Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Friday, December 1, 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 November 13, 2017 meeting minutes**	*Justice Berch and Judge Armstrong*
Item no. 3 Pages 9 - 28 Pages 29 - 64 Pages 65 - 99	**Workgroup reports:** - **Workgroup 2: Rules 44.1 (revisited, and including a new form), and Rules 44.2 and 45** - **Workgroup 3: Rules 50, 51, 52, 53, and 59** - **Workgroup 4: Rules 76, 76.1, 76.2, 87, and 94, and Rules 83 and 84 (revisited)** **Other rules issues**	 *Comm'r Christoffel, Mr. Nash* *Mr. Wolfson* *Mr. Berkshire, Ms. Sell, Judge Eppich, Ms. Davis, Judge McMurdie* *All*
Item no. 4	**Roadmap** - **Next meeting dates:** Friday, December 15 [Room 119] Friday, January 5, or Monday, January 8 [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: November 13, 2017

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

Absent: Helen Davis, Kiilu Davis

Guests: None

Administrative Office of the Courts Staff: Mark Meltzer, Sabrina Nash, Theresa Barrett, Eva Carranza, Geraldine Tacdol-Tiokasin

1. **Call to order; remarks by the Chair; approval of meeting minutes.** The Chair called the tenth Task Force meeting to order at 10:00 a.m. All four workgroups have meetings set for later this month, and the Chair appreciates their progress. As noted at the October 30 Task Force meeting, the Chairs and staff have begun the process of informally editing and wordsmithing the rules. A.O. 2016-131 established a January 10, 2018 deadline for the Task Force to file its rule petition, but considering the magnitude of this restyling project, the Chairs will ask the Court for an extension until March 2018. Judge Armstrong added that a March filing date would permit the Task Force to vet the draft rules and request prefiling comments from interested groups. Judge Armstrong will present the draft rules to the Family Law Institute in mid-January, so it is still important that the Task Force complete its initial draft by the end of December.

The Chair asked members to review the draft October 30, 2017 meeting minutes, and a member made this motion:

> **Motion:** To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 010**

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

2. **Workgroup 1.** Mr. Woodnick, Ms. Henderson, and Ms. Burns presented on behalf of Workgroup 1.

Rule 3 ("definitions"): Mr. Woodnick explained that some of the definitions in current Rule 3 were deleted in the restyling because those words are defined in the rules to which they pertain. See, for examples, the relocation of definitions of "pleading," which will be in Rule 24 on pleadings; and "motion," which is now in Rule 35 on motions. The workgroup removed the definition of a Title 14 guardian because the restyled family rules, including proposed Rules 10 through 13, don't refer to that person. They also

removed a comment to current Rule 3 that refers to that guardian. However, members will revisit the definition and the comment if they subsequently find references to guardians elsewhere in the restyled rules. One member suggested that there be no rule for definitions, and that all definitions be within the pertinent rules. A member responded that it is useful to have certain definitions in Rule 3, for example, "in camera," which comes up in multiple rules, but is specific to none. After discussion, the members agreed to retain a limited number of definitions in Rule 3, and they approved the revised rule.

Rule 4 ("computing and extending time"): Ms. Henderson noted that a section in the current rule regarding orders to appear was relocated to Rule 35; see the discussion of Rule 35 below. The provisions in restyled Rule 4(a) regarding computing time are derived from the restyled civil rules. The process for extending time, contained in section (b), is derived from the existing family rule, but the restyled provisions are modeled on the civil rules and modified for applicability to family law cases. The workgroup proposed reciprocal mechanisms for relief, which would be available for moving parties who may have missed a deadline to file a Rule 83 or 85 motion as well as for adverse parties who are responding to these motions. The Task Force will consider this subject further when Workgroup 4 presents Rules 83 and 84 later today. It will also consider whether the provision should clarify that a party can obtain an extension before as well as after the deadline, the grounds and process for obtaining an extension, and if the provision should remain in Rule 4 or be relocated in the post-trial section of the rules. The members approved Rule 4 pending that discussion.

Rule 21 (formerly, "reserved," and as proposed, "sealing, redacting, and unsealing court records"): Ms. Burns advised that following directions from the Task Force, the workgroup used this formerly reserved rule as the location for importing Maricopa Local Rules 2.19 and 2.20. These provisions will replace current Family Rule 71(B), which was deleted. One member suggested that court staff, and not just judicial officers, have access to sealed documents, but after discussion of security and other considerations, members retained the provision as-is. Members shortened the definition of "sealing" in Rule 3, and they eliminated "paper or electronic" and substituted the word "record." They also included in Rule 3 a cross-reference to Rule 21. Members then approved the new Rule 21.

Rule 35 ("family law motion practice"): Ms. Burns noted that draft reflects the workgroup's efforts to simplify the current rule. The workgroup eliminated the word "memoranda" and instead used "motion," "response," or "reply." Rule 35(d) includes a new procedure, adopted with modifications from the civil rules, which permits the parties to agree to extensions of time without the necessity of a court order. The workgroup's draft removed a provision in current Rule 35(C)(3) that begins, "to expedite its business," because it was unaware of any county that utilized that procedure. Language concerning orders to appear was initially relocated from Rule 4 to Rule 35, but on reconsideration, the workgroup removed that language as not being appropriate in Rule 35. Page limits under this rule are based on the limits in the restyled civil rules.

Members considered moving those limits to Rule 20, which deals with the form of documents, but concluded these limits should remain in Rule 35. A member asked about the meaning of "sur-reply" in section (a)(3). Members revised the pertinent sentence of section (a)(3) to state instead, "a party may not respond to a reply unless authorized by the court." The member also asked if the requirement in section (a)(1), that "an application for a court order in a pending action must be by motion," was necessary, and if it was, whether it should be restated. Members discussed revising this provision to restate the definition of "motion" they had previously eliminated in Rule 4. Rather than using that definition, however, they revised (a)(1) to state, "a party must request a court order in a pending action by motion, unless otherwise provided by these rules." With these modification, members approved Rule 35.

3. **<u>Workgroup 2.</u>** Commissioner Christoffel presented Rule 44.1.

Rule 44.1 ("Default Decree or Judgment"): Commissioner Christoffel explained that Rule 44.1 is the result of separating current Rule 44 into two rules, Rule 44 on "default," which Ms. Clark presented at the previous meeting, and a new Rule 44.1. Rule 44.1(a) begins by describing circumstances when a party can obtain a decree or judgment by motion without a hearing. Commissioner Christoffel recommended during his presentation, and without objection from the members, that subpart (a)(1)(C) be retitled, from "default" to "appearance." In section (b), he also recommended removing the word "damages" after the word "money" in the title, so the title now simply says, "judgment by motion for money other than child support."

Draft Rule 44.1(b) would not allow a party to obtain by motion a money judgment for spousal maintenance. Members discussed whether the rule should provide otherwise. If a self-represented litigant has properly prepared the required paperwork, why should that person need to take time off work to appear for a hearing that adduces no additional pertinent information? A judge member contended that these rules should not impose such barriers. Court personnel check the sufficiency of the party's default paperwork, and the court can set the matter for hearing if the paperwork is deficient; but otherwise, a hearing should be unnecessary. Another member felt that the record produced at a hearing lends an element of legitimacy to the proceeding, which is absent if there is no hearing. The member was particularly concerned about the absence of a hearing for parties whose documents were prepared by a document preparation service, when parties may not be fully aware of the contents. The judge member reiterated that the court may order a hearing, or a party may request one, but a hearing should not always be mandatory. Commissioner Christoffel raised the possibility of combining the provisions of a default decree without a hearing with the provisions for entry of a consent decree under Rule 45, which also does not require a hearing.

Yet another judge member expressed that obtaining a divorce is a major event in a person's life, and it is not unreasonable or burdensome for the rules to require the person's attendance in court for that event. A court hearing serves to provide the requisite level of due process. Failure to pay maintenance or support are jailable

obligations, and decrees that order these obligations deserve commensurate judicial attention. Unlike a consent decree, where these obligations can be established without a personal appearance if both parties consent, a default decree is usually entered without the consent of both parties. Another member noted the benefit of having a transcript of a default proceeding for review in subsequent modification proceedings, but there is no transcript for a decree entered by motion. The issue was characterized as one of expediency versus due process. A straw poll on whether the proposed rule should allow the court to award spousal maintenance by motion without a hearing showed the members were fairly divided on the issue.

The first judge-member then proposed that rather than attending a hearing, a party could submit a new form with a default application that would contain the information the party would testify to at a hearing. If a party does not provide all the necessary information in the form, the court could set the matter for hearing. The form could include information that might not be in the party's verified petition. The form could also provide specific information that A.R.S. § 25-319(B) requires for an award of spousal maintenance. Detailed information in a form might allow judges to make better, more informed decisions than if a party had personally appeared at a hearing. On the other hand, self-represented litigants might find it difficult to complete a form, or to complete it correctly. The form would need to be accompanied by educational tools that would facilitate a party's ability to complete the form fully and accurately, and the party would be required to provide a copy of the form to the party in default. After the discussion, a strong majority of members were interested in the form alternative, and the Chair directed Workgroup 2 to draft and propose such a form. Pending that, members agreed to delete from draft Rule 44.1(b) the provision that would not allow the court to award spousal maintenance by motion without a hearing. Members also discussed whether child support should be awarded by motion without a hearing if a form fully provided the necessary information. Members agreed that might be workable, but asked the workgroup to consider the issue first.

Members proceeded to discuss another section of Rule 44.1 regarding child support. Commissioner Christoffel suggested that the rule should address past child support, and that another draft paragraph concerning previously owed support, i.e., arrearages, is unnecessary and could be eliminated. One member proposed eliminating this entire section because it duplicates statutory directives, but Commissioner Christoffel believes the rule reinforces the need for, and the manner of making, a proper calculation. The members then modified the draft section, including the section title, which is now "past child support judgment." Members also discussed whether the rule allows the calculation to be made at a hearing as well as before a hearing; members agreed that it does ("will be calculated"), but in either event the rule requires notice of the calculation.

In section (f), members changed a requirement that the clerk maintain a verbatim record of a default proceeding when service was made by publication to a requirement

that the court maintain the record. The members also agreed that the words "attorney's fees" should be in the singular possessive throughout the rules, to make the term consistent with the civil rules restyling.

4. **Workgroup 4.** Mr. Berkshire presented Rules 83 and 84.

Rule 83 (formerly, "motion for new trial or amended judgment," and as proposed, "altering or amending a judgment; supplemental hearings") and Rule 84 ("motion for reconsideration or clarification"): Mr. Berkshire observed that current Rule 83's reference to a new trial is inappropriate because in family cases, the granting of a motion does not result in a new trial. Rather, a party will request the judge, based on evidence presented at the concluded trial, to alter or amend its ruling and, if appropriate, to conduct a supplemental hearing at which the court could receive additional evidence. The workgroup also intended that its draft deal with the circumstance of self-represented litigants filing post-trial motions using the titles of new trial (in current Rule 83) and reconsideration (in current Rule 84) without meaningful differentiation. Mr. Berkshire believes the draft will synthesize Rules 83 and 84 into a single, Rule 83 post-trial motion to alter or amend the judgment, which will be time-extending. The proposed rule would give the court a gate-keeping function and permit it to weed out meritless motions by allowing it to deny a motion without requiring a response. The draft rule would add a new (a)(1)(A) (that the court "did not properly consider or weigh all of the admitted evidence"), which was derived from Rule 84. Misconduct of the prevailing party was modified to misconduct of the other party. Draft section (a) added a new ground concerning mathematical errors.

Members discussed whether to include in the proposed rule an element of the current rule that provides a limit of granting no more than two new trials to either party. One member suggested that the rule provide that all motions, by all parties, must be filed within a specified time. The member's concern was that if the court grants a motion, the aggrieved party may need to file a subsequent motion. For example, if the court grants a motion regarding a business valuation, it might prompt another motion to also alter or amend an award of spousal maintenance, which in turn may lead to successive motions. At some point, the number of time extending motions should end and the judgment should be final. One member suggested a one-and-done approach to post-trial motions in the superior court, but a judge member observed that he rarely sees more than a single Rule 84 motion in a case anyway. On the other hand, remedies by appeal are costly and time-consuming. Judge Armstrong noted a case pending Supreme Court review that concerns a post-trial motion regarding a QDRO entered a decade earlier. Judge Armstrong also noted the need to amend ARCAP 9 because of Task Force action on the post-judgment motions section of the family rules. One member suggested that the appellate rule be amended by referring to the rule's title rather than its number, although other members disagreed and the Chairs will determine this later.

As the discussion progressed, members expressed the desirability of retaining a rule on motions for clarification, notwithstanding the proposed elimination of Rule 84. One member proposed adding such a motion to the provisions of Rule 85. But the

response to a motion to alter or amend should not be another motion to alter or amend, and if the granting of a Rule 84 motion would precipitate another issue, the non-moving party should raise that issue in the response. Members discussed various methods and language to deal with this situation. Members partially addressed the issue of multiple motions by a new Rule 83(d), which provides, "no party may file a motion to alter or amend an order granting or denying a motion under this rule." The workgroup will work on a rule regarding clarification, including an appropriate location for that rule, after the conclusion of today's meeting.

Members also returned to the Rule 4 issue raised earlier today. Under proposed Rule 83(c)(2), the court must set a deadline for a response if the motion is not summarily denied. Members discussed extensions of time to file the motion and to file a response, and questioned why parties cannot agree to extend time, for example, because a transcript is unavailable. But Judge Armstrong recommended that the rule provide specific outside time limits for filing the motion and response. Members then agreed that the motion must be filed within 25 days after entry of judgment (compared to 15 days under the current rule), and that if the court orders a response, the other party should have 30 days to file one. The proposed rule would also provide that the deadline for filing the motion may not be extended by stipulation or court order. Members agreed that the moving party should have 15 days after the filing of a response to file a reply.

5. **<u>Call to the public; roadmap; adjourn.</u>** There was no response to a call to the public.

The Chairs and staff will continue their editing and review process of approved rules. About two dozen rules are pending workgroup review. The next two Task Force meetings are set for Friday, December 1, and Friday, December 15. At the December 1 meeting, the Task Force will review the remaining rules of Workgroups 2 and 4, and half of the remaining rules of Workgroup 3. A judge member asked Workgroup 2 to consider whether Rule 47 needs clarification about whether those hearings are evidentiary. The Task Force will consider the balance of Workgroup 3's rules, and the remaining rules of Workgroup 1, at the December 15 meeting. Because of the short intervals between meetings, members will again need to access materials in an electronic format. The Task Force should set a meeting in early January to review a draft petition; staff will poll the members whether they prefer Friday, January 5, or Monday, January 8, 2018.

The Task Force's rule petition will mention outreach to stakeholder groups, and members should consider a list of stakeholders to whom they may present the draft and from whom they will invite pre-filing comments. The Chairs again reminded the members of the importance of preparing rule-by-rule summaries. Staff explained that the petition will not include a redline version of the proposed rules, and these summaries, which will be included in an appendix to the petition, will explain how and why a rule was modified, and particularly whether there are any proposed substantive changes.

The meeting adjourned at 2:07 p.m.

Rule 44. Default

(a) Application for Default.

Generally.

Generally.

(1) 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:

(F)(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.

(G)(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.

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~~(H)~~(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.

~~(I)~~(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 is not Effective.*** 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.

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

(d)

Rule 44.1. Default Decree or Judgment By Motion and Without a Hearing [New]

(a) ~~**Default Judgment by Motion and Without a Hearing**~~**Generally**. 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~~in this rule. ~~But~~ However,

(1) ~~(1)~~ 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~~.~~; and

(b)

(2) ~~T~~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.

(e) (b) Decree ~~of Separation,~~ Dissolution, ~~or~~ Annulment, or Separation.

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(1) ~~(A)~~ *Generally*. The court may enter a decree of ~~legal separation,~~ dissolution, ~~, or~~ annulment, or legal separation ~~of marriage~~ on motion ~~and with an affidavit from either or both parties to the marriage, if~~ without a hearing. ~~:~~

~~(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)~~

(~~B~~2) *Affidavit* ~~*Contents*~~. A party requesting a decree without a hearing must include ~~The~~ affidavits from one or both spouses with their motion. The affidavit must state facts showing

~~a.~~ i. jurisdictional requirements have been met;

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

~~b.~~

~~c.~~ (1) support for the requested relief, including, if applicable, an award of attorney's fees.

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

(c) Judgment of Maternity or Paternity.

~~(J)~~ (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.

~~(K)~~ (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

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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.

~~(1)~~**(d)** Money Judgments and Attorney's Fees ~~by Motion for Money 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, spousal maintenance, or attorney's fees, 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.~~

(2) ***Attorney's Fees.*** If the claim for a money judgment 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.

(e) When Children Are Involved or a Party is Pregnant. When the parties have children in common [including an unborn child] [or a party is pregnant] [choose one], the default decree must include the following: [make a conforming change to Rule 45(c)]

(1) Whether either party is pregnant with a child common to the parties;

(1) provisions for legal decision-making parenting time, either within the default decree or by a separate parenting plan;

(2) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the default decree or child support order must state the basis for deviation under the child support guidelines;

(3) if either party is receiving benefits under Temporary Assistance for Needy Families (TANF) or the Title IV-D program, the parties must attach the Attorney General's written approval of any specified child support amount to the default decree;

(4) copies of the filing parent's certificate of completion of the parent information program;

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(5) a completed income withholding order, including the current employer information sheet;

~~(6) a completed judgment data sheet, if required; [Note: Should the rule provide information on when this is required?]~~

(7) if the parties are requesting joint legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

(8) for a paternity or maternity action, the identities of the natural mother and father and anyone who has lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

(f) *Spousal Maintenance.* If a party requests spousal maintenance, the party must file a Form XX, Default Information for Spousal Maintenance, with the Rule 44 application for default.

~~(3)~~ (g) ***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?]

~~(2)~~ Rule 44.2. Default Decree or Judgment by Hearing [new]~~.~~

~~(3)~~a. ***Hearing Required.*** If a party does not meet the requirements for obtaining a default decree or judgment by motion without a hearing under Rule 44.1, the party must request, or the court may order, a default judgment hearing.

~~(4)~~b. ***Notice of Hearing.*** If the defaulted party has appeared in ~~the matter~~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. [Note: Should the same notice be required for all defaults?]

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(5)c. ***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.

(6)d. ***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.

(7) (e) **Past Child Support Judgment.** 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)**i.** of the time period for which past support is sought; and

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

(3) **[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.]

(4) **(e)** ***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?]

(f)Judgment if Service by Publication. If service wasservice was made by publication and no response has been timely filed, a decree or judgment may be entered. The court

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must maintain a verbatim record of the default hearing. . **[NOTE**: The civil rule on defaults no longer includes this provision.]

~~(8)~~(f)

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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 who 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 now the whereabouts of the defaulting party;

(D) identifies an attorney know 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 an 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 is not Effective.*** 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 By Motion and Without a Hearing [New]

(a) Generally. 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 in this rule. However,

(1) the court may not enter a default judgment 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; and

(2) the court many not enter a default judgment without a hearing if the defaulting party is a minor or incompetent person.

(b) Decree of Dissolution, Annulment, or Separation.

(1) ***Generally.*** The court may enter a decree of dissolution, annulment, or legal separation on motion without a hearing.

(2) ***Affidavit.*** A party requesting a decree without a hearing must include affidavits from one or both spouses with their motion. The affidavit must state facts showing:

(A) jurisdictional requirements have been met;

(B) conciliation provisions of A.R.S. § 25-381.09 have been met or do not apply; and

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

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

(c) Judgment of Maternity or Paternity.

(1) ***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.

(2) ***Affidavit.***

(A) 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.

(B) 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.

(C) 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.

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

(d) Money Judgments and Attorney's Fees.

(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, spousal maintenance, or attorney's fees, the court may enter judgment on motion with an affidavit and other documentation that establishes the amount due.

(2) ***Attorney's Fees.*** If the claim for a money judgment 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.

(e) When Children are Involved or a Party is Pregnant. When the parties have children in common [including an unborn child][a party is pregnant][choose one], the default decree must include the following:

(1) whether either party is pregnant with a child common to the parties;

(2) provisions for legal decision-making parenting time, either within the dfault decree or by a separate parenting plan;

(3) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the default decree or child support order must state the basis for deviation under the child support guidelines;

(4) if either party is receiving benefits under Temporary Assistance for Needy Families (TANF) or the Title IV-D program, the parties must attach the Attorney General's written approval of any specified child support amount to the default decree;

(5) copies of the filing parent's certificate of completion of the parent information program;

(6) ~~a completed judgment data sheet, if required; [Note: Should the rule provide information on when this is required?]~~

(7) if the parties are requesting joint legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

(8) for a paternity or maternity action, the identities of the natural mother and father and anyone who las lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

(f) **Spousal Maintenance.** If a party requests spousal maintenance, the party must file a Form XX, Default Information for Spousal Maintenance, with the Rule 44 application for default.

(g) **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 rules 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 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 consequences, what is the motivation to adhere to it?]

Rule 44.2. Default Decree or Judgment by Hearing [New]

(a) Hearing Required. If a party does not meet the requirements for obtaining a default decree or judgment by motion without a hearing under Rule 44.1, the party must request, or the court may order, a default judgment hearing.

(b) 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. [Note: Should the same notice be required for all defaults?]

(c) 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.

(d) Rights of the 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.

(e) Past Child Support Judgment. 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:

(1) Of the time period for which past support is sought; and

(2) The amount of past support will be calculated 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.]

(f) 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?]

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

Default Worksheet for Spousal Maintenance

(To be included with Application of Default if Spousal Maintenance is requested your Petition.)

To qualify for spousal maintenance under A.R.S. § 25-319, you must provide the following information. Check all boxes that apply.

□ I lack sufficient property, including property I will be receiving in the dissolution to provide for my reasonable needs.

□ I am unable to be self-sufficient through appropriate employment.

□ I am the custodian of a child whose age or condition is such that I should not be required to seek employment outside the home.

□ I lack earning ability in the labor market adequate to be self-sufficient.

□ I contributed to the educational opportunities of my spouse.

□ My marriage lasted ____years.

□ I am ____ years old and cannot be employed adequately to be self-sufficient.

□ There has been excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

□ There are actual damages and judgments from conduct resulting in criminal conviction of either you or your spouse in which the other spouse or child was the victim.

If the court finds you qualify for spousal maintenance it will need the following information to determine whether the amount and length of time you are requesting is appropriate**.** In determining this, the court seeks to achieve independence for both parties and requires an effort toward independence by the one requesting maintenance. With this goal in mind, please provide financial affidavit forms for yourself and your spouse (Form ___) and answer the following:

1. Were you employed during the marriage? How?

   ____
   ____

2. Do you have any physical or emotional limitations? Describe:

____

____

3. Describe any contributions you've made to your spouse's earning ability or how you have reduced your income or your career opportunities to benefit your spouse.

____

____

4. If your request for spousal maintenance is granted, how will you and your spouse contribute to the educational expenses of your children?

____

____

5. Why are the financial resources available to you, including property awarded in the decree, not sufficient to meet your needs?

____

____

6. Do you think additional education or training would enable you to find employment sufficient to meet your needs? ________. Is this education or training readily available? ______. How long do you think it will take to complete this education or training? ___________.

7. How much will cost you per month to obtain health insurance after the divorce? ______. How much will your spouse save per month if the insurance changes from a family plan to employee only health insurance? _______.

Verification

Rule 45. Consent Decree

(a) Generally. If the petitioner and the respondent agree to the terms of a ~~legal separation, annulment, or~~ dissolution, annulment, or legal separation, or to the terms of a paternity or maternity action, they may obtain a consent decree without a court hearing.

(1) To obtain a consent decree for a dissolution or legal separation, the summons and petition must have been served on the respondent, or the respondent must have waived service, at least 60 days before the parties file the consent decree.

(2) To proceed with a consent decree for a dissolution of marriage, the parties must jointly file a consent decree that is substantially similar to Form 8.

(3) The assigned judge or commissioner must determine whether the parties have met the requirements for a consent decree.

(b) Content of Consent Decree. The consent decree must meet these requirements:

(1) ~~If any party is receiving benefits under Temporary Assistance for Needy Families (TANF) (formerly AFDC) or the Title IV-D program, the parties must obtain the written approval of the Attorney General for any specified child support amount. [Note: This provision is moved to (c).]~~

(2) The consent decree must state the terms of the parties' agreement.

(3) In any action for dissolution, annulment, or legal separation, the parties must state:

(A) whether their marriage was a covenant marriage;

(B) whether they have children in common; and

(C) whether ~~the wife~~ one party is pregnant with ~~the husband's child~~ a child common to the parties.

(4) The consent decree must state:

(A) the parties agree to proceed by consent;

(B) each party was not subject to force or threats, or under duress or coercion, when preparing and signing the decree;

(C) for any dissolution or legal separation, each party believes the division of property is fair and equitable [reasonable?];

(D) each party understands that he or she

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(i) may retain, or has retained, an attorney of his or her choice, and

(ii) is waiving the right to trial; and

(E) whether there are any existing protective orders, and if so, the effect of the consent decree on those orders

(5) Both parties must personally sign the consent decree before a notary public. Alternatively, a party may sign the consent decree in the clerk's presence after the clerk has verified the party's identity. If a party is represented by an attorney, the attorney must also sign the consent decree.

(c) When Children Are Involved. When the parties have children in common or a party is pregnant, the consent decree must include the following:

(1) provisions for custody and parenting time, either within the consent decree or by a separate parenting plan;

(2) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the consent decree or child support order must state the basis for deviation under the child support guidelines;

(3) if either party is receiving benefits under Temporary Assistance for Needy Families (TANF) ~~(formerly AFDC)~~ or the Title IV-D program, the parties must attach to the consent decree the Attorney General's written approval of any specified child support amount;

(4) copies of each parent's certificate of completion of the parent information program;

(5) a completed income withholding order ~~of assignment~~, including the current employer information sheet;

~~(6) a completed judgment data sheet, if required; [Note: Should the rule provide information on when this is required?]~~

~~(7)~~**(6)** if the parties are requesting joint ~~custody~~legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

~~(8)~~**(7)** for a paternity or maternity action, the identities of the natural mother and father and anyone who has lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

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(2) The consent decree must state the terms of the parties' agreement.

(3) In any action for dissolution, annulment, or legal separation, the parties must state:

(A) whether their marriage was a covenant marriage;

(B) whether they have children in common; and

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(A) the parties agree to proceed by consent;

(B) each party was not subject to force or threats, or under duress or coercion, when preparing and signing the decree;

(C) for any dissolution or legal separation, each party believes the division of property is fair and equitable [reasonable?];

(D) each party understands that he or she

(i) may retain, or has retained, an attorney of his or her choice, and

(ii) is waiving the right to trial; and

(E) whether there are any existing protective orders, and if so, the effect of the consent decree on those orders

(5) Both parties must personally sign the consent decree before a notary public. Alternatively, a party may sign the consent decree in the clerk's presence after the clerk has verified the party's identity. If a party is represented by an attorney, the attorney must also sign the consent decree.

(c) When Children Are Involved. When the parties have children in common or a party is pregnant, the consent decree must include the following:

(1) provisions for custody and parenting time, either within the consent decree or by a separate parenting plan;

(2) a child support order supported by a child support worksheet, but if a party requests any deviation in the child support amount, the consent decree or child support order must state the basis for deviation under the child support guidelines;

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(5) a completed income withholding order, including the current employer information sheet;

(6) if the parties are requesting joint legal decision-making, a statement as to whether domestic violence has occurred, and the extent of any such violence; and

(7) for a paternity or maternity action, the identities of the natural mother and father and anyone who has lawful status as a parent or custodian of a child, including the court case conferring that status if it is not the current case.

Rule 50. Complex Case ~~Disclosure~~Designation

(a) Generally. A party ~~who believes that a case is~~ may request that the court designate a case as complex.

(b) Time to File. A party may file a request to designate a case as complex no later than 20 days after receipt of the opposing party's initial disclosure under Rule 49.

(c) ~~(c)~~ **Factors**. When exercising its discretion in deciding~~complex,~~ whether an action is complex under this rule, the court should consider the following factors:

(1) ~~(1A)~~ numerous difficult or novel legal issues that will be time-consuming to resolve;

(2) ~~(2B)~~ management of a large number of witnesses or a substantial amount of documentary evidence;

(3) ~~(3)~~ the need for significant expert testimony;

(4) ~~(4D4)~~ any other factor that in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(d) ~~(d)~~ **Effect of Designation.** After designating a case complex, the court must conduct a scheduling conference at which it may enter orders concerning the scope and timing of disclosure and discovery. The court also may extend the time for parties to complete discovery under Rule 51, and must provide a minimum of 12 hours for trial.

~~**and requires more detailed disclosure than provided in Rule 49 may file a notice, no later than 20 days after the filing of a responsive pleading, stating that disclosure under Rule 26.1 of the Arizona Rules of Civil Procedure is necessary. If the notice is timely filed, the parties must serve on each other a Rule 26.1 disclosure statement no later than 40 days after the notice is filed and disclose documents and electronically-stored information as is required in that rule.** Unless the court orders otherwise, the parties have a continuing duty to serve additional or amended disclosures as required in Rule 26.1(d)(2) of the Arizona Rules of Civil Procedure. [**JWR Note**: Note that if the Civil Justice Reform Committee proposals are adopted, this section will be renumbered to be 26.1(f)(2).]~~

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Rule 50. Complex Case Designation

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(b) Time to File. A party may file a request to designate a case as complex no later than 20 days after receipt of the opposing party's initial disclosure under Rule 49.

(c) Factors. When exercising its discretion in deciding whether an action is complex under this rule, the court should consider the following factors:

(1) numerous difficult or novel legal issues that will be time-consuming to resolve;

(2) management of a large number of witnesses or a substantial amount of documentary evidence;

(3) the need for significant expert testimony;

(4) any other factor that in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(d) Effect of Designation. After designating a case complex, the court must conduct a scheduling conference at which it may enter orders concerning the scope and timing of disclosure and discovery. The court also may extend the time for parties to complete discovery under Rule 51, and must provide a minimum of 12 hours for trial.

Rule 51. General Provisions Governing Discovery - [JWR Note: if the Civil Justice Reform Committee proposed rule changes are adopted, the civil rule counterpart will change substantially.]

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

(1) depositions by oral examination or written questions under Rules 57 and 58, respectively;

(2) written interrogatories under Rule 61;

(3) requests for production of documents or things or permission to enter onto land or other property for inspection and other purposes, under Rule 62

(4) physical and mental examinations under Rule 63;

(5) requests for admission under Rule 64; and

(6) subpoenas for production of documentary evidence or for inspection of premises under Rule 52.

(b) Discovery Scope and Limits. Unless the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

(1) ***Generally.***

(A) *Scope.* Parties may obtain discovery regarding any nonprivileged matter that is relevant to the any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Written discovery to a party may not request information that party is required to disclose under Rule 49. Disputes concerning the adequacy of disclosure must be presented as required by Rule 65.

(B) *Limits on Discovery.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that the discovery sought: (i) is unreasonably cumulative or duplicative, or can be obtained from another source that is more convenient, less burdensome, or less expensive; (ii) seeks information that the party has had ample opportunity to obtain; or (iii) is outside the scope permitted by Rule 51(b)(1)(A).

~~(B)~~

(2) ***Specific Limits on Discovery of Electronically Stored Information.*** A party need not provide discovery or disclosure of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 51(b)(1). The court may specify conditions for the disclosure or discovery.

(3) ***Work Product and Witness Statements.***

(A) *Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial.* Ordinarily, a party may not discover documents and tangible things that another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) prepared in anticipation of litigation or for trial. But, subject to Rule 51(b)(4)(B), a party may discover those materials if:

(i) the materials are otherwise discoverable under Rule 51(b)(1); and

(ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure of Opinion Work Product.* If the court orders discovery of materials under Rule 51(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Discovery of Own Statement.* On request and without the showing required under Rule 51(b)(3)(A), any party or other person may obtain his or her own previous statement about the action or its subject matter. If the request is refused, the party or other person may move for a court order, and Rule 65(a)(5) applies to the award of expenses. A statement discoverable under this rule is either:

(i) a written statement that the party or other person signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, video, audio, or other recording—or a transcription of it—that recites substantially verbatim the party's or other person's oral statement.

(4) *Expert Discovery.*

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(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been disclosed as an expert witness under Rule 49.

(B) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. A party may discover such facts or opinions only:

(i) as provided in Rule 63(d); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 51(b)(4)(A) or (B), including the time the expert spends testifying in a deposition; and

(ii) for discovery under Rule 51(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions, including—in the court's discretion—the time the expert reasonably spends preparing for deposition.

~~**(D)** *Number of Experts Per Issue.* Unless the parties agree or the court orders otherwise for good cause, each side is presumptively entitled to call only one retained or specially employed expert to testify on an issue. When there are multiple parties on a side and those parties cannot agree on which expert to call on an issue, the court may designate the expert to be called or, for good cause, allow more than one expert to be called. [**JWR Note:** When the family law rules were adopted, the Family Law Committee chose not to include this rule, which was first adopted as part of the Zlaket rules. Does the Task Force want to include or omit it?]~~

(5) *Claims of Privilege or Protection of Work-Product Materials.*

(A) *Information, Documents, or Electronically Stored Information Withheld.* When a party withholds information, a document, or electronically stored information in response to a written discovery request on the claim that it is privileged or subject to protection as work product, the party must promptly identify in writing the information, document, or electronically stored

information withheld and describe the nature of that information, document, or electronically stored information in a manner that—without revealing information that is itself privileged or protected—will enable other parties to assess the claim.

(B) *Inadvertent Production.* If a party contends that a document or electronically stored information subject to a claim of privilege or of protection as work-product material has been inadvertently produced in discovery, the party making the claim may notify any party who received the document or electronically stored information of the claim and the basis for it. After being notified, a party: (i) must promptly return, sequester, or destroy the specified document or electronically stored information and any copies it has; (ii) must not use or disclose the document or electronically stored information until the claim is resolved; (iii) must take reasonable steps to retrieve the document or electronically stored information if the party disclosed it before being notified; and (iv) may promptly present the document or electronically stored information to the court under seal for a determination of the claim. The producing party must preserve the document or electronically stored information until the claim is resolved.

(c) Sequence of Discovery. Unless the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice, or for other good cause:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(d) Supplementing and Correcting Discovery Responses. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect.

(e) Sanctions. The court may impose an appropriate sanction—including any order under Rules 65 or 76(d)—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(f) Discovery and Disclosure Motions. Any discovery or disclosure motion must attach a good faith consultation certificate complying with Rule ~~XX~~(9)(c).

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Rule 51. General Provisions Governing Discovery [JWR Note: if the Civil Justice Reform Committee proposed rule changes are adopted, the civil rule counterpart will change substantially.]

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

(1) depositions by oral examination under Rule 57, respectively;

(2) written interrogatories under Rule 61;

(3) requests for production of documents or things or permission to enter onto land or other property for inspection and other purposes, under Rule 62

(4) physical and mental examinations under Rule 63;

(5) requests for admission under Rule 64; and

(6) subpoenas for production of documentary evidence or for inspection of premises under Rule 52.

(b) Discovery Scope and Limits. Unless the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

(1) ***Generally.***

(A) *Scope.* Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Written discovery to a party may not request information that party is required to disclose under Rule 49. Disputes concerning the adequacy of disclosure must be presented as required by Rule 65.

(B) *Limits on Discovery.* On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that the discovery sought: (i) is unreasonably cumulative or duplicative, or can be obtained from another source that is more convenient, less burdensome, or less expensive; (ii) seeks information that the party has had ample opportunity to obtain; or (iii) is outside the scope permitted by Rule 51(b)(1)(A).

(2) ***Specific Limits on Discovery of Electronically Stored Information.*** A party need not provide discovery or disclosure of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 51(b)(1). The court may specify conditions for the disclosure or discovery.

(3) ***Work Product and Witness Statements.***

(A) *Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial.* Ordinarily, a party may not discover documents and tangible things that another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) prepared in anticipation of litigation or for trial. But, subject to Rule 51(b)(4)(B), a party may discover those materials if:

(i) the materials are otherwise discoverable under Rule 51(b)(1); and

(ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure of Opinion Work Product.* If the court orders discovery of materials under Rule 51(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) *Discovery of Own Statement.* On request and without the showing required under Rule 51(b)(3)(A), any party or other person may obtain his or her own previous statement about the action or its subject matter. If the request is refused, the party or other person may move for a court order, and Rule 65(a)(5) applies to the award of expenses. A statement discoverable under this rule is either:

(i) a written statement that the party or other person signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, video, audio, or other recording—or a transcription of it—that recites substantially verbatim the party's or other person's oral statement.

(4) *Expert Discovery.*

(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been disclosed as an expert witness under Rule 49.

(B) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. A party may discover such facts or opinions only:

(i) as provided in Rule 63(d); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 51(b)(4)(A) or (B), including the time the expert spends testifying in a deposition; and

(ii) for discovery under Rule 51(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions, including—in the court's discretion—the time the expert reasonably spends preparing for deposition.

(5) *Claims of Privilege or Protection of Work-Product Materials.*

(A) *Information, Documents, or Electronically Stored Information Withheld.* When a party withholds information, a document, or electronically stored information in response to a written discovery request on the claim that it is privileged or subject to protection as work product, the party must promptly identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that—without revealing information that is itself privileged or protected—will enable other parties to assess the claim.

(B) *Inadvertent Production.* If a party contends that a document or electronically stored information subject to a claim of privilege or of protection as work-product material has been inadvertently produced in discovery, the party making the claim may notify any party who received the document or electronically stored information of the claim and the basis for it. After being

notified, a party: (i) must promptly return, sequester, or destroy the specified document or electronically stored information and any copies it has; (ii) must not use or disclose the document or electronically stored information until the claim is resolved; (iii) must take reasonable steps to retrieve the document or electronically stored information if the party disclosed it before being notified; and (iv) may promptly present the document or electronically stored information to the court under seal for a determination of the claim. The producing party must preserve the document or electronically stored information until the claim is resolved.

(c) Sequence of Discovery. Unless the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice, or for other good cause:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(d) Supplementing and Correcting Discovery Responses. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect.

(e) Sanctions. The court may impose an appropriate sanction—including any order under Rules 65 or76(d)—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(f) Discovery and Disclosure Motions. Any discovery or disclosure motion must attach a good faith consultation certificate complying with Rule (9)(c).

Rule 52. Subpoena– [JWR Note: The Task Force might consider that it simply incorporate the rule by reference the Civil Rule and Civil Rule form. It would save practitioners from the bother of figuring out whether are any differences between the two rules, and would save the TF from the trouble of preparing a form. On the other hand, if the Civil Justice Reform Committee proposed rule changes are adopted, the civil rule will change substantially.]

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(a) Generally.

(1) ***Requirements—Generally.*** Every subpoena must:

(A) state the name of the Arizona court from which it issued;

(B) state the title of the action, the name of the court in which it is pending, and its civil action case number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a deposition, hearing, or trial;

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or

(iii) permit the inspection of premises; and.

(D) be substantially in the form set forth in Rule 97, Form XX. [**Note:** Currently there is no subpoena form in Rule 97.]

(2) ***Issuance by Clerk.*** The clerk must issue a signed but otherwise blank subpoena to a party requesting it. That party must complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court.

(2)(3) ***Interstate Depositions and Discovery.*** Rule 45.1 of the Arizona Rules of Civil Procedure applies when an action pending in another jurisdiction requires the issuance of a subpoena in Arizona, or a pending Arizona action requires the issuance of a subpoena in another jurisdiction.

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(b) Subpoena for Deposition, Hearing, or Trial; Duties; Objections.

(1) ***Issuing Court.*** A subpoena commanding attendance at a hearing or trial must issue from the superior court in the county where the hearing or trial is to be held. Except as otherwise provided in Rule 45.1 [Note: Currently there is no equivalent of Civil Rule 45.1 in the FLR], a A subpoena commanding attendance

at a deposition must issue from the superior court in the county where the action is pending.

(2) ***Combining or Separating a Command to Produce or to Permit Inspection.*** A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(3) ***Place of Appearance.***

(A) *Trial Subpoena.* Subject to Rule 52(e)(2)(B)(iii), a subpoena commanding attendance at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Deposition or Hearing Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend a deposition or hearing may not require the subpoenaed person to travel to a place other than:

(i) the county where the person resides or transacts business in person;

(ii) the county where the person is served with a subpoena, or within 40 miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) ***Command to Attend a Deposition—Notice of Recording Method.*** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(5) ***Objections; Appearance Required.*** Objections to a subpoena commanding attendance at a deposition, hearing, or trial, must be made by timely motion under Rule 52(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of this Rule 52, a person who is properly served with a subpoena must attend and testify at the date, time, and place specified in the subpoena.

(c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

(1) ***Issuing Court.*** If separate from a subpoena commanding attendance at a deposition, hearing, or trial, a subpoena commanding a person to produce designated documents, electronically stored information, or tangible things, or to permit the inspection of premises, must issue from the superior court in the county where the production or inspection is to be made.

(2) ***Electronically Stored Information.***

(A) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) *Form for Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 51(b)(1) and (b)(2). The court may specify conditions for the discovery.

(3) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands attendance at a deposition, hearing, or trial.

(4) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business, or organize and label them to correspond with the categories in the demand.

(5) ***Objections.***

(A) *Form and Time for Objection.*

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection, may serve a written objection to producing, inspecting, copying, testing, or sampling any or all of the materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense. The objection must state the basis for the objection, and must

include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused as provided in Rule 52(b)(5).

(B) *Procedure After Objecting.*

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move under Rule 65(a) to compel compliance with the subpoena. The motion must comply with Rule 65(a)(1), and must be served on the subpoenaed person and all other parties under Rule XX.

(iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(C) *Claiming Privilege or Protection.*

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly comply with Rule 51(b)(6)(A).

(ii) If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must comply with Rule 51(b)(6)(A) or, if applicable, Rule 51(b)(6)(B).

(6) ***Production to Other Parties.*** Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information, or tangible things in response to a subpoena must promptly make

such materials available to all other parties for inspection and copying, along with any other disclosures required by Rule 49.

(d) Service.

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(1) ***General Requirements; Tendering Fees.*** A subpoena may be served by any person who is not a party and is at least 18 years old. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) ***Exceptions to Tendering Fees.*** Fees and mileage need not be tendered when the subpoena commands attendance at a trial or hearing or is issued on behalf of the State of Arizona or any of its officers or agencies.

(3) ***Service on Other Parties.*** A copy of every subpoena ~~and any proof of service~~ must be served on every other party in accordance with Rule ~~XX~~43.

(4) ***Service Within the State.*** A subpoena may be served anywhere within the state.

(5) ***Proof of Service.*** Proof of service may not be filed except as allowed by Rule XX. Any such filing must be with the court clerk for the county where the action is pending and must include the server's certificate stating the date and manner of service and the names of the persons served.

(e) Protecting a Person Subject to a Subpoena; Motion to Quash or Modify.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or an attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court in the county where the case is pending or from which a subpoena was issued must quash or modify a subpoena if it:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 52(b)(3)(B);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* On timely motion, the superior court in the county where the case is pending or from which a subpoena was issued may quash or modify a subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 52(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limits set forth in Rule 51(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and

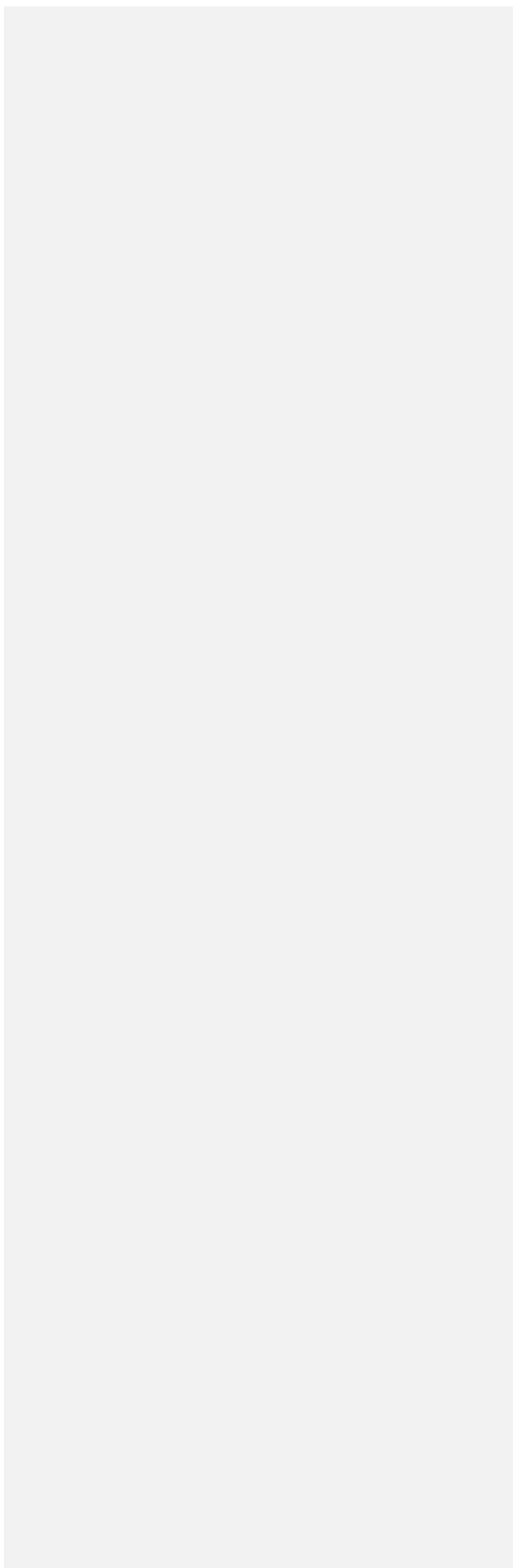
(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena must be served on the party or the attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any such motion on all other parties.

(f) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A failure to obey must be excused if the subpoena purports to require a person who is

neither a party nor a party’s officer to attend or produce at a location other than the places specified in Rule 52(b)(3)(B).



Rule 52. Subpoena [JWR Note: The Task Force might consider that it simply incorporate the rule by reference the Civil Rule and Civil Rule form. It would save practitioners from the bother of figuring out whether are any differences between the two rules, and would save the TF from the trouble of preparing a form. On the other hand, if the Civil Justice Reform Committee proposed rule changes are adopted, the civil rule will change substantially.]

(a) Generally.

(1) ***Requirements—Generally.*** Every subpoena must:

(A) state the name of the Arizona court from which it issued;

(B) state the title of the action, the name of the court in which it is pending, and its case number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a deposition, hearing, or trial;

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or

(iii) permit the inspection of premises.

(2) ***Issuance by Clerk.*** The clerk must issue a signed but otherwise blank subpoena to a party requesting it. That party must complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Supreme Court.

(3) ***Interstate Depositions and Discovery.*** Rule 45.1 of the Arizona Rules of Civil Procedure applies when an action pending in another jurisdiction requires the issuance of a subpoena in Arizona, or a pending Arizona action requires the issuance of a subpoena in another jurisdiction.

(b) Subpoena for Deposition, Hearing, or Trial; Duties; Objections.

(1) ***Issuing Court.*** A subpoena commanding attendance at a hearing or trial must issue from the superior court in the county where the hearing or trial is to be held. A subpoena commanding attendance at a deposition must issue from the superior court in the county where the action is pending.

(2) ***Combining or Separating a Command to Produce or to Permit Inspection.*** A command to produce documents, electronically stored information, or tangible

things, or to permit the inspection of premises, may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(3) ***Place of Appearance.***

(A) *Trial Subpoena.* Subject to Rule 52(e)(2)(B)(iii), a subpoena commanding attendance at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Deposition or Hearing Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend a deposition or hearing may not require the subpoenaed person to travel to a place other than:

(i) the county where the person resides or transacts business in person;

(ii) the county where the person is served with a subpoena, or within 40 miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) ***Command to Attend a Deposition—Notice of Recording Method.*** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

(5) ***Objections; Appearance Required.*** Objections to a subpoena commanding attendance at a deposition, hearing, or trial, must be made by timely motion under Rule 52(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of this Rule 52, a person who is properly served with a subpoena must attend and testify at the date, time, and place specified in the subpoena.

(c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

(1) ***Issuing Court.*** If separate from a subpoena commanding attendance at a deposition, hearing, or trial, a subpoena commanding a person to produce designated documents, electronically stored information, or tangible things, or to permit the inspection of premises, must issue from the superior court in the county where the production or inspection is to be made.

(2) ***Electronically Stored Information.***

(A) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) *Form for Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 51(b)(1) and (b)(2). The court may specify conditions for the discovery.

(3) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands attendance at a deposition, hearing, or trial.

(4) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business, or organize and label them to correspond with the categories in the demand.

(5) ***Objections.***

(A) *Form and Time for Objection.*

(i) A person commanded to produce documents, electronically stored information, or tangible things, or to permit inspection, may serve a written objection to producing, inspecting, copying, testing, or sampling any or all of the materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

(ii) The objection must be served on the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials or to permit inspection, with a command to attend a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance at a deposition, hearing, or trial must attend and testify at the date, time, and place specified in the subpoena, unless excused as provided in Rule 52(b)(5).

(B) *Procedure After Objecting.*

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those parts of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move under Rule 65(a) to compel compliance with the subpoena. The motion must comply with Rule 65(a)(1), and must be served on the subpoenaed person and all other parties under Rule XX.

(iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(C) *Claiming Privilege or Protection.*

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as work-product material must promptly comply with Rule 51(b)(6)(A).

(ii) If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must comply with Rule 51(b)(6)(A) or, if applicable, Rule 51(b)(6)(B).

(6) ***Production to Other Parties.*** Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information, or tangible things in response to a subpoena must promptly make such materials available to all other parties for inspection and copying, along with any other disclosures required by Rule 49.

(d) Service.

(1) ***General Requirements; Tendering Fees.*** A subpoena may be served by any person who is not a party and is at least 18 years old. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for one day's attendance and the mileage allowed by law.

(2) ***Exceptions to Tendering Fees.*** Fees and mileage need not be tendered when the subpoena commands attendance at a trial or hearing or is issued on behalf of the State of Arizona or any of its officers or agencies.

(3) ***Service on Other Parties.*** A copy of every subpoena must be served on every other party in accordance with Rule 43.

(4) ***Service Within the State.*** A subpoena may be served anywhere within the state.

(5) ***Proof of Service.*** Proof of service may not be filed except as allowed by Rule XX. Any such filing must be with the court clerk for the county where the action is pending and must include the server's certificate stating the date and manner of service and the names of the persons served.

(e) Protecting a Person Subject to a Subpoena; Motion to Quash or Modify.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or an attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court in the county where the case is pending or from which a subpoena was issued must quash or modify a subpoena if it:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 52(b)(3)(B);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* On timely motion, the superior court in the county where the case is pending or from which a subpoena was issued may quash or modify a subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 52(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limits set forth in Rule 51(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship; and

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated for those expenses.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena must be served on the party or the attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any such motion on all other parties.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 52(b)(3)(B).

Rule 53. Protective Orders Regarding Discovery Requests

(a) Generally. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or alternatively, on matters relating to a deposition, the court in the county where the deposition will be taken. Subject to Rule 51(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) forbidding the discovery;

(2) specifying terms and conditions, including time and place, for the discovery;

(3) prescribing a discovery method other than the one selected by the party seeking discovery;

(4) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

(5) designating the persons who may be present while the discovery is conducted;

(6) requiring that a deposition be sealed and opened only on court order;

(7) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(8) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(b) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on terms that are just, order that any party or person provide or permit discovery.

(c) Awarding Expenses. Rule 65(a)(~~5~~4) applies to the award of expenses on a motion for a protective order.

(d) Confidentiality Orders.

(1) ***Burden of Proof.*** Before the court may enter an order that limits a party or person from disclosing information or materials produced in the action to a person who is not a party to the action and before the court may deny an intervenor's request for access to such discovery materials:

(A) the party seeking confidentiality must show why a confidentiality order should be entered or continued; and

(B) the party or intervenor opposing confidentiality must show why a confidentiality order should be denied in whole or in part, modified, or vacated. The burden of showing good cause for an order remains with the party seeking confidentiality.

(2) ***Findings of Fact.*** When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to:

(A) any party's or person's need to maintain the confidentiality of such information or materials;

(B) any nonparty's or intervenor's need to obtain access to such information or materials; and

(C) any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal.

No such findings of fact are needed if the parties have stipulated to such an order or if a motion to intervene and to obtain access to materials subject to a confidentiality order is unopposed. A party moving for entry of a confidentiality order must submit with its motion a proposed order containing proposed findings of fact.

(3) ***Least Restrictive Means.*** An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

Rule 53. Protective Orders Regarding Discovery Requests

(a) Generally. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or alternatively, on matters relating to a deposition, the court in the county where the deposition will be taken. Subject to Rule 51(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) forbidding the discovery;

(2) specifying terms and conditions, including time and place, for the discovery;

(3) prescribing a discovery method other than the one selected by the party seeking discovery;

(4) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

(5) designating the persons who may be present while the discovery is conducted;

(6) requiring that a deposition be sealed and opened only on court order;

(7) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(8) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(b) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on terms that are just, order that any party or person provide or permit discovery.

(c) Awarding Expenses. Rule 65(a)(4) applies to the award of expenses on a motion for a protective order.

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No such findings of fact are needed if the parties have stipulated to such an order or if a motion to intervene and to obtain access to materials subject to a confidentiality order is unopposed. A party moving for entry of a confidentiality order must submit with its motion a proposed order containing proposed findings of fact.

(3) ***Least Restrictive Means.*** An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

Rule 59. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) ***In the Same or Similar Action.*** At a hearing or trial, all or part of a deposition taken in the action—or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest—may be used against a party if:

(A) the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) ***In a Different Action.*** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) ***Deponent's Availability at Trial.*** Subject to Rule 59(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

(4) ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) ***Substituted Party.*** Substituting a party under Rule 37 does not affect the right to use a previously taken deposition.

(6) ***Other uses.*** A deposition may also be used as permitted by Rule 2(a) of these rules. [Note: Question whether this provision is necessary. It is in the current FLR Rule 59(a), but it is not in the corresponding Civil Rule 32.]

(b) Objections to Admissibility. Subject to Rules 55(b) and (c), and 59(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation.

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(1) ***Generally.*** Unless the court orders otherwise, a party must provide the court a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form.

(2) ***Designation.*** A party intending to offer deposition testimony at trial or at a hearing, for any purpose other than impeachment, must designate the portions to be offered by page and line reference and identify the party or parties against whom it will be offered. The designations must be included in any pretrial or prehearing statement required by the court.

(d) Preservation and Waiver of Objections.

(1) ***To the Notice.*** A party objecting to an error or irregularity in a deposition notice must promptly serve the objection in writing on the party giving the notice.

(2) ***To the Officer's Qualification.*** A party objecting to the qualification of the officer before whom a deposition is to be taken must make such objection:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) ***To the Taking of the Deposition.***

(A) *To Competence, Relevance, or Materiality.* A party objecting to a deponent's competence—or to the competence, relevance, or materiality of testimony—must make the objection before or during the deposition if the ground for the objection could have been corrected at that time.

(B) *To an Error or Irregularity at an Oral Deposition.* A party objecting to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that could be corrected at that time must timely make the objection during the deposition.

(C) *To a Written Question.* A party objecting to the form of a written question under Rule 58 must serve the objection under Rule 58(b)(3).

(4) ***To the Officer's Completion and Return of Deposition.*** A party objecting to how the officer (A) transcribed the testimony, or (B) prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition, must file a motion to suppress promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

COMMITTEE COMMENT

This rule is based upon Rule 32, Arizona Rules of Civil Procedure.

Note: The following provisions of current Rule 59(D)(3) are not in the restyled version of Rule 59. Instead, they are relocated in Family Law Rule 57(c), to mirror Civil Rule 30.

Objections to the form of the question or responsiveness of the answer shall be concise, and shall not suggest answers to the witness. No specification of the defect in the form of the question or the answer shall be stated unless requested by the party propounding the question. Argumentative interruptions shall not be permitted.

Continuous and unwarranted off the record conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited. This conduct is subject to the proscriptions of subdivision D(3)(d) and the sanctions prescribed in Rule 65.

Rule 59. Using Depositions in Court Proceedings

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(1) ***In the Same or Similar Action.*** At a hearing or trial, all or part of a deposition taken in the action—or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest—may be used against a party if:

(A) the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) ***In a Different Action.*** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

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(4) ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) ***Substituted Party.*** Substituting a party under Rule 37 does not affect the right to use a previously taken deposition.

(6) ***Other uses.*** A deposition may also be used as permitted by Rule 2(a) of these rules. [Note: Question whether this provision is necessary. It is in the current FLR Rule 59(a), but it is not in the corresponding Civil Rule 32.]

(b) Objections to Admissibility. Subject to Rules 55(b) and (c), and 59(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation.

(1) ***Generally.*** Unless the court orders otherwise, a party must provide the court a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form.

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Continuous and unwarranted off the record conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited. This conduct is subject to the proscriptions of subdivision D(3)(d) and the sanctions prescribed in Rule 65.

Rule 76. Resolution Management Conference

(a) Setting. The court may, and on a party's request must, set a resolution management conference ("RMC"). The court must hold a RMC no later than 60 days after a request is filed, unless the court extends the time for good cause.

Commented [MPJ1]: I always thought this was too much time. But it is in the current rules. Does it need to be changed?

(b) Meet-and-Confer and Other Party Duties.

(1) ***Generally***. Not less than 5 days before the RMC, the parties must:

(A) confer to resolve as many issues as possible. This requirement does not apply if a court order prohibits contact between the parties, or they have a significant history of domestic violence. However, in such situations the parties and their counsel still must take all reasonable steps to resolve as many issues as possible without having personal contact.

(B) comply with applicable disclosure requirements in Rule 49 or 50;

Commented [MPJ2]: Depending on how quickly the RMC is held, and the amount of discovery, this may not be practicable.

(C) prepare and file a written Resolution Statement setting forth any agreements reached by the parties. Each party must file a separate position statement setting forth the party's position on all disputed issues in the case; and

(D) comply with the alternative dispute resolution reporting requirement in Rule 66(f)(2).

(2) ***Form of Resolution Statement.*** The Resolution Statement must be substantially in the form set forth in Rule 97, Form 4 or 5, as applicable.

(c) Court Action. At the RMC, the court may:

(1) enter binding agreements on the record under Rule 69;

(2) determine the parties' positions on the disputed issues and explore reasonable solutions to facilitate their resolution;

(3) enter temporary orders based on the parties' stipulations or, if the parties agree, based upon the parties' discussions, avowals, and arguments at the RMC without holding an evidentiary hearing on contested issues;

(4) order evaluations, assessments, appraisals, testing, appointments, or other special procedures to properly manage the case and resolve disputed issues;

(5) resolve any discovery and disclosure schedules and disputes and adopt any agreements of the parties regarding discovery and disclosure;

(6) permit the amendment of pleadings;

(7) assist in identifying those issues of fact and law that are still at issue;

(8) refer a matter for settlement conference;

(9) order other alternative dispute resolution processes;

(10) schedule an evidentiary hearing, a trial, and any other necessary hearings or conferences;

(11) set a date for filing the joint pretrial statement required in Rule 76.1;

(12) impose time limits on trial proceedings or portions of those proceedings, and issue orders about managing documents, exhibits, and testimony; and

(13) make such other orders as the court deems appropriate.

(d) Entry of Orders. The court must enter an order reciting the action it took at the RMC. This order controls the course of the case unless the court modifies it by a later order.

See further Rule 76.1. Pretrial Statements [New] [**Note:** Because current Rule 76 deals with two distinct subjects (the RMC and the pretrial statement), it was separated into two rules: Rule 76 on the RMC and Rule 76.1 on the pretrial statement.]

See further Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding [New] [**Note:** Rule 76.2 is based on current Rule 76(D). It was restyled as a freestanding rule because it has application to multiple rules (e.g., Rules 76, 76.1, and 77).]

Rule 76. Resolution Management Conference

(a) Setting. The court may, and on a party's request must, set a resolution management conference ("RMC"). The court must hold a RMC no later than 60 days after a request is filed, unless the court extends the time for good cause.

(b) Meet-and-Confer and Other Party Duties.

(1) ***Generally***. Not less than 5 days before the RMC, the parties must:

(A) confer to resolve as many issues as possible. This requirement does not apply if a court order prohibits contact between the parties, or they have a significant history of domestic violence. However, in such situations the parties and their counsel still must take all reasonable steps to resolve as many issues as possible without having personal contact.

(B) comply with applicable disclosure requirements in Rule 49 or 50;

(C) prepare and file a written Resolution Statement setting forth any agreements reached by the parties. Each party must file a separate position statement setting forth the party's position on all disputed issues in the case; and

(D) comply with the alternative dispute resolution reporting requirement in Rule 66(f)(2).

(2) ***Form of Resolution Statement.*** The Resolution Statement must be substantially in the form set forth in Rule 97, Form 4 or 5, as applicable.

(c) Court Action. At the RMC, the court may:

(1) enter binding agreements on the record under Rule 69;

(2) determine the parties' positions on the disputed issues and explore reasonable solutions to facilitate their resolution;

(3) enter temporary orders based on the parties' stipulations or, if the parties agree, based upon the parties' discussions, avowals, and arguments at the RMC without holding an evidentiary hearing on contested issues;

(4) order evaluations, assessments, appraisals, testing, appointments, or other special procedures to properly manage the case and resolve disputed issues;

(5) resolve any discovery and disclosure schedules and disputes and adopt any agreements of the parties regarding discovery and disclosure;

(6) permit the amendment of pleadings;

(7) assist in identifying those issues of fact and law that are still at issue;

(8) refer a matter for settlement conference;

(9) order other alternative dispute resolution processes;

(10) schedule an evidentiary hearing, a trial, and any other necessary hearings or conferences;

(11) set a date for filing the joint pretrial statement required in Rule 76.1;

(12) impose time limits on trial proceedings or portions of those proceedings, and issue orders about managing documents, exhibits, and testimony; and

(13) make such other orders as the court deems appropriate.

(d) Entry of Orders. The court must enter an order reciting the action it took at the RMC. This order controls the course of the case unless the court modifies it by a later order.

See further Rule 76.1. Pretrial Statements [New] [**Note:** Because current Rule 76 deals with two distinct subjects (the RMC and the pretrial statement), it was separated into two rules: Rule 76 on the RMC and Rule 76.1 on the pretrial statement.]

See further Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding [New] [**Note:** Rule 76.2 is based on current Rule 76(D). It was restyled as a freestanding rule because it has application to multiple rules (e.g., Rules 76, 76.1, and 77).]

Rule 76.1. Pretrial Statements; Pretrial Conference

(a) Timing. Unless the court orders otherwise, Tthe parties must file a pretrial statement no later than 20 days before trial or the date set for a pretrial conference, if one is set, unless the court orders otherwise.

(b) Joint and Separate Statements. Unless the court orders otherwise, the parties may file joint or separate pretrial statements. However, if the parties are unrepresented and domestic violence between them is alleged, the parties may must file separate statements statements if domestic violence has occurred between unrepresented parties. The petitioner must initiate the preparation of a draft joint statement, and must confer communicate with every other party concerning the draft. Every pretrial statement must be signed by each party or counsel.

(c) Contents. The parties may use the form of pretrial statement provided in Rule 97, Form 16. Each pretrial statement must include the following:

(1) a brief description of the nature of the action;

(2) each party's name and address, if not confidential;

(3) the name and date of birth of each minor child;

(4) the anticipated length of trial;

(5) the parties' stipulations or agreements;

(6) a statement of uncontested facts or law;

(7) detailed and detailed and concise statements of contested issues of fact and law by each party;

(7)(8) a position on each contested issue;

(9) a list of witnesses each party intends to call testify during the trial, setting forth each witness's address and phone number;

(8)(10) , and identifyingdesignation of deposition testimony under Rule 59(c)(2); any witness whose testimony will be presented solely by deposition (no witness shall be used at the trial other than those listed, except for good cause shown). [**Note:** this parenthetical is covered by section (e)]

(9)(11) each party's list of objections to any witness, and the basis for each objection;

(10)(12) a list of the exhibits that each party intends to use at trial, specifying exhibits that the parties agree are admissible at trial or, if not in agreement, listing the

objections and the specific grounds for each objection that a party will make if the exhibit is offered at trial (specific objections or grounds not listed in the pretrial statement may be deemed waived at the discretion of the trial judge);

(11)(13) a statement by each party confirming that all pretrial discovery and disclosure has been completed by the trial date and that the parties have exchanged all exhibits and reports of experts who have been listed as witnesses;

(14) a statement as to whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement;

(12)(15) any request for attorney's fees, and

(16) a statement about how a verbatim record of the trial will be made.

(13)(d) **Supplemental Pretrial Statements.** Unless otherwise ordered by the court, a party may supplement a separate pretrial statement before trial.[Not sure why it should be done by each party if they agree.]

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(d)(e) **Attachments to the Pretrial Statement.** Each of the parties must each file with the joint or separate pretrial statement the following:

(1) a comprehensive statement of income and expenses substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information") or in such other form permitted by local rule;

(2) if the case involves custodylegal-decision making, parenting time, or child support issues, a fully completed Parent's Worksheet for Child Support Amount; and

(3) if the case involves an action for dissolution, legal separation, or annulment, a detailed itemized inventory of property and debt substantially in the form set forth in Rule 97, Form 12 ("Inventory of Property and Debts"):

(A) listing community, joint tenancy, and other property and debts held in common by the parties, and the separate property and debts of each party;

(B) including for each property the date of acquisition, the title by which the parties hold the property, the amount of encumbrances, and each party's evaluation of the fair market value of the property; and

(C) setting forth each party's proposed distribution of property and debts.

(e)(f) **Failure to List.** A party may not present a witness or offer an exhibit during trial other than those listed and exchanged in a pretrial statement, unless the court orders otherwise for good cause. A party waives the right to raise an objection at the trial or

hearing if the specific objection to a witness or exhibit is not raised in the pretrial statement.

(1) ~~If there has been a failure by either or both counsel, or the parties if not represented by counsel, to meet and prepare the pre-trial statement, the court may impose any of the sanctions or penalties provided by these rules or any statute or authority of the court, and in the absence of good cause shown, the court may continue the trial, enter an interim award for relief to the requesting party based on his or her Financial Affidavit, and award the requesting party his or her attorneys' fees and expenses incurred in preparing for and attending the pretrial hearing, trial or settlement conference scheduled by the court.~~ **[Note**: But see Rule 76(F), now restyled as Rule 76.2, which duplicates this provision in large measure.]

~~(f)~~(g) ~~**Final**~~ **Pretrial Conference.** The court may on its own, and on request of a party must, schedule a ~~final~~ pretrial conference to ~~review the pretrial statement and to determine whether the parties have complied with this rule. At the conference, the parties must~~ formulate a plan for trial, including procedures for facilitating the admission of evidence and the filing of final pretrial statements. At least one of the attorneys who will conduct the trial for each party, and any unrepresented parties, must attend this conference. ~~The court may modify an order following a final pretrial conference only on a showing of extraordinary circumstances.~~

~~(g)~~(h) **Sanctions.** ~~If a party or attorney fails to obey a scheduling or pretrial order, or any provision of this rule, or if no appearance is made on behalf of a party at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial or other scheduled hearing, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a conference, hearing, or trial, or in the preparation of a resolution statement or joint pretrial statement, the court upon motion or its own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others:~~

~~**(1)** an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence;~~

~~**(2)** an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment or temporary order;~~

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(3) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders, except an order to submit to a physical or mental examination.

In lieu of or in addition to any other sanction, the court shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees or an assessment to the clerk of the court, or both, unless the court finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

COMMITTEE COMMENT

This rule is based on Rules 7.1 and 16, Arizona Rules of Civil Procedure, with additions added to fit the family law context.

[**Note:** Current Rule 76(D) ("sanctions") is relocated as restyled Rule 76.2.]

Rule 76.1. Pretrial Statement; Pretrial Conference

(a) Timing. Unless the court orders otherwise, the parties must file a pretrial statement no later than 20 days before trial or the date set for a pretrial conference, if one is set.

(b) Joint and Separate Statements. Unless the court orders otherwise, the parties may file joint or separate pretrial statements. However, if the parties are unrepresented and domestic violence between them is alleged, the parties may file separate statements. The petitioner must initiate the preparation of a draft joint statement, and must communicate with every other party concerning the draft. Every pretrial statement must be signed by each party or counsel.

(c) Contents. The parties may use the form of pretrial statement provided in Rule 97, Form 16. Each pretrial statement must include the following:

(1) a brief description of the nature of the action;

(2) each party's name and address, if not confidential;

(3) the name and date of birth of each minor child;

(4) the anticipated length of trial;

(5) the parties' stipulations or agreements;

(6) a statement of uncontested facts or law;

(7) detailed and concise statements of contested issues of fact and law;

(8) a position on each contested issue;

(9) a list of witnesses each party intends to call testify during the trial;

(10) designation of deposition testimony under Rule 59(c)(2);

(11) each party's list of objections to any witness, and the basis for each objection;

(12) a list of the exhibits that each party intends to use at trial, specifying exhibits that the parties agree are admissible at trial or, if not in agreement, listing the objections and the specific grounds for each objection that a party will make if the exhibit is offered at trial;

(13) a statement by each party confirming that all pretrial discovery and disclosure has been completed by the trial date and that the parties have exchanged all exhibits and reports of experts who have been listed as witnesses;

(14) a statement as to whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement;

(15) any request for attorney's fees, and

(16) a statement about how a verbatim record of the trial will be made.

(d) Supplemental Pretrial Statements. Unless otherwise ordered by the court, a party may supplement a separate pretrial statement before trial.

(e) Attachments to the Pretrial Statement. Each of the parties must each file with the joint or separate pretrial statement the following:

(1) a comprehensive statement of income and expenses substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information") or in such other form permitted by local rule;

(2) if the case involves legal-decision making, parenting time, or child support issues, a fully completed Parent's Worksheet for Child Support Amount; and

(3) if the case involves an action for dissolution, legal separation, or annulment, a detailed itemized inventory of property and debt substantially in the form set forth in Rule 97, Form 12 ("Inventory of Property and Debts"):

(A) listing community, joint tenancy, and other property and debts held in common by the parties, and the separate property and debts of each party;

(B) including for each property the date of acquisition, the title by which the parties hold the property, the amount of encumbrances, and each party's evaluation of the fair market value of the property; and

(C) setting forth each party's proposed distribution of property and debts.

(f) Failure to List. A party may not present a witness or offer an exhibit during trial other than those listed and exchanged in a pretrial statement, unless the court orders otherwise for good cause. A party waives the right to raise an objection at the trial or hearing if the specific objection to a witness or exhibit is not raised in the pretrial statement.

(1) ~~If there has been a failure by either or both counsel, or the parties if not represented by counsel, to meet and prepare the pre-trial statement, the court may impose any of the sanctions or penalties provided by these rules or any statute or authority of the court, and in the absence of good cause shown, the court may continue the trial, enter an interim award for relief to the requesting party based on his or her Financial Affidavit, and award the requesting party his or her attorneys' fees and expenses incurred in preparing for and attending the pretrial hearing, trial or settlement conference scheduled by the court.~~ **[Note**: But see Rule 76(F), now restyled as Rule 76.2, which duplicates this provision in large measure.]

(g) Pretrial Conference. The court may on its own, and on request of a party must, schedule a pretrial conference to formulate a plan for trial, including procedures for facilitating the admission of evidence and the filing of final pretrial statements. At least one of the attorneys who will conduct the trial for each party, and any unrepresented parties, must attend this conference.

~~**(h) Sanctions.** If a party or attorney fails to obey a scheduling or pretrial order, or any provision of this rule, or if no appearance is made on behalf of a party at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial or other scheduled hearing, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a conference, hearing, or trial, or in the preparation of a resolution statement or joint pretrial statement, the court upon motion or its own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others:~~

~~**(1)** an order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence;~~

~~**(2)** an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereof, or rendering a judgment or temporary order;~~

~~**(3)** in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders, except an order to submit to a physical or mental examination.~~

~~In lieu of or in addition to any other sanction, the court shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees or an assessment to the clerk of the court, or both, unless the court finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.~~

Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding

(a) Grounds for Imposing Sanctions. In a pre-judgment or post-judgment proceeding, the court upon motion or its own initiative ~~On motion or on its own in a pre-judgment or post-judgment proceeding, the court~~ may impose sanctions if a party or attorney:

(1) fails to obey a scheduling or pretrial order;

(2) fails to appear at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial, or other scheduled hearing;

(3) is substantially unprepared to participate in a conference hearing or trial;

(4) fails to participate in good faith in a conference, hearing, or trial, or in preparing a resolution statement or joint pretrial statement. [**JWR Note:** Formatting and restyling similar to Civil Rule 16(i)(1).f]

(b) Sanctions. Absent good cause for conduct described in (a), the court may enter sanctions including, but not limited to, the following:

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

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

(3) striking pleadings in whole or in part;

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

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

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

(7) scheduling a proceeding to treat the violation as contempt of court.

(c) Fees and Expenses. Instead of or in addition to any other sanction, the court may order the disobedient party, the party's attorney, or both, to pay reasonable expenses—including attorney's fees, an assessment to the clerk, or both—caused by any noncompliance with a court order, unless the court finds that the noncompliance was substantially justified or other circumstances make an award of fees, an assessment, or expenses unjust.

Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding

(a) Grounds for Imposing Sanctions. In a pre-judgment or post-judgment proceeding, the court upon motion or its own initiative may impose sanctions if a party or attorney:

(1) fails to obey a scheduling or pretrial order;

(2) fails to appear at a Resolution Management Conference, a pretrial conference, an evidentiary hearing, a trial, or other scheduled hearing;

(3) is substantially unprepared to participate in a conference hearing or trial;

(4) fails to participate in good faith in a conference, hearing, or trial, or in preparing a resolution statement or joint pretrial statement. [**JWR Note:** Formatting and restyling similar to Civil Rule 16(i)(1).f]

(b) Sanctions. Absent good cause for conduct described in (a), the court may enter sanctions including, but not limited to, the following:

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

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

(3) striking pleadings in whole or in part;

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

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

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

(7) scheduling a proceeding to treat the violation as contempt of court.

(c) Fees and Expenses. Instead of or in addition to any other sanction, the court may order the disobedient party, the party's attorney, or both, to pay reasonable expenses—including attorney's fees, an assessment to the clerk, or both—caused by any noncompliance with a court order, unless the court finds that the noncompliance was substantially justified or other circumstances make an award of fees, an assessment, or expenses unjust.

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~~ on its own~~,~~ or on motion~~, grant a new trial on~~alter or amend all or some its rulings~~ 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; Scope; Response and Reply.**

(1) ***Motion.*** A motion ~~pursuant to~~under this rule~~s~~ must be filed no later than ~~15~~25 days after the entry of judgment ~~pursuant to~~under Rule 78(b) or (c). This deadline may not be extended by stipulation or court order, except as allowed by Rule ~~6~~4(b)(2). ~~The motion may be amended at any time before the Response is filed.~~

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(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. The court may limit the scope of a response to specified issues and reply. The court may not grant a motion without providing the nonmoving party an opportunity to file a written response. The response deadline must be 30 days after the court orders a response.

(3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response must also address any issues that might arise if the motion is granted.

(4) ***Reply.*** The reply must be filed no later than 15 days after the filing of a response.

(d) Successive Motions. No party may file a motion to alter or amend an order granting or denying a motion under this rule.

(2) 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) -Motion for New Trial Afterafter 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 trialmotion made pursuant to this rule if the respondentdefaulted party—within one year after entry of judgment—files an application establishing good cause for a new trialgranting 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

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"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)(f) [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.]

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

(g) **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 its rulings on any of the following grounds materially affecting that party's rights:

(A) did not properly consider or weigh all 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; Scope; Response and Reply.

(1) ***Motion.*** A motion under this rule must be filed no later than 25 days after the entry of judgment under Rule 78(b) or (c). This deadline may not be extended by stipulation or court order, except as allowed by Rule 4(b)(2).

(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. The court may limit the scope of a response to specified issues. The court may not grant a motion without providing the nonmoving party an opportunity to file a response. The response deadline must be 30 days after the court orders a response.

(3) ***Contents of Response.*** The response must address any issues raised in the motion, unless limited by the court. The response must also address any issues that might arise if the motion is granted.

(4) ***Reply.*** The reply must be filed no later than 15 days after the filing of a response.

(d) Successive Motions. No party may file a motion to alter or amend an order granting or denying a motion under this rule.

(e) 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.

(f) [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.]

(g) Order Must Specify Grounds. Any order granting 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 84. Motion for Reconsideration or Clarification

(a) (a) Grounds.

(a) (1) *Generally.* A party may file a motion that requests the court to reconsider or clarify a ruling on the ground that if the ruling is confusing or is susceptible to more than one reasonable interpretation.

(b) , or because the court:

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

(B) did not properly consider, interpret or apply the controlling law; or

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

(2) ***Specifying Grounds.*** A motion for reconsideration or clarification, however titled, must specify one or more of the grounds in (a)(1) as the basis for the motion.

(b) **Timing.** A party may file a motion for clarification at any time, but the motion does not extend the time for filing a notice of appeal.

(c) **Procedure.** Unless the court orders otherwise, a party may not file a response to a motion for clarification, and the court may summarily deny the motion. However, the court may not grant a motion for clarification without providing the nonmoving party an opportunity to file a written response.

(b) **Rule 83 Motion.** A party may not combine a motion filed under this rule with a motion under Rule 83. On a motion for clarification, the court may not open the judgment or accept additional evidence as it can under Rule 83. must file a motion under (a)(1)(A), (B) or (C) no later than 30 days after the entry of the relevant ruling. If the motion is based on the ground that the ruling is confusing or susceptible to more than one reasonable interpretation, it may be filed at any appropriate time

(c) **Procedure.** Unless the court orders otherwise, a party may not file a response to a A motion for reconsideration clarification, and the court may summarily deny the motion. must be submitted without oral argument, and without the filing of a response or reply, unless the court orders otherwise. However, the court may not grant a motion for reconsideration clarification, or modify its ruling, without providing the nonmoving party an opportunity to file a written response.

(d) Partial Denial; Oral Argument. The court may summarily deny a motion for reconsideration or clarification of a challenged ruling, and order a written

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response concerning other challenged rulings. The court may schedule oral argument on any aspect of the motion.

(e) Effect of Motion on Time for Appeal. **No motion filed under this rule suspends or extends the deadline for filing a notice of appeal from the relevant ruling.**

(f) Rule 83 Motion. A party may not combine a motion filed under this rule rule may not be substituted for, combined with, or pled alternatively to, a a motion under Rule 83. On a a motion for clarification, motion filed under Rule 84, the court may not open the judgment or accept additional evidence as it could can under Rule 83.

COMMENT TO 2015 AMENDMENT

This rule replaces content that formerly appeared in Rule 35(D).

COMMITTEE COMMENT

(d) This rule is based on Rule 59(l), Arizona Rules of Civil Procedure. [Note: There is no longer a Rule 59(l). See, however, Civil Rule 7.1(e), "Motions for Reconsideration."]

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Rule 84. Motion for Clarification

(a) Grounds. A party may file a motion that requests the court to clarify a ruling if the ruling is confusing or is susceptible to more than one reasonable interpretation.

(b) Timing. A party may file a motion for clarification at any time, but the motion does not extend the time for filing a notice of appeal.

(c) Procedure. Unless the court orders otherwise, a party may not file a response to a motion for clarification, and the court may summarily deny the motion. However, the court may not grant a motion for clarification without providing the nonmoving party an opportunity to file a written response.

(d) Rule 83 Motion. A party may not combine a motion filed under this rule with a motion under Rule 83. On a motion for clarification, the court may not open the judgment or accept additional evidence as it can under Rule 83.

Rule 87. Stay of Proceedings to Enforce a Judgment

(a) No Automatic Stay. Except as provided in Arizona Rule of Civil Appellate Procedure 7 or as a court otherwise orders, an interlocutory or final judgment—including in an action for an injunction or a receivership [**Note:** Not sure about this phrase because there is no equivalent in the FLR of Civil Rules 65 or 66] —is not stayed after being entered, even if an appeal is taken.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it— pending disposition of any of the following motions:

(1) under Rule 82(b), to amend the findings or for additional findings;

(2) pending disposition of a motion under Rule 83 or Rule 84, for a new trial or to alter or amend a judgment, or under;

~~(3)~~**(1)** ~~under~~ Rule 85(a) or (b) 5(a) and (b), for relief from a judgment or order; or

~~(4)~~**(2)** when justice so requires in other circumstances until such time as the court designates in other instances until such time as the court may fix.

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(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on such terms for bond, security, or otherwise that preserve the opposing party's rights. [Note: Not sure about the necessity of this section inasmuch as there is no equivalent in the FLR of Civil Rule 65.]

(d) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.

(1) ***Judgment Directing Execution of Instrument.*** If a party appeals a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the outcome of the appeal.

(2) ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property may not be stayed pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(e) Stay of a Judgment Against the State or Its Agencies or Political Subdivisions.

(1) ***Money Judgments.*** If a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is automatically stayed upon the filing of an appeal.

(2) ***Nonmoney Judgments.*** If a judgment other than a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is not automatically stayed upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation, or other security.

(f) Stay of Judgment Entered Under Rule 78(b). A court may stay the enforcement of a final judgment entered under Rule 78(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(g) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until ~~15~~ 25 days after its entry, and no execution or other process may issue on the judgment during that time.

COMMITTEE COMMENT

This rule is based on Rule 62, Arizona Rules of Civil Procedure.

[**Note:** See further ARCAP 7(a)(1)(B).]

Rule 87. Stay of Proceedings to Enforce a Judgment

(a) No Automatic Stay. Except as provided in Arizona Rule of Civil Appellate Procedure 7 or as a court otherwise orders, an interlocutory or final judgment—including in an action for an injunction or a receivership is not stayed after being entered, even if an appeal is taken.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it:

(1) pending disposition of a motion under Rule 83 to alter or amend a judgment, or under Rule 85(a) or (b) for relief from a judgment or order; or

(2) when justice so requires in other circumstances until such time as the court designates.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on such terms for bond, security, or otherwise that preserve the opposing party's rights.

(d) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.

(1) ***Judgment Directing Execution of Instrument.*** If a party appeals a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the outcome of the appeal.

(2) ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property may not be stayed pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(e) Stay of a Judgment Against the State or Its Agencies or Political Subdivisions.

(1) ***Money Judgments.*** If a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is automatically stayed upon the filing of an appeal.

(2) ***Nonmoney Judgments.*** If a judgment other than a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is not automatically stayed upon the filing of an appeal. If a court

grants a stay of such a judgment, it may not require a bond, obligation, or other security.

(f) Stay of Judgment Entered Under Rule 78(b). A court may stay the enforcement of a final judgment entered under Rule 78(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(g) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until 25 days after its entry, and no execution or other process may issue on the judgment during that time.

COMMITTEE COMMENT

This rule is based on Rule 62, Arizona Rules of Civil Procedure.

[**Note:** See further ARCAP 7(a)(1)(B).]

Rule 94. Civil and Child Support Arrest Warrants

(a) Definitions.

(1) ***Civil Arrest Warrant.*** A "civil arrest warrant" is an order issued in a non-criminal matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

(2) ***Child Support Arrest Warrant.*** A "child support arrest warrant" is an order issued in a non-criminal child support matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

(b) When Issued.

~~(1) *Civil Arrest Warrant.* On a party's motion or on its own, the court may issue a civil arrest warrant if it finds that the person named in the warrant :~~

~~(A) by an order to appear:~~

~~(i) had been ordered by the court to appear personally at a specific time and location;~~

~~(ii) received actual notice of that order, including a warning that failure to appear might result in a civil arrest warrant being issued; and~~

~~(iii) failed to appear as ordered; or~~

~~(B) by a subpoena:~~

~~(i) had been personally served with a subpoena to appear in person at a specific time and location, and the subpoena included a warning that failure to appear might result in a civil arrest warrant being issued; and~~

~~(ii) failed to appear as ordered.~~

~~(2)~~(1) ***Civil Arrest Warrant.*** On a party's motion or on its own, the court may issue a civil arrest warrant if it finds that the person named in the warrant: ~~failed to appear and:~~

~~(i)~~ w~~W~~as ~~legally~~ required to appear personally at a specific time and location by~~:~~

~~a.~~ ~~A~~an order to appear~~,~~ or

~~b.~~(A) ~~A~~a subpoena;

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(B) received actual notice of that order or subpoena, including a warning that failure to appear might may result in a the issuance of a civil arrest warrant being issued; and.

(ii)(C) failed to appear.

(3)(2) ***Child Support Arrest Warrant.*** On a party's motion or own its own, iIn any action under A.R.S. § 25-502, the court may issue a child support arrest warrant as provided in A.R.S. § 25-681(A) on a party's motion or own its own.

(c) Warrant's Issuance, Content, and Effectiveness.

(1) ***Issuance.*** Only a court may issue a civil arrest or child support arrest warrant.

(2) ***Content.*** The warrant must:

(A) contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system; and

(B) command the arrest of the named person and that the person be either remanded to the custody of the sheriff or brought before the issuing judicial officer or the nearest or most accessible judicial officer of the superior court in the same county if the issuing judicial officer is absent or unable to act.

(3) ***Effectiveness.*** A warrant that is issued under pursuant to this rule remains in effect until it is executed or a court extinguishes it.

(d)(4) ***Bond and Release Amount.***

(1) *Civil Arrest Warrant.*

(A) *Generally.* A civil arrest warrant must include: :

(i) a reasonable bond amount that assures the person will appear in court; or

(ii) an order that the person be held without bond until the person is seen by a judicial officer.

(B) *Bond Forfeiture.* The procedure for forfeiture of bonds in criminal cases applies to the forfeiture of bonds on civil arrest warrants.

(2)(B) ***Child Support Arrest Warrant.*** A court must issue a child support arrest warrant in conformity with A.R.S. §§ 25-681 and 25-683. The court must

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Commented [JWS2]: Doesn't this go without saying?

Commented [JWS3]: In Maricopa, the party is rarely brought before the issuing judicial officer. There is a centralized person assigned to that duty. Should this be explicitly allowed by the rule.

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determine and the warrant must state the amount the person must pay to be released from custody.

~~(c)~~(d) Time and Manner of Execution.

(1) *Civil Arrest Warrant.*

(A) *Execution.* A civil arrest warrant is executed by the arrest of the person named in the warrant. Unless the court orders otherwise for good cause, a civil arrest warrant may not be executed between the hours of 10:00 p.m. and 6:30 a.m.

(B) *Procedure After Arrest.* The arrested person must be brought before the issuing judicial officer—or if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court of the same county—within twenty-four judicial business hours [**Note:** that can be six days if the person is arresting on Friday evening.] of the warrant's execution.

(C) *Notice to Sheriff of the Issuing County.* If the person is arrested in a county other than the issuing county, the arresting officer must notify the sheriff in the issuing county, who must take custody of the arrested person as soon as possible and bring the person before the issuing judicial officer.

(2) *Child Support Arrest Warrant.* A child support arrest warrant must be executed in a time and manner that complies with A.R.S. § 25-682.

~~(f)~~(e) Duty of Court After a Warrant's Execution.

(1) *Civil Arrest Warrant.* After a civil arrest warrant is executed, the judicial officer must:

(A) advise the arrested person of the nature of the proceeding;

(B) set the least onerous terms and conditions of release that reasonably guarantee the person's required appearance; and

(C) set the date of the next court appearance. ~~[**Note:** How does the arrested person receive notice if the next court date if the person bonds out before seeing a judicial officer?]~~

(2) *Child Support Arrest Warrant.* After a child support arrest warrant is executed, the judicial officer must proceed as provided in A.R.S. § 25-683.

(f) Forfeiture of Bond on a Civil Arrest Warrant. The procedure for forfeiture of bonds in criminal cases applies to the forfeiture of bonds on civil arrest warrants.

Commented [JWS4]: This is discussed above in content of warrant.

Commented [JWS5]: What happens if the Sheriff does not take custody?

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Rule 94. Civil and Child Support Arrest Warrants

(a) Definitions.

(1) ***Civil Arrest Warrant.*** A "civil arrest warrant" is an order issued in a non-criminal matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

(2) ***Child Support Arrest Warrant.*** A "child support arrest warrant" is an order issued in a non-criminal child support matter that directs any peace officer in Arizona to arrest the person named in the warrant and to bring that person before the court.

(b) When Issued.

(1) ***Civil Arrest Warrant.*** On a party's motion or on its own, the court may issue a civil arrest warrant if it finds that the person named in the warrant:

(A) was required to appear personally at a specific time and location by an order to appear or a subpoena;

(B) received actual notice of that order or subpoena, including a warning that failure to appear may result in the issuance of a civil arrest warrant; and

(C) failed to appear.

(2) ***Child Support Arrest Warrant.*** In any action under A.R.S. § 25-502, the court may issue a child support arrest warrant as provided in A.R.S. § 25-681(A) on a party's motion or own its own.

(c) Warrant's Issuance, Content, and Effectiveness.

(1) ***Issuance.*** Only a court may issue a civil arrest or child support arrest warrant.

(2) ***Content.*** The warrant must:

(A) contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system; and

(B) command the arrest of the named person and that the person be either remanded to the custody of the sheriff or brought before the issuing judicial officer or the nearest or most accessible judicial officer of the superior court in the same county if the issuing judicial officer is absent or unable to act.

(3) ***Effectiveness.*** A warrant that is issued pursuant to this rule remains in effect until it is executed or a court extinguishes it.

(4) ***Bond and Release Amount.***

(A) *Civil Arrest Warrant.* A civil arrest warrant must include:

(i) a reasonable bond amount that assures the person will appear in court; or

(ii) an order that the person be held without bond until the person is seen by a judicial officer.

(B) ***Child Support Arrest Warrant.*** A court must issue a child support arrest warrant in conformity with A.R.S. §§ 25-681 and 25-683. The court must determine and the warrant must state the amount the person must pay to be released from custody.

(d) Time and Manner of Execution.

(1) ***Civil Arrest Warrant.***

(A) *Execution.* A civil arrest warrant is executed by the arrest of the person named in the warrant. Unless the court orders otherwise for good cause, a civil arrest warrant may not be executed between the hours of 10:00 p.m. and 6:30 a.m.

(B) *Procedure After Arrest.* The arrested person must be brought before the issuing judicial officer—or if that judicial officer is absent or unable to act, the nearest or most accessible judicial officer of the superior court of the same county—within twenty-four judicial business hours [**Note:** that can be six days if the person is arresting on Friday evening.] of the warrant's execution.

(C) *Notice to Sheriff of the Issuing County.* If the person is arrested in a county other than the issuing county, the arresting officer must notify the sheriff in the issuing county, who must take custody of the arrested person as soon as possible and bring the person before the issuing judicial officer.

(2) ***Child Support Arrest Warrant.*** A child support arrest warrant must be executed in a time and manner that complies with A.R.S. § 25-682.

(e) Duty of Court After a Warrant's Execution.

(1) ***Civil Arrest Warrant.*** After a civil arrest warrant is executed, the judicial officer must:

(A) advise the arrested person of the nature of the proceeding;

(B) set the least onerous terms and conditions of release that reasonably guarantee the person's required appearance; and

(C) set the date of the next court appearance.

(2) ***Child Support Arrest Warrant.*** After a child support arrest warrant is executed, the judicial officer must proceed as provided in A.R.S. § 25-683.

(f) Forfeiture of Bond on a Civil Arrest Warrant. The procedure for forfeiture of bonds in criminal cases applies to the forfeiture of bonds on civil arrest warrants.