** If a party does not meet the requirements for obtaining a default judgment by motion without a hearing, the party must request a default judgment hearing.

(2) ***Notice of Hearing.*** If the defaulted party has appeared in the matter, that party or, if appearing by a representative, that party's representative, must be served with written notice of the hearing no later than 3 days before the hearing.

(3) ***Conduct of Hearing.*** The court may conduct the hearing as necessary to resolve factual issues, determine the relief to be granted, and to enable the court to enter an appropriate decree or judgment.

(4) ***Rights of a Defaulted Party***. A defaulted party is deemed to have admitted every material allegation of the petition. However, if a defaulted party has made a motion under this rule, the court must allow that party to participate in the hearing to determine what relief is appropriate or to establish the truth of any statement.

(d) Support Judgment.

(1) ***Past Child Support.*** The court will not enter a default judgment for any amount of child support accruing before the filing date of a petition to establish the first order for child support unless, in the petition or in the notice required under Rule 44(a)(3), the party seeking support has notified the defaulting party:

(A) of the time period for which past support is sought; and

(B) the amount of support as calculated by retroactive application of the Arizona Child Support Guidelines.

(2) ***Previously Owed Arrears.*** The court will not enter a default judgment for any amounts of child support arrears owed before the filing of a petition for an order to appear under Rule 26(c), unless, in the petition or in a separate written notice filed and served on the responding party no later than 14

days before the hearing, the party filing the petition has notified the responding party of:

(A) the specific time period for which such past support is sought; and

(B) the amount of support will be calculated by retroactive application of the Arizona Child Support Guidelines.

~~**[Note regarding (d)(1) and (2):** Current Rule 44(B)(3) consists of two sentences with 195 words. The above revisions are a first attempt to restate the provisions of that current rule, but further clarification may be necessary. The workgroup considered deletion of subpart (2) but left it in the draft pending TF discussion.]~~

(3) ***Informing Defaulted Party.*** If a decree or judgment is entered by default, except in those cases resulting in default after service by publication, the party obtaining the decree or judgment must certify on the decree or judgment that, within 3 days [**JWR Note:** Don't need to refer to judicial days because the time computation rule provides that weekends and holidays don't count] of the party's receipt of the decree or judgment, the party obtaining the decree or judgment will mail [**NOTE:** the current rule says "will mail" – **JWR Response:** I think "will" is appropriate. It will be going on the judgment being submitted to the court.] a copy of the decree or judgment to the party in default at that party's last known address. Failure to comply with this rule does not affect the validity of the decree or judgment entered or the time to appeal, or relieve a party from any obligations set forth in the decree or judgment. [**NOTE:** If failure to follow the rule has no consequence, what is the motivation to adhere to it?]

(e) Judgment if Service by Publication. If service was made by publication and no response has been timely filed, a decree or judgment may be entered. The clerk must maintain a verbatim record of the default hearing. . **[NOTE**: The civil rule on defaults no longer includes this provision.]

(f)

Rule 83. ~~New Trial;~~ Altering or Amending a Judgment; Supplemental Hearings

(a) Generally.

(1) ***Grounds for ~~New Trial~~Altering or Amending a Judgment.*** The court may, on its own, or on motion, ~~grant a new trial on~~alter or amend all or some of the issues—and to any party—on any of the following grounds materially affecting that party's rights:

(A) did not properly consider or weigh all of the admitted evidence;

~~(A)~~**(B)** any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;

~~(B)~~**(C)** misconduct of the ~~prevailing~~ other party;

~~(C)~~**(D)** accident or surprise that could not reasonably have been prevented;

~~(D)~~**(E)** newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

(F) error in the admission or rejection of evidence, or other errors of law at the trial or during the action;

~~(E)~~**(G)** mistakenly overlooked or misapplied uncontested facts, including mathematical errors, which were necessary to the ruling, or

(H) the ~~verdict,~~ decision, findings of fact, or judgment is not supported by the evidence or is contrary to law

~~**(F).**~~

~~(2)~~**(b)** ~~**A new trial, if granted, must be limited to the question or questions found to be in error, if separable.**~~ ~~**Further**~~**Court Action** ~~After a Trial~~. The court may, on motion ~~for a new trial~~, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment. The relief, if granted, must be limited to the question or questions found to be error, if separable.

~~(b)~~**(c) Time to File a Motion; Response and Reply.**

(1) Motion. A motion pursuant to this rules must be filed no later than 15 days after the entry of judgment pursuant to Rule 78(b) or (c). This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2). The motion may be amended at any time before the Response is filed.

~~**(1) A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2). The motion may be amended at any time before the court rules on it.**~~

(2) Response. Within 15 days of the filing of a motion pursuant to this Rule, the court must either summarily deny the motion or set a deadline for a response and reply. The court may not grant a motion without providing the nonmoving party an opportunity to file a written response.~~***Response and Reply.*** Rule 35 governs responses and replies to a motion for new trial.~~

~~**(c) New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than 15 days after the entry of judgment — which time may not be extended except as allowed by Rule 4(b)(2) — the court, on its own, may order a new trial for any reason set forth in (a). After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.~~

~~**(d) Scope of New Trial.** A new trial, if granted, must be limited to the question or questions found to be in error, if separable.~~

~~(e)~~**(d) Motion ~~for New Trial After~~after Service by Publication.**

(1) ***Generally.*** When judgment has been rendered on service by publication, and the ~~respondent~~ defaulted party has not appeared, the court may grant a ~~new trial~~motion made pursuant to this rule if the ~~respondent~~defaulted party—within one year after entry of judgment—files an application establishing good cause for ~~a new trial~~granting said motion.

~~**(2) *Bond Required to Stay Execution.*** Execution of judgment should not be stayed [**Note:** Current Rule 83 says "shall not be stayed, but Civil Rule 59 says "should"] unless the respondent posts a bond in double the amount of the judgment or the value of the property that is the subject of the judgment. The bond must be conditioned on the respondent's prosecution of the application for new trial and on satisfaction of the judgment in full should the court deny the application.~~

~~(2)~~**(e)** [Alternative] **Stay of Execution.** Execution on a judgment is not stayed unless a court orders a stay, either on the respondent's motion or on its own. The court may require the respondent to post a bond or other security in an amount set by the court to ensure that the respondent will be diligent in filing a motion for new trial and will satisfy the judgment if the court denies the motion. [**JWR Note:** What is shown above

is a lot different from the current Family Law Rule 83(G)(2). I suggest a rewrite of the current language, as shown.]

~~**(f) Number of New Trials.** No more than two new trials may be granted to a party in the same action.~~

~~(g)~~(f) **Order Must Specify Grounds.** Any order granting a ~~new trial or altering or amending a judgment~~ a motion made pursuant to this rule must specify with particularity the ground or grounds for the court's order.

COMMENT TO 2015 AMENDMENT

These revisions merge former Rule 84 (Motion to Alter or Amend a Judgment or Order) into Rule 83 to simplify the Arizona Rules of Family Law Procedure governing challenges to court rulings.

COMMITTEE COMMENT

This rule is based on Rule 59, Arizona Rules of Civil Procedure. **[Note:** Although restyled Rule 83 is based on Civil Rule 59, it omits section (f) of the Civil Rule, "Motion on Ground of Excessive or Inadequate Damages."

Rule 83. Altering or Amending a Judgment; Supplemental Hearings

(a) Generally.

(1) ***Grounds for Altering or Amending a Judgment.*** The court may, on its own, or on motion, alter or amend all or some of the issues—and to any party—on any of the following grounds materially affecting that party's rights:

(A) did not properly consider or weigh all of the admitted evidence;

(B) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;

(C) misconduct of the other party;

(D) accident or surprise that could not reasonably have been prevented;

(E) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

(F) error in the admission or rejection of evidence, or other errors of law at the trial or during the action;

(G) mistakenly overlooked or misapplied uncontested facts, including mathematical errors, which were necessary to the ruling, or

(H) the decision, findings of fact, or judgment is not supported by the evidence or is contrary to law

(b) Court Action. The court may, on motion, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment. The relief, if granted, must be limited to the question or questions found to be error, if separable.

(c) Time to File a Motion; Response and Reply.

(1) Motion. A motion pursuant to this rules must be filed no later than 15 days after the entry of judgment pursuant to Rule 78(b) or (c). This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2). The motion may be amended at any time before the Response is filed.

(2) Response. Within 15 days of the filing of a motion pursuant to this Rule, the court must either summarily deny the motion or set a deadline for a response and reply. The court may not grant a motion without providing the nonmoving party an opportunity to file a written response.

(d) Motion after Service by Publication.

(1) ***Generally.*** When judgment has been rendered on service by publication, and the defaulted party has not appeared, the court may grant a motion made pursuant to this rule if the defaulted party—within one year after entry of judgment—files an application establishing good cause for granting said motion.

(e) [Alternative] **Stay of Execution.** Execution on a judgment is not stayed unless a court orders a stay, either on the respondent's motion or on its own. The court may require the respondent to post a bond or other security in an amount set by the court to ensure that the respondent will be diligent in filing a motion for new trial and will satisfy the judgment if the court denies the motion. [**JWR Note:** What is shown above is a lot different from the current Family Law Rule 83(G)(2). I suggest a rewrite of the current language, as shown.]

(f) Order Must Specify Grounds. Any order granting a a motion made pursuant to this rule must specify with particularity the ground or grounds for the court's order.

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