

Task Force on the Arizona Rules of Family Law Procedure

Meeting Agenda

Friday, December 15, 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	<i>Hon. Rebecca Berch and Hon. Mark Armstrong, Co-Chairs</i>
Item no. 2	Approval of the December 1, 2017 meeting minutes	<i>Justice Berch and Judge Armstrong</i>
Item no. 3	Workgroup reports: <ul style="list-style-type: none">- Workgroup 1: Rules 24, 26, 27, 29, 32, and 34- Workgroup 2: Rules 44.1 (including a new form), and Rules 47, 47.1, 47.2, and 48- Workgroup 3: Rules 52, 57, 60, 63, 64, and 73- Workgroup 4: Rule 76.1 Other rules issues	<i>Judge Cohen, Ms. Burns, Mr. Davis, Mr. Woodnick, and Ms. Henderson</i> <i>Commissioner Christoffel</i> <i>Mr. Wolfson</i> <i>Ms. Davis, Judge McMurdie</i> <i>All</i>
Item no. 4	Roadmap <ul style="list-style-type: none">- No meeting dates are currently set- The deadline for completing the initial draft of the rule is January 5, 2018	<i>Justice Berch and Judge Armstrong</i>
Item no. 5	Call to the Public Adjourn	<i>Justice Berch</i>

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

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

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: December 1, 2017

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

Absent: Hon. Peter Swann

Guests: None

Administrative Office of the Courts Staff: Mark Meltzer, Sabrina Nash, Angela Pennington, Jodi Jerich

1. Call to order; remarks by the Chair; approval of meeting minutes. The Chair called the eleventh Task Force meeting to order at 10:01 a.m. She commended the members of Workgroup 4 for completing a review of their assigned rules. The Chair was optimistic that the Task Force could conclude its initial review of the rules at the December 15 meeting. Her goal is to have a complete preliminary draft by the beginning of January and to start vetting the rules before filing a rule petition. Judge Armstrong filed a motion yesterday to extend the petition filing deadline until the end of March. The chairs and staff are continuing to meet and edit rules.

The Chair asked members to review the draft November 13, 2017 meeting minutes, and a member made this motion:

Motion: To approve the draft minutes. Seconded, and the motion passed unanimously. **FLR: 011**

The Chair then requested workgroup reports, beginning with Workgroup 2.

2. Workgroup 2. Workgroup 2 continued its discussion of the default rules, and it presented Rule 45 on consent decrees.

Rule 44.1 ("default decree or judgment by motion and without a hearing;" Rule 44.2 ("default decree or judgment by hearing;" and a form ("default information for spousal maintenance")): Commissioner Christoffel explained at the November 13 meeting that Rule 44.1 is the result of separating current Rule 44 into two rules, Rule 44 on "default," which Ms. Clark presented at an October meeting, and a new Rule 44.1 on default decrees and judgments. After the discussion at the November 13 meeting, Workgroup 2 further divided Rule 44.1 into a rule on default decrees or judgments by motion without a hearing, and a new Rule 44.2 that provides for default decrees or judgments following a hearing. The workgroup's most recent revisions to Rule 44.1 would permit the court to enter a decree by motion for spousal maintenance and on children's issues. With these

revisions, a petitioner would not be required to attend court for a perfunctory default hearing, but could instead complete a required spousal maintenance form or provide specified documents that provide a basis for orders concerning legal decision-making and parenting time. If the form or documents are incomplete or deficient, the court would set the matter for a default *hearing*. Some of the information required by the revised default rule is modeled on what is required for a consent decree, which also is entered without a hearing. The default form and supporting filings could also document the basis of those orders in the event they are the subject of a subsequent modification proceeding.

None of the members had objections to proceeding with these concepts. However, Commissioner Christoffel said that a Pima County hearing officer was concerned that self-represented litigants could not accurately complete the spousal maintenance form. On the other hand, Pima County's law library holds clinics for self-represented litigants, and those clinics could provide information and guidance on completing the form. If self-represented litigants have clinics and other tools available, then in a significant number of cases, they should be able to properly complete the form. In response to a question, Commissioner Christoffel confirmed that under the revised rules, cases where a respondent was served by publication still would require petitioner to appear at a default hearing. However, under the revised rule for service, the court could enter a decree concerning children's issues and spousal maintenance notwithstanding service by publication. Members suggested that Rule 44.2 should include a cross-reference to Rule 41 to clarify this point.

Commissioner Christoffel then reviewed the workgroup's proposed default information for spousal maintenance form. He noted that the form requires a verification, and that petitioner would be required to send the form to respondent. The form begins with a series of checkboxes that are based on A.R.S. § 25-319(B). It then poses 7 questions, and members had comments concerning those questions. For example, the questions did not ask about the respondent's income. The form did not show what amount petitioner requested, and the duration of petitioner's requested spousal maintenance award. Question 1, "Were you employed during the marriage? How?" does not include relevant questions about when and where the petitioner was employed. Question 2, which asked for a description of physical or emotional limitations, raised concerns under the Americans with Disabilities Act, and it did not relate any limitation to the petitioner's earnings capacity. Some members also thought Question 3, "describe any contributions you've made to your spouse's earning ability and how you have reduced your income or career opportunities to benefit your spouse" might be difficult for some people to understand. But members noted the challenge of drafting a form that applies to a myriad of individual situations. In addition, the form is not designed for high net-worth individuals, who would probably have attorney representation. Moreover, the form would provide judicial officers with more information to base a ruling on than they might obtain from in-court testimony. The form might even assist judicial officers in obtaining useful information when they conduct in-person hearings. One member proposed that the form focus on an explanation of what amount the petitioner is asking for, and for how

long, and why petitioner thinks the respondent spouse can afford to make those payments. Another member suggested that all the necessary information be in a single, self-contained form. Commissioner Christoffel advised that the workgroup will revise the form based on members' comments during today's meeting. The form will be included in the draft rules that will be circulated for public comments in January.

Members also discussed when the petitioner should file the form and provide a copy to the respondent. Members generally believed that the form should be sent early enough that respondent has an opportunity to review it before the court acts on it. Although Rule 44 only requires petitioner to mail a copy of the default application to respondent, Commissioner Christoffel proposed adding to that rule, or to Rule 44.1, a requirement that petitioner mail the form with the application. Commissioner Christoffel also proposed that the form include an abbreviated affidavit of financial information, in lieu of a full, multi-page financial affidavit.

As a result of other changes to Rule 44.1, members revised Rule 44.1(c)(1) ("judgment of maternity or paternity: generally") to remove references to legal decision-making and parenting time, and to improve the provision's syntax. They also discussed whether a reference in subpart (c)(2) to A.R.S. § 25-813 was correct or complete. They agreed that this statutory reference is a federal requirement for a default order in a paternity or maternity action that did not need to be changed, and that other jurisdictional authorities could be alleged in a petition.

Rule 45 ("consent decree"): Mr. Nash presented this rule. A member expressed a preliminary concern that the title of the draft rule inappropriately removed the words "order or judgment," and after discussion, members agreed to add these words to the title and elsewhere in the rule. The workgroup proposed that subpart (b)(1) state, "whether the wife is pregnant with the husband's child," but after discussing recent case law and issues that arise with surrogates, members changed this to "whether one party is pregnant with a child common to the parties." A similar revision was made in section (c). Members discussed whether subpart (b)(4) should require a recitation that the division of property was "fair and equitable" or "fair and reasonable." A.R.S. § 25-318 refers to "not unfair," and one member proposed removing the word "fair" from this rule. However, judges typically rely on the parties' representation that the division is "fair and equitable" and they retained that phrase. Subpart (b)(5) requires parties to sign a consent decree, order, or judgment before a notary public. Although some members believed that Rule 45 consent orders should be notarized, in practice, they may not be. However, proposed Rule 14(a) requires a notarized verification for a consent decree.

The workgroup relocated a provision concerning TANF from section (b) to section (c), and added "or county attorney" after "written approval of the Attorney General." They also deleted the word "benefits under" before TANF and added "services from" before the Title IV-D program. A Task Force member requested in subpart (c)(4) that "parent information program" be capitalized. Members discussed whether a party would file a certificate of completion of the program, or if the program provider filed them with

the court. The rule does not need to differentiate who files the certificate if it winds up in the court record, but members nonetheless added to the provision, “if not previously filed with the court.” There is no requirement in Rule 45 concerning conciliation; however, there is a reference in subpart (a)(2) to Form 8, which does mention the conciliation provision. The workgroup deleted a subpart in section (c) that required a completed judgment data sheet because that form is no longer in use. Members declined to require an income withholding order for spousal maintenance in proposed Rule 45 because an order is optional in that circumstance. With these changes, members approved Rule 45.

3. Workgroup 3. Mr. Wolfson presented 5 rules on behalf of the workgroup.

Rule 50 (“complex case designation”): Mr. Wolfson noted that complex cases require specific and detailed attention by the assigned judge. Although under the current rule a party simply files a notice of complex designation, the proposed rule would require the filing of a motion for complex designation. The proposal provides factors for the court to consider when deciding if it should designate a case as complex. If the court grants the request, it must set a scheduling conference and provide additional time for trial. The proposed rule eliminates the current rule’s requirement for disclosure under Civil Rule 26.1 because it does not apply to every case. The workgroup believed it was preferable for the court to conduct a conference where the parties could discuss specific disclosure needs that are appropriate to an individual case.

One of the factors for the court to consider in determining complexity is “numerous difficult or novel legal issues.” A member suggested eliminating “difficult” because it is ambiguous, and members then agreed on “issues that would take time to resolve.” After discussion, they also agreed to retain the word “significant” before “expert testimony.” Members had concerns that the rule’s requirement for 12 hours of trial time might lead to 12 hours becoming a default limit rather than a floor, and that it might be contrary to current Rule 77 standards and Evidence Rule 611’s text to “avoid wasting time,” but members nonetheless retained the 12-hour provision. Members also discussed the time for requesting complex designation. Staff’s draft said, “no later than 20 days after receipt of the opposing party’s initial disclosure under Rule 49.” Because initial disclosures may be incomplete or cursory, members changed this to 60 days after the filing of a responsive pleading, or later for good cause. Members approved Rule 50 as modified, but they would like to have public comment on the proposed rule.

Rule 51 (“general provisions governing discovery”): These revisions are based on restyled Civil Rule 26, with modifications. The draft rule provides that a party may not request discovery of information that an opposing party is required to disclose under Rule 49. The purpose of this provision is not to limit discovery, but rather, to assure that the opposing party complies with his or her Rule 49 disclosure duties. The workgroup removed a provision that would have provided for a limit of one expert per issue per side, which is the civil rule. After discussion, members agreed with this deletion because two experts on a complex family issue may be appropriate. Another provision in draft

Rule 51 requires a party to present disclosure and discovery issues under Rule 65. Members approved the rule as modified.

Rule 52 ("subpoena"): Mr. Wolfson noted that the workgroup added a new provision, Rule 52(a)(3) ("interstate depositions and discovery"), which incorporates Civil Rule 45.1. He then raised two policy issues presented by Rule 52. The first issue is whether the family rule should mirror Civil Rule 45 on subpoenas. Among the reasons for doing so is the availability of a civil subpoena form; the family rules do not include a form of subpoena. The second and related issue dealt with objections to a subpoena. Under the civil rule, an objecting party is required to file an objection, whereas the current family rule permits the subpoenaed person to object in writing, without a court filing; it then becomes the burden of the subpoenaing party to file a motion to compel enforcement. The workgroup recommended that the family subpoena rule be modeled on the current family rule rather than the civil rule. Members overwhelmingly preferred the current family rule process, and the workgroup will need to modify the draft to reflect that preference. Finally, Mr. Wolfson noted that the draft civil rule requires the subpoenaing party to give other parties two days' notice of a document subpoena before it's served, and the family rule simply requires prior notice. Members agreed that a revised family rule should instead require the subpoenaing party to give notice concurrently with service of the subpoena. Members also recommended that the rule include a minimum, presumptive response time for the subpoenaed records custodian to respond to a documents subpoena of either 10 or 14 days.

Rule 53 ("protective orders regarding discovery requests"): Mr. Wolfson reviewed the proposed rule and advised that it is modeled on Civil Rule 26(c), without substantive modifications. Members had no comments or questions and approved the rule as proposed.

Rule 59 ("using depositions in court proceedings"): This rule is patterned on Civil Rule 32, and it includes in subpart (a)(6) a provision that is not in the civil rule but is in the current family rule: "A deposition may also be used as permitted by Rule 2(a) of these rules." Mr. Wolfson's review of this rule noted a provision in subpart (c)(2) that requires a person intending to offer deposition testimony at a hearing to designate the appropriate portions, except for deposition testimony offered for impeachment. Members approved this provision, but they first discussed concerns with a practice whereby a party does not purchase a deposition transcript but expects to receive a copy without charge if the other party designates it for trial. Members had different views on whether the designating party is required to provide a copy, but the discussion did not result in any modifications to the rule. Members did delete subpart (d)(3)(C), relating to objections to a written question at a deposition under Rule 58, because they had previously abrogated Rule 58. Otherwise, members approved Rule 59.

4. Workgroup 4. Workgroup members presented several rules including rules the Task Force had previously considered.

Rule 76 (“resolution management conference”), Rule 76.1 (“pretrial statement; pretrial conference”), and Rule 76.2 (“sanctions for failure to participate in a court proceeding”): Ms. Davis observed that the workgroup divided current Rule 76 (“pretrial procedures”) into three new rules. Proposed Rule 76 deals solely with the resolution management conference (“RMC”). The proposed rule, like the current rule, requires the court to set an RMC no later than 60 days after a party files a request for one, unless the court extends the time for good cause. Members discussed whether 60 days was too long an interval, but they agreed to retain that time pending the receipt of comments on this matter. In subpart (b)(1)(A), members agreed to delete “significant” as an adjective before the words “history of domestic violence.” The workgroup’s draft of subpart (b)(1)(B) refers to compliance with applicable disclosure requirements under Rules 49 and 50, but after further discussion, members deleted (b)(1)(B) because disclosure may be incomplete at the time of the conference. Otherwise, members approved the draft rule.

On Rule 76.1, members discussed the timing of the pretrial conference and pretrial statements. The draft rule followed the current rule and provided for the filing of a pretrial statement 20 days before either a trial date or the date set for a pretrial conference. However, the workgroup preferred a process that would allow the parties to interact with the court sooner than immediately before trial; this would allow a discussion with the court of what was at issue in an individual case, and for scheduling an appropriate trial date and other pretrial proceedings. Members discussed the possibility of having an initial pretrial statement and supplemental and final pretrial statements, or only one. A judge member suggested calling one filing a preconference statement, to distinguish it from a pretrial statement, and to possibly include a provision in Rule 50 for these statements in complex cases. Members did not resolve these issues and they returned the rule to the workgroup for further consideration. Before the discussion concluded, members agreed that in section (b), if the parties are unrepresented and there are allegations of domestic violence, the parties must file separate statements under this rule.

Ms. Davis explained that Rule 76.2 made no substantive changes to the current rule. But in subpart (b)(5), members added after “unless dismissal would be contrary to the best interests of a child” the words, “or the complying party.” In response to a question, Ms. Davis confirmed that the contempt referenced in subpart (b)(7) is civil and not criminal contempt. Members then approved this rule.

Rule 80 (“declaratory judgments”): Under the agenda item entitled “other rules issues,” Ms. Davis noted that the Task Force had previously abrogated Rule 80, which concerned declaratory judgments. Thereafter, she has seen family cases utilizing declaratory actions, and she requested that the rule be reinstated. Judge Armstrong noted that it is a short rule that can be readily reinserted into the set, and he suggested doing this if declaratory actions are used. No one objected, and the rule will be added back.

Rule 83 (formerly, “motion for new trial or amended judgment,” and as proposed, “altering or amending a judgment; supplemental hearings”) and Rule 84 (currently, “motion for reconsideration or clarification” and as proposed, “motion for clarification”): Mr. Berkshire

explained that the workgroup revised these two rules following their presentation during the November 13 meeting. Although the workgroup initially proposed the abrogation of Rule 84, it now proposed a Rule 84 that is only for clarification, and not for reconsideration. The revised rule expressly provides that it does not extend the time for filing a notice of appeal, that it may not be combined with a Rule 83 motion, and that under Rule 84, the court may not open the judgment or accept additional evidence as it can under Rule 83. Members discussed and approved this version of Rule 84. Mr. Berkshire further noted that the members had concerns at the last meeting with successive motions under Rule 83. He observed that Rule 83(d) expressly precludes the filing of a motion to alter or amend an order granting or denying a motion under the rule, which should curtail successive motions. Moreover, the workgroup added a new sentence to subpart (c)(3) (“contents of response”) that expressly requires a party’s response to address any issue that might arise if the court grants the moving party’s Rule 83 motion. Mr. Berkshire noted that under subpart (c)(1), the deadline for filing a motion is 25 days, and under subpart (c)(2) the court has up to 15 days to deny the motion before setting a deadline for a response, so the responding party may have up to 40 days to review the motion before the response deadline begins to run, which should be adequate. With these revisions, members approved Rule 83.

Rule 87 (“stay of proceedings to enforce a judgment”): Judge Eppich advised that the workgroup made stylistic but not substantive changes to staff’s draft. However, in section (g) (“stay of a judgment in rem”), it expanded the specified time from 15 days to 25 days, which is more consistent with changes to the provisions on post-trial motions. In section (e), subpart (1) is titled “money judgments,” and members agreed to change the title of subpart (2) from “nonmoney judgements” to “other judgments.” With these modifications, members approved Rule 87.

Rule 94 (“civil and child support arrest warrants”): Ms. Sell observed that this rule provides more substance on civil arrest warrants than child support arrest warrants because the latter are primarily governed by statute. In subpart (b)(1), the standard for issuing a civil warrant for failure to appear for a subpoena is the same as a failure to appear on an order to appear. A member questioned a provision in subpart (c)(3) (“effectiveness”) that indicated a civil arrest warrant is in effect until it is executed or extinguished by the court. The member thought there might be a one-year time limit for execution, but no one located any statutory authority for that proposition. In section (d) (“time and manner of execution”), members disfavored the phrase “twenty-four judicial business hours” and, after discussion of applicable law, changed the time to 48 hours. Section (f) (“forfeiture of a bond on a civil arrest warrant”) refers generally to the procedure for forfeiture of bonds in criminal cases, and members agreed that the provision should refer to a specific criminal rule or statute. Members conditionally approved the rule pending these changes.

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

The Chair noted there are about 13 rules remaining for review, all of which will be on the December 15 meeting agenda. If those rules are completed on December 15, a January Task Force meeting should not be necessary. She encouraged members to complete their rule-by-rule summaries and provide them to staff. A summary should note any substantive changes, or if the rule was merely restyled; should cross-reference any corresponding civil rule; and should mention any changes to a form necessitated by the rule revisions. Members should consider preparing a reference table that correlates civil and family rules. Ms. Davis and Mr. Pollitt are working on a new uniform request for production. A member suggested that the Task Force consider Pima County's simplified affidavit of financial information, which is a single page. A simplified set of procedures for self-represented litigants will abide adoption of the restyled family rules.

A complete set of draft family rules will be posted on the Task Force webpage. There will be a link on the webpage to an Outlook mailbox allowing anyone to submit comments to the Task Force concerning the draft. Judge Armstrong noted that his deadline for submitting a draft set of rules, which he will use for his presentation to the Family Law Institute next month, is January 5, 2018. Because of the limited length of his presentation, he cannot discuss each rule, but he will highlight significant changes, such as the Task Force revisions to Rules 2, 6, and 10.

The meeting adjourned at 2:43 p.m.

Proposed #	Proposed Title	Current #	Current Title
Part I	General Administration	Part I	General Administration
1	Scope and Applicability of These Rules	1	Scope of Rules
2	Applicability of the Arizona Rules of Evidence	2	Applicability of Other Rules
3	Definitions	3	Definitions
4	Computing and Extending Time	4	Time
5	Consolidation	5	Consolidation
5.1	Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings	5.1	Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings
6	Change of Judge as a Matter of Right	6	Change of Judge
6.1	Change of Judge for Cause	--	--
7	Protected Address	7	Protected and Unpublished Addresses
8	Telephonic Appearances and Testimony	8	Telephonic Appearances and Testimony
9	Duties of Parties and Counsel	9	Duties of Counsel
10	Representation of Children	10	Representation of Children; Minors and Incompetent Persons
10.1	Court-Appointed Advisor	--	--
11	Attendance of Minors	11	Presence of Children
12	Court Interviews of Children	12	Court Interviews of Children
13	Public Access to Proceedings and Records	13	Public Access to Proceedings and Records
14	Written Verifications and Unsworn Declarations Under Penalty of Perjury	14	Sworn Written Verification; Unsworn Declarations Under Penalty of Perjury
15	Affirmation Instead of Oath	15	Affirmation in Lieu of Oath
16	Interpreters	16	Interpreters
17 FKA R. 21	Sealing, Redacting, and Unsealing Court Records	17	Limitation on Examination of Witness; Exception
18	Preserving a Recording of a Court Proceeding	18	Preservation of Verbatim Recording of Court Proceedings
19	Lost or Destroyed Records	19	Lost Records; Method of Supplying, Substitution of Copies; Hearing if Corrections Denied
20	Form of Documents	20	Electronic Filing
21 FKA R. 23.1	Improper Venue	21	Reserved
22	Conduct of Proceedings	22	Conduct of Proceedings
Part II	Pleadings and Motions	Part II	Pleadings and Motions
23 FKA R. 24	Pleadings; Petition and Response	23	Commencement of Action

Rule 2423. Pleadings: Petition and Response

~~—~~**Petition.** A “petition” is the initial pleading that begins a family law case or a post-decree matter, as described in this rule.

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

- (1) annulment (A.R.S. § 25-301);
- (2) dissolution of a marriage (A.R.S. § 25-312);
- (3) legal separation (A.R.S. § 25-313);
- ~~(4)(1) third party rights (A.R.S. § 25-409);~~
- (5)(4) dissolution of a covenant marriage (A.R.S. § 25-903);
- (6)(5) legal separation in a covenant marriage (A.R.S. § 25-904);
- (6) establishment of paternity or maternity (A.R.S. § 25-806);
- (7) third party rights (A.R.S. § 25-409);

~~(7) —~~

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- (8) to establish, enforce, register, or modify ~~custody~~ legal decision-making or parenting time (A.R.S. §§ 25-403, -411, -803(C), ~~and~~, and -1031 et seq. ~~-1055~~);
~~or~~
- (9) to establish, enforce, register or modify support (A.R.S. §§ 25-320, -503, ~~-1031 and -1033~~ -1201 et seq.); or
- (10) relief otherwise authorized by statute.;

~~(9) —~~

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(b) Notice of Filing a Foreign Judgment.

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

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

(d) Appearance of Parties and Child; Warrant to Take Physical Custody of a Child.

~~Under A.R.S. §§ 25-1040 and 25-1061, a~~ party may request a court order under A.R.S. §§ 25-1040 for the appearance of parties and children, or may request the court under A.R.S. § 25-1061 to issue a warrant to take physical custody of a child.

(e) Response. A response is a document that substantially answers a petition.

(1) Required Response. A party who is served with a petition described in subparts (a)(1 through 6) must file a response. If a party does not file a response, the petitioner has the right to request a default and obtain a default judgment against that party.

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(2) Permissive Response. A party who is served with a petition described in subparts (a)(7 through 10), (b), (c), or (d) may file a response.

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~~(d)~~

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

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

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

COMMITTEE COMMENT

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

Rule 23. Pleadings: Petition and Response

(a) Petition. A “petition” is the initial pleading that begins a family law case or a post-decree matter, as described in this rule. A party begins an action by filing a verified petition seeking:

- (1) annulment (A.R.S. § 25-301);
- (2) dissolution of a marriage (A.R.S. § 25-312);
- (3) legal separation (A.R.S. § 25-313);
- (4) dissolution of a covenant marriage (A.R.S. § 25-903);
- (5) legal separation in a covenant marriage (A.R.S. § 25-904);
- (6) establishment of paternity or maternity (A.R.S. § 25-806);
- (7) third party rights (A.R.S. § 25-409);
- (8) to establish, enforce, register, or modify legal decision-making or parenting time (A.R.S. §§ 25-403, -411, -803(C), and -1031 et seq.);
- (9) to establish, enforce, register or modify support (A.R.S. §§ 25-320, -503, -1201 et seq.); or
- (10) relief otherwise authorized by statute.

(b) Notice of Filing a Foreign Judgment.

- (1) A party may file a foreign judgment or decree pertaining to the disposition of marital property or debt under A.R.S. §§ 12-1701 to 1708.
- (2) A party may begin an action for disposition of property (A.R.S. § 25-318(A)) or maintenance (A.R.S. § 25-319(A)) under a foreign court’s decree by filing the foreign judgment under A.R.S. §§ 12-1701 to 1708. Once the party has filed the foreign judgment, the party may file a petition for an order to appear specifying the relief sought.

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

(d) Appearance of Parties and Child; Warrant to Take Physical Custody of a Child.,

A party may request a court order under A.R.S. §§ 25-1040 for the appearance of parties and children, or may request the court under A.R.S. § 25-1061 to issue a warrant to take physical custody of a child.

(e) Response. A response is a document that substantially answers a petition.

- (1) ***Required Response.*** A party who is served with a petition described in subparts (a)(1 through 6) must file a response. If a party does not file a response, the petitioner has the right to request a default and obtain a default judgment against that party.
- (2) ***Permissive Response.*** A party who is served with a petition described in subparts (a)(7 through 10), (b), (c), or (d) may file a response.

Rule 29 24. General Rules for Contents of Pleadings

~~(a) Pleadings to Be Concise and Direct; Alternative Statements; Inconsistency.~~

- ~~(1) **Generally.** Each allegation of a pleading must be simple, concise, and direct. No technical form is required.~~
- ~~(2) **Alternative Statements of a Claim or Defense.** A party may set out two or more statements of a claim or defense hypothetically or alternatively. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.~~
- ~~(3) **Inconsistent Claims or Defenses.** A party may state as many separate claims or defenses as the party has, regardless of consistency.~~
- ~~(4) **Compliance with Rule 31(a).** In making any claim or allegation, a party must comply with the party's obligations under Rule 31(A).~~

~~**JWR Note:** I revised this to conform to Civil Rule 8(d), which is the same as Fed. Civ. Rule 8(d). Why is this section first? I would think that (b) should come first. Also note that the family rule departs from its civil rule counterpart by cross-referencing Rule 31(A). I put the reference in a separate subsection, but it could be included in (a).~~

~~(b)(a) Petition.~~ A petition must contain:

- ~~(1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional proof to support it;~~
- ~~(2) a simple, concise, and direct ~~short and plain~~ statement of a claim that shows the petitioner is entitled to relief; and~~
- ~~(3) a demand for the relief sought, which may include relief in the alternative or of different types of relief.~~

~~**JWR Note:** I revised this to conform to Civil Rule 8(a), which his the same as Fed. Rule 8(a). Again, shouldn't this come first?~~

~~(e)(b) Response.~~ ~~**JWR Note:** Consistent with my comments above, I would make this (b).~~

- ~~(1) **Generally.** In responding to a pleading, a party must:
 - ~~(A) state in simple, concise, and direct ~~short and plain~~ terms its defenses to each claim asserted against the party; and~~
 - ~~(B) admit or deny the allegations asserted against the party by an opposing party.~~~~

(2) **Denials—Responding to the Substance.** A denial must fairly respond to the substance of the allegation. It also must include any statement of fact on which the party relies that differs from the opposing party’s allegations.

(3) **Denying Part of an Allegation.** Any party who intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(4) **Lacking Knowledge or Information.** A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(5) **Asserting Claims.** The response may include claims for relief.

~~(6)~~ **Effect of a Response.** Except as provided in Rule 32(f), the filing of a response has the effect of placing at issue any matter in the petition not specifically admitted.

(c) Alternative Statements; Inconsistency. A party may set out two or more statements of a claim or defense hypothetically or alternatively. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. A party may state as many separate claims or defenses as the party has, regardless of consistency.

(d) Construing Pleadings. Pleadings must be construed so as to do substantial justice.
~~JWR Note: Taken from Civil Rule 8(e) and Fed. Rule 8(e).~~

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COMMITTEE COMMENT

This rule is based on Rule 8, Arizona Rules of Civil Procedure.

NOTE (JWR):

(a) Rule 29(a) is the same as Civil Rule (and Federal Rule) 8(d), except the reference to Rule 31(A) was retained as separate subpart.

(b) Rule 29(b) is the same as Civil Rule (and Federal Rule) 8(a).

(c) Rule 29(c)(1) is the same as Civil Rule (and Federal Rule) 8(b)(1).

(d) Rule 29(c)(2) is the same as Civil Rule (and Federal Rule) 8(b)(2), but the second sentence is taken from the current Family Law Rule.

(e) Rule 29(c)(3) is the same as Civil Rule (and Federal Rule) 8(b)(4). (Civil Rule 8(b)(3) was not included because its substance is not part of the current Family Law Rule.)

(f) Rule 29(c)(4) is the same as Civil Rule (and Federal Rule) 8(b)(5).

(g) Rules 29(c)(5) and (6) come from the current Family Law Rule. Rule 29(c)(6) comes from the current Family Law Rule 29(C). (Civil Rule 8(b)(6) was not incorporated because it is contrary to the current Family Law Rule.

(h) Rule 8(d) is the same as Civil Rule (and Federal Rule) 8(e).

Rule 24. Contents of Pleadings

(a) Petition. A petition must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional proof to support it;
- (2) a simple, concise, and direct statement of a claim that shows the petitioner is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or of different types of relief.

(b) Response.

(1) *Generally.* In responding to a pleading, a party must:

- (A) state in simple, concise, and direct terms its defenses to each claim asserted against the party; and
- (B) admit or deny the allegations asserted against the party by an opposing party.

(2) *Denials—Responding to the Substance.* A denial must fairly respond to the substance of the allegation. It also must include any statement of fact on which the party relies that differs from the opposing party's allegations.

(3) *Denying Part of an Allegation.* Any party who intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(4) *Lacking Knowledge or Information.* A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(5) *Asserting Claims.* The response may include claims for relief.

(6) *Effect of a Response.* Except as provided in Rule 32(f), the filing of a response has the effect of placing at issue any matter in the petition not specifically admitted.

(c) **Alternative Statements; Inconsistency.** A party may set out two or more statements of a claim or defense hypothetically or alternatively. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. A party may state as many separate claims or defenses as the party has, regardless of consistency.

(d) **Construing Pleadings.** Pleadings must be construed so as to do substantial justice.

Commented [RJW1]: Taken from Civil Rule 8(e) and Fed. Rule 8(e).

COMMITTEE COMMENT

This rule is based on Rule 8, Arizona Rules of Civil Procedure.

NOTE (JWR):

- (a) Rule 29(a) is the same as Civil Rule (and Federal Rule) 8(d), except the reference to Rule 31(A) was retained as separate subpart.
- (b) Rule 29(b) is the same as Civil Rule (and Federal Rule) 8(a).
- (c) Rule 29(c)(1) is the same as Civil Rule (and Federal Rule) 8(b)(1).
- (d) Rule 29(c)(2) is the same as Civil Rule (and Federal Rule) 8(b)(2), but the second sentence is taken from the current Family Law Rule.
- (e) Rule 29(c)(3) is the same as Civil Rule (and Federal Rule) 8(b)(4). (Civil Rule 8(b)(3) was not included because its substance is not part of the current Family Law Rule.)
- (f) Rule 29(c)(4) is the same as Civil Rule (and Federal Rule) 8(b)(5).
- (g) Rules 29(c)(5) and (6) come from the current Family Law Rule. Rule 29(c)(6) comes from the current Family Law Rule 29(C). (Civil Rule 8(b)(6) was not incorporated because it is contrary to the current Family Law Rule.
- (h) Rule 8(d) is the same as Civil Rule (and Federal Rule) 8(e).

Rule ~~26~~24.2 OR 24 G etc25. Additional Filings: ~~Preliminary Injunction, Summons, Order to Appear~~

(a) Petition for ~~Annulment, Annulment, Dissolution of Marriage, or Legal Separation, Dissolution of Covenant Marriage, or Legal Separation in Covenant Marriage.~~ When filing a petition ~~for annulment, dissolution of marriage, or legal separation,~~ the petitioner must present to the clerk ~~(1) an original and a copy of~~ a preliminary injunction for issuance under A.R.S. § 25-315(A) and ~~(2) a~~ summons. The clerk will issue the preliminary injunction and the summons, and return them to the petitioner for service ~~on the opposing party.~~

(b) ~~Petition~~ Petition for Child Custody Legal Decision-Making or Parenting Time, by Parent, Paternity, or Maternity. When filing ~~a petition~~ a petition for child ~~e custody by a parent~~ legal decision-making or parenting time, or for paternity or maternity, the petitioner must present to the clerk ~~an original and a copy of~~ a summons that the clerk will issue and return to the petitioner for service, ~~on the opposing party.~~ When filing a petition to establish legal decision-making or parenting time for a child whose paternity has already been established pursuant to ARS 25-808, the party must present to the clerk for issuance a preliminary injunction pursuant to A.R.S. § 25-808 for service.

(c) Notices, Forms and Orders. In addition to the documents described in (a) and (b), the petitioner must present to the clerk for issuance all notices, forms, and orders required by statutes, these rules, local rules, or administrative orders, which the clerk will issue and return to petitioner for service.

(d) Family Law Cover Sheet. A family law cover sheet must be presented as required by administrative order or local rule.

~~(b)~~

(e) Order to Appear. ~~When filing a petition to modify child custody under Rule 91(D), or w~~When filing any action other than those listed in (a) and (b), the petitioner must ~~present give to the clerk court~~ an original and a two copies of an order to appear. The court will use the order to appear to schedule a hearing on the petition and will return ~~it a copy~~ to the petitioner, who must then serve it for service on the opposing party.

(d) ~~Notices, Forms and Orders.~~ In addition to the documents described in (a), (b), and (e), ~~the petitioner must present to the clerk for issuance all notices, forms, and orders required by statutes, these rules, local rules, or administrative orders, which the clerk will issue and return to petitioner for service on the opposing party.~~

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~~[**JWR Note:** “Present” is a term of art that has meaning to the clerks. “Provide” is ambiguous because it may mean that the clerk has to file it or at least keep a copy. “Present” means that the party has to give it to the clerk for stamping, but that the clerk doesn’t keep it or keep a copy.]~~

Rule 25. Additional Filings

- (a) Petition for Annulment, Dissolution of Marriage, or Legal Separation.** When filing a petition for annulment, dissolution of marriage, or legal separation, the petitioner must present to the clerk (1) a preliminary injunction for issuance under A.R.S. § 25-315(A) and (2) a summons. The clerk will issue the preliminary injunction and the summons, and return them to the petitioner for service.
- (b) Petition for Legal Decision-Making or Parenting Time, Paternity, or Maternity.** When filing a petition for legal decision-making or parenting time, or for paternity or maternity, the petitioner must present to the clerk a summons that the clerk will issue and return to the petitioner for service. When filing a petition to establish legal decision-making or parenting time for a child whose paternity has been established pursuant to ARS 25-808, the party must present to the clerk for issuance a preliminary injunction pursuant for service.
- (c) Notices, Forms and Orders.** In addition to the documents described in (a) and(b), the petitioner must present to the clerk for issuance all notices, forms, and orders required by statutes, these rules, local rules, or administrative orders, which the clerk will issue and return to petitioner for service.
- (d) Family Law Cover Sheet.** A family law cover sheet must be presented as required by administrative order or local rule.
- (e) Order to Appear.** When filing any action other than those listed in (a) and (b), the petitioner must give the court two copies of an order to appear. The court will use the order to appear to schedule a hearing on the petition and will return a copy to the petitioner for service.

Rule 3126. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; ~~Assisting Filing by Self-Represented Person; Verification~~

(a) Signature.

- (1) **Generally.** Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name— or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.
- (2) **Electronic Filings.** A person may sign an electronically filed document by placing the symbol “/s/” on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.
- (3) **~~Filings by Multiple Parties~~Signing for Another Party.** A person filing a document containing more than one place for a signature— , such as a stipulation— may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting “/s/ [the other party's or person's name] with permission” as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a good faith argument for... non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions are well grounded in fact; and have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

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(c) Sanctions.

- (1) **Generally.** If a pleading, motion, or other document is signed in violation of this rule, the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney’s fee.
- (2) **Consultation.** Before filing a motion for sanctions under this rule, the moving party must:
 - (A) attempt to resolve the matter by good faith consultation as provided in Rule ~~XX~~9(c); and
 - (B) if the matter is not satisfactorily resolved by consultation, ~~serve~~ provide the opposing party with written notice of the specific conduct that allegedly violates Rule 31(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 31(c)(3).
- (3) **Motion for Sanctions.** A motion for sanctions under this rule must:
 - (A) be made separately from any other motion;
 - (B) describe the specific conduct that allegedly violates Rule 31(b);
 - (C) be accompanied by a Rule ~~XX~~9(c) good faith consultation certificate; and
 - (D) attach a copy of the written notice provided to the opposing party under Rule 31(c)(2)(B).

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~~(d) **Assisting Filing by Self-Represented Person.** An attorney may help draft a pleading, motion, or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person’s representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which case the attorney must make an independent reasonable inquiry into the facts.~~

~~(e) **Verification.** If a rule or statute requires a pleading to be verified, the pleading must be accompanied by an affidavit by the party—or a person acting on the party’s behalf who is acquainted with the facts—attesting under oath that, to the best of the party’s or person’s knowledge, the facts set forth in the pleading are true and accurate. (ATB note: This section should refer to R. 14, "Sworn Written Declaration")~~

JWR NOTE: Parts (a) through (d) are drawn from restyled Civil Rule 11. Note that the standards in (b)(2) and (b)(3) differ from the current rule. The Civil Justice Reform Committee has proposed amendments that would make the rule more demanding on the pleader. The current standard is shown in brackets in text.

Part (d) is drawn from restyled Civil Rule 8(i). The Civil Rules Task Force moved the verification provision formerly in Civil Rule 11(b) to a new Civil Rule 8(i).

Part (e) refers to a “good faith consultation certificate,” which is provided in Civil Rule 7.1(h). The Family Law Rules currently do not have a counterpart to that rule.

Rule 26. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions

(a) Signature.

- (1) **Generally.** Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name, or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.
- (2) **Electronic Filings.** A person may sign an electronically filed document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.
- (3) **Signing for Another Party.** A person filing a document containing more than one place for a signature, such as a stipulation, may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information, and belief formed after reasonable inquiry:

- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- (2) the claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
- (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

- (1) *Generally.*** If a pleading, motion, or other document is signed in violation of this rule, the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney’s fee.
- (2) *Consultation.*** Before filing a motion for sanctions under this rule, the moving party must:
 - (A)** attempt to resolve the matter by good faith consultation as provided in Rule 9(c); and
 - (B)** if the matter is not satisfactorily resolved by consultation, provide the opposing party with written notice of the specific conduct that allegedly violates Rule 31(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 31(c)(3).
- (3) *Motion for Sanctions.*** A motion for sanctions under this rule must:
 - (A)** be made separately from any other motion;
 - (B)** describe the specific conduct that allegedly violates Rule 31(b);
 - (C)** be accompanied by a Rule 9(c) good faith consultation certificate; and
 - (D)** attach a copy of the written notice provided to the opposing party under Rule 31(c)(2)(B).

JWR NOTE: Parts (a) through (d) are drawn from restyled Civil Rule 11. Note that the standards in (b)(2) and (b)(3) differ from the current rule. The Civil Justice Reform Committee has proposed amendments that would make the rule more demanding on the pleader. The current standard is shown in brackets in text.

Part (d) is drawn from restyled Civil Rule 8(i). The Civil Rules Task Force moved the verification provision formerly in Civil Rule 11(b) to a new Civil Rule 8(i).

Part (c) refers to a “good faith consultation certificate,” which is provided in Civil Rule 7.1(h). The Family Law Rules currently do not have a counterpart to that rule.

Rule 2727. Service of the ~~Opposing Party or Additional Parties~~ Petition

- (a) **Annulment, Dissolution of Marriage, or Legal Separation, ~~and Dissolution or Separation in a Covenant Marriage~~.** In an action for annulment, dissolution, or legal separation, ~~or dissolution or separation in a covenant marriage~~, the petitioner must serve on the opposing party a copy of the petition, the summons, the preliminary ~~injunction issued under A.R.S. § 25-315(A)~~ injunction, and any notice, form and order required under Rule ~~2625~~(~~dc~~).
- (b) **Legal Decision-Making or Parenting Time, Paternity, or Maternity, ~~or~~ Child Custody by a Parent.** In an action for legal decision-making or parenting time, paternity, or ~~or~~ maternity, ~~or child custody by a parent~~, the petitioner must serve on each party entitled to service a copy of the petition ~~and~~ summons, and any preliminary injunction, and any notice, form and order required under Rule ~~2625~~(~~dc~~).
- (c) **Order to Appear and Petition.** In all actions other than those listed in (a) and (b), the petitioner must serve on each party entitled to service a copy of the petition, order to appear, and any notice, form and order required under Rule ~~265~~(~~dc~~). Petitioner must complete service no later than 20 days before the scheduled hearing, unless the court orders otherwise.
- (~~e~~)**(d) Manner of Service.** Service must be made under Rule 40 or Rule ~~41~~ ~~or~~ ~~42~~, as applicable.

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Rule 27. Service of the Petition

- (a) Annulment, Dissolution of Marriage, or Legal Separation.** In an action for annulment, dissolution, or legal separation, the petitioner must serve on the opposing party a copy of the petition, the summons, the preliminary injunction, and any notice, form and order required under Rule 25(c).
- (b) Legal Decision-Making or Parenting Time, Paternity, or Maternity.** In an action for legal decision-making or parenting time, paternity, or maternity, the petitioner must serve on each party entitled to service a copy of the petition, summons, and any preliminary injunction, notice, form and order required under Rule 25(c).
- (c) Order to Appear and Petition.** In all actions other than those listed in (a) and (b), the petitioner must serve on each party entitled to service a copy of the petition, order to appear, and any notice, form and order required under Rule 25(c). **Petitioner must complete service no later than 20 days before the scheduled hearing, unless the court orders otherwise.**
- (d) Manner of Service.** Service must be made under Rule 40 or Rule 41 .

Rule ~~34~~ 24.1 28. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) Amending as a Matter of Course. A party may amend its pleading once ~~as a matter of course;~~ as a matter of course

~~(A) at any time before a responsive pleading is served, or~~

~~(B) if the pleading is one to which no responsive pleading is required and no hearing has been set, the party may amend it at any time within 20 days after it was served.~~

~~(C) Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend will be freely given when justice requires.~~

~~(A) no later than 21 20 days after serving its service if the pleading is one to which no responsive pleading is permitted; or~~

~~— no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required; or, if a motion under Rule 32(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier. (what is this??)~~

~~— Any time before a responsive pleading is served (I would make this A but couldn't figure out how to do that)~~

~~(B)~~

~~(2) Other Amendments. In all other instances, a party may amend its pleading only with leave of court the court's permission or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires.~~

~~(3) Effect on Pending Motions. After the filing of a motion to dismiss or strike under Rule 32(b), (c), or (f), amending a pleading as a matter of course does not, by itself, make moot the motion as to the adequacy of the pleading's allegations as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response.~~

~~(4)~~**(2) Proposed Pleading as an Exhibit.** A party moving for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion. The exhibit must show ~~the respects in which~~ how the proposed

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pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

~~(5)~~**(3)** *Filing and Response.* If a motion for leave to amend is granted, the moving party must file and serve the amended pleading within 10 days after the entry of the order granting the motion, unless the court orders otherwise. ~~If the pleading is one to which a responsive pleading is required, an~~ opposing party must ~~answer or otherwise~~ respond to an amended pleading, if a response is required, within the time remaining for response to the original pleading or within 10 days after the amended pleading is served, whichever is later, unless the court orders otherwise.

(b) Amendments During and After Trial.

(1) *Based on an Objection at Trial.* If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. ~~The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would unfairly prejudice that party's claim or defense on the merits.~~ The court may grant a continuance to enable the objecting party to respond to the evidence.

(2) *For Issues Tried by Consent.* When an issue not raised by the pleadings is ~~tried~~ introduced at trial by the parties' express or implied consent, it must be treated in all respects as if it had been raised in the pleadings. A party may ~~move~~ request—at any time, ~~even after judgment~~—to amend the pleadings to conform to the evidence ~~and to raise an unpleaded issue.~~ ~~But if~~ failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) *Amendment Adding Claim or Defense.* An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

~~(2) *Amendment Changing Party.* An amendment changing the party against whom a claim is asserted relates back if:~~

~~(A) Rule 34(c)(1) is satisfied; and~~

~~(B) within the applicable limitations period—plus the period provided in Rule 40(i) for the service of the summons and complaint—the party to be brought in by amendment;~~

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~~(i) has received such notice of the institution of the action that it will not be prejudiced in maintaining a defense on the merits; and~~

~~(ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.~~

~~(3)~~(2) **Service.** Service of process in compliance with Rule 41(h), (i), or (j) satisfies Rule 34(c)(2)(B)(i) and (ii) with respect to the state, county, or municipal corporation—or any agency or officer of those entities—to be brought into the action as a defendant. [**JWR Note:** “Defendant” or “party”? “Respondent”? Are there “defendants” in family law actions?]

(d) Supplemental Pleadings. On motion and reasonable notice, the court may permit a party to file a supplemental pleading setting forth any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. A court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The court may order the opposing party to answer or otherwise respond to the supplemental pleading within a specified time.

COMMITTEE COMMENT

This rule is based on [Rule 15, Arizona Rules of Civil Procedure](#).

Rule 28. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

- (1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course

 - (A) at any time before a responsive pleading is served, or
 - (B) if the pleading is one to which no responsive pleading is required and no hearing has been set, the party may amend it at any time within 20 days after it was served.
 - (C) Otherwise, a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend will be freely given when justice requires.
- (2) ***Proposed Pleading as an Exhibit.*** A party moving for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion. The exhibit must show how the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.
- (3) ***Filing and Response.*** If a motion for leave to amend is granted, the moving party must file and serve the amended pleading within 10 days after the entry of the order granting the motion, unless the court orders otherwise. An opposing party must respond to an amended pleading, if a response is required, within the time remaining for response to the original pleading or within 10 days after the amended pleading is served, whichever is later, unless the court orders otherwise.

(b) Amendments During and After Trial.

- (1) ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court may grant a continuance to enable the objecting party to respond to the evidence.
- (2) ***For Issues Tried by Consent.*** When an issue not raised by the pleadings is introduced at trial by the parties' express or implied consent, it must be treated in all respects as if it had been raised in the pleadings. A party may request—at any time—to amend the pleadings to conform to the evidence. Failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

- (1) ***Amendment Adding Claim or Defense.*** An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.
- (2) ***Service.*** Service of process in compliance with Rule 41(h), (i), or (j) satisfies Rule 34(c)(2)(B)(i) and (ii) with respect to the state, county, or municipal corporation—or any agency or officer of those entities—to be brought into the action as a defendant. [**JWR Note:** “Defendant” or “party”? “Respondent”? Are there “defendants” in family law actions?]

(d) Supplemental Pleadings. On motion and reasonable notice, the court may permit a party to file a supplemental pleading setting forth any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. A court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The court may order the opposing party to answer or otherwise respond to the supplemental pleading within a specified time.

COMMITTEE COMMENT

This rule is based on [Rule 15, Arizona Rules of Civil Procedure](#).

Rule ~~32-29~~. Defenses and Objections: ~~When and How Presented~~; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing

(a) Time to File and Serve a Responsive Pleading.

(1) **Generally.** Unless another time is specified by rule or statute, the time for filing and serving a responsive pleading is as follows:

(A) A respondent or third-party defendant must file and serve a response or other responsive pleading:

(i) within 20 days after being served with the summons and complaint, except as otherwise provided in Rule 42; or

(ii) if the respondent or third-party defendant has timely waived service under Rule 40(f), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States.

(B) A party must file and serve an answer or other pleading responsive to a counterclaim within 20 days after being served with the pleading that states the counterclaim.

(C) A party must file and serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) **Effect of a Motion.** Unless the court sets a different time, filing and serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be filed and served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be filed and served within 10 days after the more definite statement is served.

(b) **How to Present Certain Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

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- (4) insufficient process;
- (5) insufficient service of process; and
- (6) failure to state a claim upon which relief can be granted; ~~and~~
- ~~(7) failure to join a party under Rule 19. [Note: Although the corresponding civil rule allows the defense of failure to join a party, is it a cognizable defense under the Family Law Rules? See further A.R.S. §25-314(D) and FLR 33(C). It is not currently in Family Law Rule 32(b).]~~

(c) Time to Assert Certain Defenses. A motion asserting any of these defenses must be made before ~~pleading filing~~ if a responsive pleading, ~~if one~~ is ~~allowed~~ required. However, a motion for lack of subject matter jurisdiction may be made at any time. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim.

~~If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. A party does not waive a defense or objection by joining it with one or more other defenses or objections in a responsive pleading or in a motion. A party may assert improper venue as a defense only if the action cannot be or could not have been transferred to the proper county under A.R.S. § 12-404.~~

~~(e)(d)~~ **Motion for Judgment on the Pleadings.** ~~After the pleadings are closed—but no later than the date on which dispositive motions must be filed—a~~ party may move for judgment on the pleadings; ~~not later than 90 days before trial.~~

~~(d)(e)~~ **Result of Presenting Matters Outside the Pleadings.** If, on a motion under Rule ~~3229~~(b)(6) or ~~(ed)~~, matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 79. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

~~(e)~~ **Motion for a More Definite Statement.** ~~If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order. [JWR Note: This is not currently in Family Law Rule 32. I assume its exclusion was intentional.]~~

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(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after the pleading is served.

~~**(g) Joining Motions.** [JWR Note: This is not currently in Family Law Rule 32. I assume the exclusion was intentional.]~~

- ~~(1) **Right to Join.** A motion under this rule may be joined with any other motion allowed by this rule.~~
- ~~(2) **Limitation on Further Motions.** Except as provided in Rule 32(h)(2) or (3), a party who makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.~~

(h)(g) -Waiving and Preserving Certain Defenses.

(1) **When Some Are Waived.** A party waives any defense listed in Rule ~~2932~~(b)(2) through (5) by failing to either:

- ~~(A) omitting it from a motion in the circumstances described in Rule 32(g)(2); or~~
- ~~(B) failing to either:~~

~~(i)(A) -make it by motion under this rule; or~~

~~(ii)(B) -include it in a responsive pleading or in an amendment ~~allowed by Rule 34(a)(1) as a matter of course to a pleading.~~~~

(2) **When to Raise Others.** Failure to state a claim upon which relief can be granted, to join a person required by Rule ~~19(b)33(c)~~, or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 24;

(B) by a motion under Rule ~~3229(e)(d)~~; or

(C) at trial.

~~(3) **Lack of Subject Matter Jurisdiction.** If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.~~

(i)(h) Preliminary Hearings on Rule 29 Motions. If a party so moves, any defense listed in Rule ~~3229~~(b)(1) through (6)—whether made in a pleading or by motion—and

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a motion under Rule ~~3229~~(ed) must be heard and decided before trial unless the court orders a deferral until trial.

~~COMMITTEE COMMENT~~

~~This rule is based on Rule 12, Arizona Rules of Civil Procedure.~~

Rule 29. Defenses and Objections: Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing

(a) Time to File and Serve a Responsive Pleading.

(1) **Generally.** Unless another time is specified by rule or statute, the time for filing and serving a responsive pleading is as follows:

(A) A respondent or third-party defendant must file and serve a response or other responsive pleading:

(i) within 20 days after being served with the summons and complaint, except as otherwise provided in Rule 42; or

(ii) if the respondent or third-party defendant has timely waived service under Rule 40(f), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States.

(B) A party must file and serve an answer or other pleading responsive to a counterclaim within 20 days after being served with the pleading that states the counterclaim.

(C) A party must file and serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) **Effect of a Motion.** Unless the court sets a different time, filing and serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be filed and served within 10 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be filed and served within 10 days after the more definite statement is served.

(b) **Certain Defenses.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

- (4) insufficient process;
- (5) insufficient service of process; and
- (6) failure to state a claim upon which relief can be granted.

(c) Time to Assert Certain Defenses. A motion asserting any of these defenses must be made before filing a responsive pleading, if one is required. However, a motion for lack of subject matter jurisdiction may be made at any time. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim.

(d) Motion for Judgment on the Pleadings. A party may move for judgment on the pleadings not later than 90 days before trial.

(e) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 29(b)(6) or (d), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 79. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after the pleading is served.

(g) Waiving and Preserving Certain Defenses.

(1) *When Some Are Waived.* A party waives any defense listed in Rule 29(b)(2) through (5) by failing to either:

- (A) make it by motion under this rule; or
- (B) include it in a responsive pleading or in an amendment to a pleading.

(2) *When to Raise Others.* Failure to state a claim upon which relief can be granted, to join a person required by Rule 33(c), or to state a legal defense to a claim may be raised:

- (A) in any pleading allowed or ordered under Rule 24;
- (B) by a motion under Rule 29(d); or
- (C) at trial.

(h) Hearings on Rule 29 Motions. If a party so moves, any defense listed in Rule 29(b)(1) through (6)—whether made in a pleading or by motion—and a motion under Rule 29(d) must be heard and decided before trial unless the court orders a deferral until trial.

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 adequately employed 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 answer the following:

1. If you were you employed during the marriage, state how employed and when.

2. Do you have a physical or emotional condition that would require spousal maintenance to meet your needs? Describe:

3. Describe any contributions you've made to your spouse's earning ability or how you reduced your income or 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 it 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? _____.

8. What is your spouse's present occupation and monthly income? (If you do not have documentation of your spouse's income, describe how you came to your estimate.)

9. Complete this financial statement.

NECESSARY MONTHLY EXPENSES (For yourself and minor children who reside with you)

House (mortgage/rent) \$ _____
 Repair/Upkeep \$ _____

Utilities
 Electricity \$ _____
 Gas \$ _____
 Water & Sewer \$ _____
 Phone \$ _____
 Garbage \$ _____

Food & Household Supplies \$ _____
 Work/School Lunch \$ _____
 Medical, dental, drugs, supplies \$ _____
 Insurance not deducted from pay \$ _____
 Clothing \$ _____
 Laundry/Dry Cleaning \$ _____

Childcare/Sitter \$ _____
 Support paid for spouse and/or minor children of prior relationship \$ _____
 Car Repair/Maintenance \$ _____
 Car Insurance \$ _____
 Gas/Oil \$ _____
 Vehicle License \$ _____
 Public Transportation \$ _____
 Other \$ _____

_____ \$ _____
Total Monthly Expenses \$ _____

MONTHLY PAYMENTS/DEBTS

Creditor	Balance	Payment
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Total Monthly Payments \$ _____

Total Expenses, Payments \$ _____

INCOME

GROSS PAYCHECK
 weekly twice mo.* \$ _____

monthly every 2 weeks \$ _____

*For example, the 1st and 15th \$ _____

Less: Federal Taxes \$ _____

Less: State Taxes \$ _____

SS & Medicare \$ _____

Insurance \$ _____

Savings, etc. \$ _____

Other _____ \$ _____

Other _____ \$ _____

_____ \$ _____

Total Deductions \$ _____

Net Paycheck \$ _____

TOTAL GROSS MONTHLY INCOME \$ _____

10. How will the reasonable needs of your spouse be met if you receive this requested spousal maintenance?

Verification

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:

1. states the name of the party against whom default is sought;
2. states that the party has failed to respond within the time allowed by these rules;
3. 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~~ party in default;
4. identifies an attorney known to represent the ~~defaulting party~~ party in default, either in the action in which default is sought or in a related matter, whether or not the attorney has formally appeared, or does not know the identity and address of any such attorney; and
5. attaches a copy of the proof ~~or acceptance~~ of service, establishing the date and manner of service on the ~~defaulting party~~ party in default.

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

~~6-1.~~ *To the Party.* If the party requesting default knows the whereabouts of the ~~defaulting party~~ party in default, a copy of the application for default must be mailed to the ~~defaulting party~~ party in default, even if the party is represented by an attorney who has entered an appearance in the action.

~~7-2.~~ *To the Attorney.* If the party requesting default knows that the ~~defaulting party~~ party in default is represented by an attorney either in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the ~~defaulting party~~ party in default.

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~~8-3.~~ *Time of Notice.* The notice required under ~~subpart (a)(3)(A)~~ or ~~(b)~~ must be mailed on the date that the application is filed, or as soon as practicable after its filing.

~~9-4.~~ *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~~party in default 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)~~ (2) The court ~~also~~ may not enter a default judgment ~~by motion and~~ without a hearing if the ~~defaulting party~~party in default 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.~~

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~~(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

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~~(ii)~~

~~(B2)~~ 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~~

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

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

~~b.~~

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

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~~(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.

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~~(c)~~ Judgment of Maternity or Paternity.

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~~10-1.~~ 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 ~~establishing maternity or paternity, and orders regarding legal decision-making and parenting time,~~ on motion and with an affidavit of the State, the mother, or the father.

~~11-2.~~ Affidavit ~~Contents~~.

~~(i) (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.

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~~(ii) (i)~~ 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) (ii)~~ If the petition requests entry of an order for current and past support, a child support worksheet that establishes the amounts requested must

accompany the motion; and an affidavit must state the basis for determining the gross income of the defaulting parent.

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

~~(4)(d) Money Judgments and Attorney's Fees by Motion for Money Other Than Child Support~~

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(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.~~

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(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.

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(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)]

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

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

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(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;

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(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;

(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?]~~

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(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 substantially similar to Form 17, Rule 97, Default Information for Spousal Maintenance, with the Rule 44 application for default.

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~~**(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 of the party's receipt of the decree or judgment, the party obtaining the decree or judgment will mail 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.

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

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~~**(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.

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~~**(4)**~~**b. Notice of Hearing.** If the defaulted party has appeared in ~~the~~ 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?]

~~**(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~~party in default:

~~(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 was~~service was made by publication and ~~no response~~no response has been timely filed, a decree or judgment may be ~~entered~~as provided under Rule 41(m). The **court** 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 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 party in default;
 - (D) identifies an attorney known to represent the party in default, either in the action in which default is sought or in a related matter, whether or not the attorney has formally appeared, or does not know the identity and address of any such attorney; and
 - (E) attaches a copy of the proof or acceptance of service establishing the date and manner of service on the party in default.
- (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 party in default, a copy of the application for default must be mailed to the party in default, even if the party is represented by an attorney who has entered an appearance in the action.
 - (B) *To the Attorney.* If the party requesting default knows that the party in default is represented by an attorney either in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party in default.
 - (C) *Time of Notice.* The notice required under subpart (a)(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 party in default 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 may not enter a default judgment without a hearing if the party in default is a minor or an incompetent person.

(b) **Decree 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.** The court may enter a judgment establishing maternity or paternity, and orders regarding legal decision-making and parenting time, 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] [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;
 - (2) provisions for legal decision-making parenting time, either within the default 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 income withholding order, including the current employer information sheet;
 - (7) ~~(6) a completed judgment data sheet, if required; [Note: Should the rule provide information on when this is required?]~~
 - (8) 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
 - (9) 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 substantially similar to Form 17, Rule 97, 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 of the party's receipt of the decree or judgment, the party obtaining the decree or judgment will mail 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.

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 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.

(1) 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 party in default:

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

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

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

(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 was made by publication and no response has been timely filed, a decree or judgment may be entered as provided under Rule 41(m). The court must maintain a verbatim record of the default hearing.

Rule 47. Motions for Temporary Orders

(a) **Motions for ~~a~~-Pre-Decree Temporary Orders.** ~~A party seeking a temporary order under A.R.S. §§ 25-315, 25-324, 25-404, 25-407, 25-408, 25-409, 25-817 or 25-905~~ A party seeking temporary orders for legal decision making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorneys' fees, must file a separate verified motion that states the motion's legal and jurisdictional basis and the specific relief requested. ~~The party may file the motion after or at the same time the party files the initial petition. [JWR Note: Is this sentence necessary? When else would you file the motion?] The motion must incorporate by reference the petition's relevant allegations and not separately repeat them.~~ The motion also must include the following information and documentation, if relevant: ~~[Note: Are the statutes in the first sentence the appropriate statutes to reference, e.g. 25-324 does not mention temporary orders. Other statutes might be relevant. Should this rule simply delete the statutory references? Are they necessary? E.g., "A party seeking temporary orders for legal decision making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorneys' fees, must file....."]~~

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- (1) **For Legal Decision-Making and Parenting Time.** A motion requesting temporary legal decision-making or parenting time must ~~include specify the court's authority to proceed under A.R.S. § 25-402 and must include~~ a proposed parenting plan that specifically states the legal decision-making or parenting time requested for both parties.
- (2) **For Child Support.** A motion requesting temporary child support must include a completed Child Support Worksheet that specifies the amount requested in accordance with the current Arizona Child Support Guidelines. The moving party also must disclose to the other party within the time specified in (d) all child support disclosure documents required by Rule 49(c). ~~If the court holds an evidentiary hearing on the motion, the moving party must provide an additional copy of these documents to the court at the hearing.~~
- (3) **For Spousal Maintenance.** A motion requesting temporary spousal maintenance must state the specific duration and amounts requested. The motion must include an affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information").
- (4) **For Property, Debt, and Attorney's Fees.** A motion requesting a temporary order to exclude a party from a residence, to divide community property, or to order payment of debt, expenses, or attorney's fees, must state the specific relief requested, the proposed division of property, the responsibility that each party would have to pay debts and expenses, and the income and assets that ~~will~~

would be available to each party if the motion is granted. A motion for a temporary order requesting payment of attorney's fees must state the specific amount of fees requested and must include an affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information"). ~~The motion also must state the responsibility that each party would have for the payment of debts, expenses, and attorney's fees if the court grants the motion.~~

(b) Order to Appear. Unless a local rule establishes a different procedure, the moving party must provide the assigned judicial officer with the original and 3 copies one copy of an order to appear substantially in the form set forth in Form 13, Rule 97; Form 13 ("Order To Appear"), ~~3 copies of the motion, and 3 copies of the financial documents required in (a).~~ The clerk will file the original Order to Appear when the assigned judicial officer signs it.

(c) Scheduling.

(1) Generally. Upon receiving a motion for ~~a~~ temporary order~~s~~ and the required supporting documents, the court ~~will~~ must schedule either a pretrial conference, a Rule 76(a) Resolution Management Conference, or an evidentiary hearing. Without the parties' agreement, the court may not conduct an evidentiary hearing during a pretrial conference or a resolution management conference. The court must set the conference or hearing on a date no later than 30 days after the ~~court~~ receives the motion. ~~[after the motion is filed.]~~ [JWR Note: Why is this triggered by receipt rather than filing. Who knows when the judge "receives" anything?]

(A) Disputed Issues of Fact. The court may not resolve disputed issues of fact at a pretrial conference or Resolution Management Conference without the parties' agreement.

(B) Evidentiary Hearing. If not all of the issues are resolved at a pretrial conference or Resolution Management Conference, the court must set an evidentiary hearing to a date no later than 30 days after the conference, unless the parties agree to a different time frame [JWR Note: Most sources on Google say this is composed of two words] or procedure.

(C) Extensions of Time. The court may extend the time frames set forth in (c)(1) for good cause.

(2) Motions for Legal Decision-Making and Parenting Time. Notwithstanding (c)(1), if a party files a pre-decree motion for a temporary order requesting legal decision-making or parenting time, the court must hold an evidentiary hearing no later than 60 days after the party files the motion unless:

- (A) the moving party waives the requirement for a hearing within 60 days;
- (B) a temporary order is established during a separate conference or hearing that is held within 60 days after the party files the motion; or
- (C) extraordinary circumstances exist and the court is not able to schedule the hearing within 60 days after the motion is filed, and the court makes a finding on the record regarding the cause of the delay.

(3) **Other Matters.** ~~A party may request a temporary order regarding other matters, including child support and spousal maintenance, at the same time as the party's request for a temporary order regarding legal decision making or parenting time. Notwithstanding (c)(1), the court may hold an evidentiary hearing on those other matters at the same time as the hearing on legal decision making and parenting time. For any temporary parenting time order entered under this rule, the court must determine an amount of child support under A.R.S. § 25-320 and the Arizona Child Support Guidelines.~~

(4) **Other Settings.** ~~In addition to the conferences and hearings provided in Subject to the requirements of subpart (c)(1),~~ the court may set any other appropriate conference or hearing.

(d) **Service.** The moving party must serve all parties with the documents described in sections (a) and (b) ~~no later than 10 judicial days before the scheduled conference or hearing, unless the court orders otherwise. [JWR Note: No need to refer to judicial days. Under the time computation rules, intermediate weekends and holidays don't count if the prescribed time is less than 11 days.].~~ The moving party must make good faith efforts to complete service promptly and, absent good cause, must complete service within 5 days after receipt of the issued order to appear and no later than 14 days before the date set in the order.

(e) **Response.** A party who is served with an Order to Appear on a motion for a temporary order is not required to file a ~~formal~~ response to the motion, but if the party does so, the party must verify the response. ~~[JWR Note: How is a formal response different from a response?]~~

(1) Whether or not the party files a response, the party must fully comply with the requirements of section (f).

(2) Additionally, if the motion requests child support, the party who is served must file a completed Child Support Worksheet.

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~~(e)~~ (3) The party who is served also must provide copies of all filed documents to the assigned judicial officer and to the moving party no later than 3 days before the date set for a conference or hearing.

(f) Requirements Before a Conference or Hearing.

~~(1)~~ **Meet and Confer.** ~~At least 3 days~~ before any conference or evidentiary hearing set by the court under (c), the parties and counsel must meet and confer. The parties also must comply with the disclosure requirements of Rule 49. ~~If the matter is set for a resolution management conference, the parties' s disclosure requirements and~~ must submit a Resolution Statement substantially in the form set forth in Rule 97, Form 4 or 5, as applicable, Rule 97, no later than ~~5-3~~ days before the date set for the conference or hearing.

~~(2)~~ **Exchange of Exhibits and Witness Lists Before an Evidentiary Hearing.** ~~No later than 3 days before the date set for an evidentiary hearing, the parties must exchange any exhibits they will offer at the hearing and each party must provide to the other party a list of the names, addresses, and telephone numbers of all witnesses who may testify at the hearing, and the subject of their anticipated testimony.~~

~~(4)~~ —

~~(2)~~(3) **Exception.** If there is a current court order prohibiting contact between the parties, or there is a significant history of domestic violence between the parties, the parties are not required to personally meet, confer, or contact each other before the conference or hearing, or otherwise violate an existing protective order. However, if a party is represented the parties and their by counsel, then counsel must take all reasonable steps under the circumstances to resolve as many issues as possible.

~~(3)~~ **Exchange of Exhibits and Witness Lists Before an Evidentiary Hearing.** ~~No later than 3 days before the date set for an evidentiary hearing, the parties must exchange any exhibits they will offer at the hearing and each party must provide to the other party a list of the names, addresses, and telephone numbers of all witnesses who may testify at the hearing.~~

(g) Attendance. All parties and their counsel, if they are represented, must ~~be present~~appear at any pretrial conference, Resolution Management Conference, or evidentiary hearing.

(h) Request for Expedited Hearing. If a party requests an expedited hearing, the caption of the motion must include the words, "Expedited Hearing ~~Required~~ Requested." The motion must specify facts necessitating an expedited hearing. The

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court may consider and decide a request for an expedited hearing without waiting for a response or holding oral argument.

(i) **Local Procedures.** Nothing contained in this rule precludes any county from establishing by local rule or administrative order an alternative process for temporary ~~child support orders~~.

(j) **Enforceability of ~~a~~ Temporary Orders.**

~~(1) **When Enforceable.** A Temporary orders signed by the court and filed by the clerk are enforceable as a final orders during the action's pendency.~~

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~~(2)(1) **When Unenforceable.** A temporary order becomes ineffective and unenforceable upon an action's termination by but terminate upon dismissal of the action, or following entry of a final decree, judgment, or order, unless that final decree, judgment, or order provides otherwise.~~

~~(3)(2) **Exceptions.** An Orders of Protection and Injunctions Against Harassment is are not subject to this rule's the provisions of this rule.~~

COMMENT TO 2015 AMENDMENT

~~Rule 47(D)(2) has been added to conform to legislative changes made to A.R.S. § 25-407 in Senate Bill 1073, which was passed in the First Regular Session of the Fifty-first Legislature with an effective date of September 13, 2013 (Laws 2013, Chapter 31).~~

COMMITTEE COMMENT

The pretrial conference ~~referred to in~~ this rule ~~references~~ is intended to be a brief hearing at which the goals set forth in Rule 76.1 ~~(A)(3)(e) through (f)~~ are considered.

~~NOTE: Rule 47(B) is now Rule 47.2.~~

~~Rule 47(I) and (J) is now Rule 47.1.~~

Rule 47.1. Simplified Child Support Orders [New]

(a) Motion for a Temporary Simplified Child Support Order.

(1) **Generally.** Unless a local rule provides otherwise, a party seeking a temporary child support order under A.R.S. §§ 25-315 or 25-817 may request a simplified order by filing with the court:

(A) a verified Motion for Simplified Temporary Child Support Order;

(B) a completed Child Support Worksheet;

(C) a proposed Simplified Temporary Child Support Order; and

(D) a proposed ~~Order of Assignment~~Income Withholding Order. [**Note:** The current rule provides that the proposed orders are filed with the court, but generally, proposed orders are not filed.]

(2) **Required Disclosures.** The motion must advise ~~the other party that the other responding party of a requirement is required~~ to ~~timely~~ file a timely response and a completed Child Support Worksheet, and must submit a proposed simplified Temporary Child Support Order and a proposed Income Withholding Order of Assignment. The motion also must advise the responding party that failure to do so may result in the court entering ~~the requested~~ Temporary Child Support Order ~~as requested by the moving party~~.

(3) **Notice of Hearing.** If the moving party requested a hearing, the moving party must serve the responding party with a notice of hearing.

(4) **Service.** The motion must be served on the responding party in the manner set forth for service of a pleading and summons under Rules 40, or 41, ~~or 42~~, as applicable. The moving party must file a proof of service as provided in those rules. [**JWR Note:** The current rule seems to require this, but doesn't say so. I also think this is the verbiage used earlier, but I'm not absolutely sure.]

(b) Response.

(1) **Timing.** The responding party must file any response no later than 20 days after the motion is served, if served in Arizona, or 30 days after the motion is served, if served outside Arizona.

(+)(2) **Request for Hearing.** At the time of filing a response, the responding party may file a request for hearing. The responding party must serve the response and request for hearing on the respondent under Rule 43.

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(2)(3) **Uncontested Motions.** If the responding party does not file a response or if the response does not ~~specifically~~ contest the child support requested in the motion, the court will not set a hearing. The court will enter the proposed Simplified Temporary Child Support Order and the Income Withholding Order of Assignment if the available information in support of the temporary order appears accurate and provides the court with adequate information to determine the amount of child support under the Arizona Child Support Guidelines.

~~(e) **Summary Temporary Child Support Order.** If the court determines either after reviewing the pleadings and the supporting documents submitted under (a) and (b), or at a Resolution Management Conference, that:~~

~~(1) the party entitled to receive child support is seeking an amount that is less than or equal to 150% of the amount of child support the other party is willing to pay; and~~

~~(2) the parties based their positions on the application of the Arizona Child Support Guidelines;~~

~~the court without holding an evidentiary hearing may enter a Summary Temporary Child Support Order within the range of the parties' positions. The entry of a Summary Temporary Child Support Order does not prejudice the rights of the parties to have the issue finally determined at a later hearing or trial.~~

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making Orders

[New]

(a) Generally. A motion requesting temporary legal decision-making or parenting time after entry of a decree must file a verified motion stating the legal and jurisdictional ~~basis~~ bases for the motion, and the specific relief requested. It also must include a proposed parenting plan containing the legal decision-making and parenting time requested for both parties. The motion must incorporate by reference the relevant allegations of the pending post-decree petition and not separately repeat them.

(b) Timing. The party may file the motion after or at the same time the party files a post-decree petition authorized by statute.

(c) Service. The motion must be served on the responding party in the manner set forth for service of a pleading and summons under Rules 40, ~~or~~ 41, ~~or~~ 42, as applicable.

[**Note:** Is the other party required to file a response or other documents? Current Rule 47(B) does not appear to address this. Also, is Rule 47.2 even necessary in light of the provisions of Rule 91?]

(d) Scheduling. The court will schedule a resolution management conference or an evidentiary hearing on the motion, as appropriate.

Rule 47. Motions for Temporary Orders

(a) Motions for Pre-Decree Temporary Orders. ~~A party seeking a temporary order under A.R.S. §§ 25-315, 25-324, 25-404, 25-407, 25-408, 25-409, 25-817 or 25-905~~ A party seeking temporary orders for legal decision making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorneys' fees, must file a separate verified motion that states the motion's legal and jurisdictional basis and the specific relief requested. The motion must include the following information and documentation, if relevant: ~~[**Note:** Are the statutes in the first sentence the appropriate statutes to reference, e.g. 25-324 does not mention temporary orders. Other statutes might be relevant. Should this rule simply delete the statutory references? Are they necessary? E.g., "A party seeking temporary orders for legal decision making, parenting time, child support, or spousal maintenance, or concerning property, debt, or attorneys' fees, must file....."]~~

- (1) *For Legal Decision-Making and Parenting Time.*** A motion requesting temporary legal decision-making or parenting time must specify the court's authority to proceed under A.R.S. § 25-402 and must include a proposed parenting plan that specifically states the legal decision-making or parenting time requested for both parties.
- (2) *For Child Support.*** A motion requesting temporary child support must include a completed Child Support Worksheet that specifies the amount requested in accordance with the current Arizona Child Support Guidelines. The moving party also must disclose to the other party within the time specified in (d) all child support disclosure documents required by Rule 49(c).
- (3) *For Spousal Maintenance.*** A motion requesting temporary spousal maintenance must state the specific duration and amounts requested. The motion must include an affidavit substantially in the form set forth in Rule 97, Form 2 ("Affidavit of Financial Information").
- (4) *For Property, Debt, and Attorney's Fees.*** A motion requesting a temporary order to exclude a party from a residence, to divide community property, or to order payment of debt, expenses, or attorney's fees, must state the specific relief requested, the proposed division of property, the responsibility that each party would have to pay debts and expenses, and the income and assets that would be available to each party if the motion is granted. A motion for a temporary order requesting payment of attorney's fees must state the specific amount of fees requested and must include an Affidavit of Financial Information.

(b) Order to Appear. Unless a local rule establishes a different procedure, the moving party must provide the assigned judicial officer with the original and one copy of an order to appear substantially in the form set forth in Form 13, Rule 97 (“Order To Appear”). The clerk will file the original Order to Appear when the assigned judicial officer signs it.

(c) Scheduling.

(1) Generally. Upon receiving a motion for temporary orders and the required supporting documents, the court must schedule either a pretrial conference, a Resolution Management Conference, or an evidentiary hearing. Without the parties’ agreement, the court may not conduct an evidentiary hearing during a pretrial conference or a resolution management conference. The court must set the conference or hearing on a date no later than 30 days after the after the motion is filed.

(A) Disputed Issues of Fact. The court may not resolve disputed issues of fact at a pretrial conference or Resolution Management Conference without the parties’ agreement.

(B) Evidentiary Hearing. If not all of the issues are resolved at a pretrial conference or Resolution Management Conference, the court must set an evidentiary hearing to a date no later than 30 days after the conference, unless the parties agree to a different time frame or procedure.

(C) Extensions of Time. The court may extend the time frames set forth in (c)(1) for good cause.

(2) Motions for Legal Decision-Making and Parenting Time. Notwithstanding (c)(1), if a party files a pre-decree motion for a temporary order requesting legal decision-making or parenting time, the court must hold an evidentiary hearing no later than 60 days after the party files the motion unless:

(A) the moving party waives the requirement for a hearing within 60 days;

(B) a temporary order is established during a separate conference or hearing that is held within 60 days after the party files the motion; or

(C) extraordinary circumstances exist and the court is not able to schedule the hearing within 60 days after the motion is filed, and the court makes a finding on the record regarding the cause of the delay.

(3) Other Matters. For any temporary parenting time order entered under this rule, the court must determine an amount of child support under A.R.S. § 25-320 and the Arizona Child Support Guidelines.

(4) **Other Settings.** Subject to the requirements of subpart (c)(1), the court may set any other appropriate conference or hearing.

(d) **Service.** The moving party must serve all parties with the documents described in sections (a) and (b). The moving party must make good faith efforts to complete service promptly and, absent good cause, must complete service within 5 days after receipt of the issued order to appear and no later than 14 days before the date set in the order.

(e) **Response.** A party who is served with an Order to Appear on a motion for a temporary order is not required to file a response to the motion, but if the party does so, the party must verify the response.

(1) Whether or not the party files a response, the party must fully comply with the requirements of section (f).

(2) Additionally, if the motion requests child support, the party who is served must file a completed Child Support Worksheet.

(3) The party who is served also must provide copies of all filed documents to the assigned judicial officer and to the moving party no later than 3 days before the date set for a conference or hearing.

(f) Requirements Before a Conference or Hearing.

(1) **Meet and Confer.** At least 3 days before any conference or evidentiary hearing set by the court under (c), the parties and counsel must meet and confer. The parties also must comply with the disclosure requirements of Rule 49. If the matter is set for a resolution management conference, the parties must submit a Resolution Statement substantially in the form set forth in Form 4 or 5, as applicable, Rule 97, no later than 3 days before the date set for the conference or hearing.

(2) **Exchange of Exhibits and Witness Lists Before an Evidentiary Hearing.** No later than 3 days before the date set for an evidentiary hearing, the parties must exchange any exhibits they will offer at the hearing and each party must provide to the other party a list of the names, addresses, and telephone numbers of all witnesses who may testify at the hearing, and the subject of their anticipated testimony.

(3) **Exception.** If there is a current court order prohibiting contact between the parties, or there is a significant history of domestic violence between the parties, the parties are not required to personally meet, confer, or contact each other before the conference or hearing, or otherwise violate an existing protective

order. However, if a party is represented by counsel, then counsel must take all reasonable steps under the circumstances to resolve as many issues as possible.

(g) Attendance. All parties and their counsel, if they are represented, must appear at any pretrial conference, Resolution Management Conference, or evidentiary hearing.

(h) Request for Expedited Hearing. If a party requests an expedited hearing, the caption of the motion must include the words, “Expedited Hearing Requested.” The motion must specify facts necessitating an expedited hearing. The court may consider and decide a request for an expedited hearing without waiting for a response or holding oral argument.

(i) Local Procedures. Nothing contained in this rule precludes any county from establishing by local rule or administrative order an alternative process for temporary orders.

(j) Enforceability of Temporary Orders.

(1) *When Enforceable.* Temporary orders signed by the court and filed by the clerk are enforceable as final orders but terminate upon dismissal of the action, or following entry of a final decree, judgment, or order, unless that final decree, judgment, or order provides otherwise.

(2) *Exceptions.* Orders of Protection and Injunctions Against Harassment are not subject to the provisions of this rule.

COMMITTEE COMMENT

The pretrial conference this rule references is intended to be a brief hearing at which the goals set forth in Rule 76.1 are considered.

Rule 47.1. Simplified Child Support Orders [New]

(a) Motion for a Temporary Simplified Child Support Order.

(1) *Generally.* Unless a local rule provides otherwise, a party seeking a temporary child support order under A.R.S. §§ 25-315 or 25-817 may request a simplified order by filing with the court:

(A) a verified Motion for Simplified Temporary Child Support Order;

(B) a completed Child Support Worksheet;

(C) a proposed Simplified Temporary Child Support Order; and

(D) a proposed Income Withholding Order. [**Note:** The current rule provides that the proposed orders are filed with the court, but generally, proposed orders are not filed.]

- (2) **Required Disclosures.** The motion must advise the responding party of a requirement to file a timely response and a completed Child Support Worksheet, and must submit a proposed simplified Temporary Child Support Order and a proposed Income Withholding Order. The motion also must advise the responding party that failure to do so may result in the court entering the requested Temporary Child Support Order.
- (3) **Notice of Hearing.** If the moving party requested a hearing, the moving party must serve the responding party with a notice of hearing.
- (4) **Service.** The motion must be served on the responding party in the manner set forth for service of a pleading and summons under Rules 40 or 41, as applicable. The moving party must file a proof of service as provided in those rules.

(b) Response.

- (1) **Timing.** The responding party must file any response no later than 20 days after the motion is served, if served in Arizona, or 30 days after the motion is served, if served outside Arizona.
- (2) **Request for Hearing.** At the time of filing a response, the responding party may file a request for hearing. The responding party must serve the response and request for hearing on the respondent under Rule 43.
- (3) **Uncontested Motions.** If the responding party does not file a response or if the response does not contest the child support requested in the motion, the court will not set a hearing. The court will enter the proposed Simplified Temporary Child Support Order and the Income Withholding Order if the available information in support of the temporary order appears accurate and provides the court with adequate information to determine the amount of child support under the Arizona Child Support Guidelines.

Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making Orders

[New]

- (a) **Generally.** A motion requesting temporary legal decision-making or parenting time after entry of a decree must file a verified motion stating the legal and jurisdictional bases for the motion, and the specific relief requested. It also must include a proposed parenting plan containing the legal decision-making and parenting time requested for

both parties. The motion must incorporate by reference the relevant allegations of the pending post-decree petition and not separately repeat them.

- (b) Timing.** The party may file the motion after or at the same time the party files a post-decree petition authorized by statute.
- (c) Service.** The motion must be served on the responding party in the manner set forth for service of a pleading and summons under Rules 40 or 41, as applicable. [**Note:** Is the other party required to file a response or other documents? Current Rule 47(B) does not appear to address this. Also, is Rule 47.2 even necessary in light of the provisions of Rule 91?]
- (d) Scheduling.** The court will schedule a resolution management conference or an evidentiary hearing on the motion, as appropriate.

Rule 48. Temporary Orders Without Notice

(a) Filing and Timing. A party may request ~~a~~ temporary orders without notice ~~to another party~~ by filing a verified motion ~~supported by affidavit~~, along with a proposed form of orders and a notice of hearing on the motion. ~~The~~ A party may file the motion may be filed after or at the same time or after the party files filing an initial pre-decree or post-decree petition.

(b) Grounds. A court may grant ~~a~~ temporary orders without written or oral notice to an nonmoving adverse party or that party's attorney only if the verified motion ~~and affidavit~~:

(1) clearly shows by specific facts ~~that that~~ if ~~no~~ an order is not issued before the nonmoving adverse party can be heard, the moving party or a minor child of the party, will be sustain irreparably injured, or ~~that~~ irreparable injury, loss, or damage will result to the separate or community property of the moving party; and

(2) the moving party or ~~the party's~~ attorney provides written certification of concerning the efforts, ~~if any, that the moving party took~~ to give notice to the other nonmoving party, or ~~the reasons~~ why giving notice ~~to the nonmoving party~~ should not be required.

(c) Orders. ~~A~~ Temporary orders granted without notice must specify the serious or life-threatening injury, loss, or damage and why it is irreparable, and state why the court granted the orders without notice. ~~The~~ temporary orders expires at the date and time set for hearing on the motion ~~for a temporary order without notice~~ unless the court extends the time for good cause.

(d) Hearing. ~~The court must set a~~ A hearing must be set on the motion ~~for temporary orders without notice~~ no later than 10 days after the order's entry, unless the court extends the time for good cause. The nonmoving party may request an earlier hearing with upon reasonable notice ~~and~~ as the court directs.

(e) Service. ~~The moving party must serve~~ the order and ~~the~~ notice of hearing must be served on the nonmoving party as soon as possible after the order's entry or as the court otherwise directs.

(f) Bond. No bond is required for a temporary order ~~under this rule~~ unless the court finds ~~that~~ a bond is appropriate.

COMMITTEE COMMENT

This rule is based on Rule 65(d), Arizona Rules of Civil Procedure.

Rule 48. Temporary Orders Without Notice

- (a) Filing and Timing.** A party may request temporary orders without notice by filing a verified motion, along with a proposed form of orders and a notice of hearing on the motion. A motion may be filed at the same time or after filing an initial pre-decree or post-decree petition.
- (b) Grounds.** A court may grant temporary orders without written or oral notice to an adverse party or that party's attorney only if the verified motion:
- (1)** clearly shows by specific facts that if an order is not issued before the adverse party can be heard, the moving party or a minor child of the party, will be irreparably injured, or irreparable injury, loss, or damage will result to the separate or community property of the moving party; and
 - (2)** the moving party or attorney provides written certification of the efforts to give notice to the other party, or why giving notice should not be required.
- (c) Orders.** Temporary orders without notice must specify the serious or life-threatening injury, loss, or damage and why it is irreparable, and state why the court granted the orders without notice. Temporary orders expire at the date and time set for hearing on the motion unless the court extends the time for good cause.
- (d) Hearing.** A hearing must be set on the motion no later than 10 days after the order's entry, unless the court extends the time for good cause. The nonmoving party may request an earlier hearing with reasonable notice as the court directs.
- (e) Service.** The order and notice of hearing must be served as soon as possible after the order's entry or as the court directs.
- (f) Bond.** No bond is required for a temporary order unless the court finds a bond appropriate.

COMMITTEE COMMENT

This rule is based on Rule 65(d), Arizona Rules of Civil Procedure.

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 **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) include the following language:

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you.

~~**(iii)** —~~

~~**(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.

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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 **under subparts**

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~~(a)(1)(D) or (c)(5)~~ ~~by by timely motion under Rule 52(c)(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.

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(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) Time for Compliance. *A person who is served with a subpoena to produce materials must be given at least 14 days to comply.*

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(3) 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)~~(4) **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)~~(5) **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)~~(6) **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. 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.

~~(A)~~

~~(i)~~ (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)~~(ii) 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

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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.~~

~~(B)~~

~~(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~~43.

(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)~~**(7) 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

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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~~43.1.

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(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~~43.1. 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.**

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(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

(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.
- (D) include the following language:

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within 14 days after it is served upon you, or before the time specified for compliance, by providing a written objection to the party or attorney serving the subpoena.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you.

- (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) **Appearance Required.** Objections to a subpoena commanding attendance at a deposition, hearing, or trial, must be made **under subparts (a)(1)(D) or (c)(5) by 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) ***Time for Compliance.*** A person who is served with a subpoena to produce materials must be given at least 14 days to comply.
- (3) ***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.
- (4) ***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.
- (5) ***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.

(6) 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. **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.**
- (ii)** 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 43.
- (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).

(7) ***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 443.

(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 43.1. 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 57. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

- (1) ***Depositions Permitted.*** A party may depose: (A) any party; (B) any party’s current spouse; and (C) any person disclosed as an expert witness under Rule 49(h). A party also may depose any document custodian ~~in order~~ to secure production of documents and establish evidentiary foundation. Unless all parties agree ~~or~~ the court orders otherwise for good cause, ~~or by court order following a resolution management conference,~~ a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.
- (2) ***Depositions ~~Petitioner or Other Party Earlier Than 30 Days After Serving the Summons and Petition.~~*** A party ~~petitioner or other party~~ must obtain leave of court to take a deposition earlier than 30 days after serving the summons and petition on any ~~respondent or other party~~ unless: (A) unless otherwise agreed in writing ~~a respondent or other party has served a deposition notice or otherwise sought discovery under these rules;~~ or (B) ~~the petitioner or other~~ a party certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. ~~If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 57(a)(2), the deposition may not be used against that party.~~
- (3) ***Incarcerated Deponents.*** Subject to Rule 57(a)(1), a party may depose an incarcerated person only by agreement of the person’s custodian or by leave of court on such terms as the court orders.
- (4) ***Compelling Attendance of Deponent.*** ~~A party may compel a nonparty deponent’s attendance by serving a subpoena under Rule 52.~~ ***Attendance of a Party.*** A party’s attendance at a deposition is required ~~without service of a subpoena.~~ ~~noticing the deposition of a party—or an officer, director, or managing agent of a party—need not serve a subpoena under Rule 52.~~
- (5) ***Compelling Attendance of Non-Party Deponent.*** A party may compel a nonparty deponent’s attendance by serving a subpoena under Rule 52.
- (4) —

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(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

(1) **Notice Generally.** Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) **Producing Materials.** If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 62 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 62 apply to any such request.

(3) **Method of Recording.**

(A) **Permitted Methods.** Unless all parties agree or the court orders otherwise, testimony under oath or affirmation must be recorded by a certified reporter and may ~~also in addition~~ be recorded by audio or audiovisual means.

~~(B) **Method Stated in the Notice.** The party who notices the deposition must state in the notice the method for recording the testimony. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.~~

~~(C)~~(B) **Additional Method Notice of Method of Recording.** With at least two days ~~prior~~ written notice to the deponent and other parties, any ~~other~~ party may designate another method for recording the testimony in addition to ~~that specified in the original notice~~ a certified reporter. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

~~(D) **Notice of Recording by Audiovisual Means.** Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).~~

~~(E)~~(C) **Transcription.** Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) **By Remote Means.** The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this

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rule and Rules 55(a), 65(a)(2), 62(b)(3)(B), and 62(e), the deposition takes place where the deponent answers the questions, but an Arizona certified court reporter may record the testimony in Arizona. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

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~~(5) Officer's Duties.~~

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~~(A) Before Deposition. Unless the parties agree otherwise under Rule 56, a deposition must be conducted before an officer appointed or designated under Rule 55. The officer must begin the deposition with a statement or notation on the record that includes:~~

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- ~~(i) the officer's name, certification number, if any, and business address;~~
- ~~(ii) the date, time, and place of the deposition;~~
- ~~(iii) the deponent's name;~~
- ~~(iv) the officer's administration of the oath or affirmation to the deponent; and~~
- ~~(v) the identity of all persons present.~~

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~~(B) Conducting the Deposition; Avoiding Distortion. If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 57(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques.~~

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~~(C) After the Deposition. At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters. [JWR Note: Note that this is not in the current Family Law Rule 57(B)(4), although it was in the former Civil Rule 30(b)(4). Was the omission intentional?]~~

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~~(6) (5) Notice or Subpoena Directed to an Entity. In a deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person~~

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must testify about information known or reasonably available to the entity. ~~This Rule 30(b)(6)~~ This subpart does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel. ~~Written Questions.~~

- (1) **Examination and Cross-Examination.** The examination and cross-examination of a deponent **must** proceed as they would at trial under the Arizona Rules of Evidence ~~, except including Rule 615. for Rules 103~~ Parties may not make evidentiary objections, including relevance objections, and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without ~~it's~~ the **party's** presence. After putting the deponent under oath or affirmation, the ~~officer~~ **certified court reporter** personally—or a person acting in the presence and under the direction of the officer—must record the testimony by the method(s) designated under Rule 57(b)(3).
- (2) **Objections.** ~~The officer~~ **A certified court reporter** must note on the record any objection made during the deposition—whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.
- (3) **Conferences Between Deponent and Counsel.** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.
- ~~(4) **Participating Through Written Questions.** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.~~

(d) Duration; Sanctions; Motion to Terminate or Limit.

(1) **Duration.** Unless the parties agree or the court orders otherwise, a deposition should be of reasonable length, is presumptively limited to 4 hours unless the parties agree otherwise, and must be completed in a single day. An unreasonable refusal to extend deposition time may result in sanctions.

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(2) **Sanctions.** The court may impose appropriate sanctions—including any order under Rule 71(?) 65—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, or who without good cause terminates or limits a deposition, including an unreasonable refusal to agree to extend a deposition beyond 4 hours.

(3) **Motion to Terminate or Limit.**

(A) **Grounds.** At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. Within 10 days thereafter, the deponent or party must file the a motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

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(back to workgroup) If the person who limits or terminates the deposition fails to file a timely motion, any other party may move to compel the continuation of the deposition and seek sanctions under Rule 65.

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(B) **Order.** The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 51(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) **Award of Expenses.** Rule 65(a)(5) applies to the award of expenses.

(e) **Review by the Deponent; Changes.**

(1) **Review; Statement of Changes.** If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: When the officer has fully transcribed a deposition or has completed the recording of a deposition taken by audio-visual means only, the officer must notify the deponent that the transcript or recording is available available for review. After receiving such notice, the deponent has 30 days in which: **[JWR Note:** Note that current Family Law Rule 57(E) departed from the former Civil Rule 30(e). Under the civil rule (like the federal rule), notice was sent only if requested by the deponent at the end of the deposition. The family law rule flipped that,

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making notice mandatory. (That used to be the federal rule until it was changed.) I revised the draft rule to incorporate the current rule’s requirement that the officer must always notify the deponent. I did not, however, retain the requirement of signature, which also was deleted in the old federal rule in 1993 because court reporters often had a hard time getting the deponents to sign the transcript.]

- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign and deliver to the certified reporter **officer** a statement listing the changes and the reasons for making them.

- (2) ***Certified Reporter’s Officer’s Certificate to Attach Changes.*** The officer must note in the certificate prescribed by Rule 57(f)(1) whether the officer received a statement of changes from the deponent and, if so, the officer must attach any changes the deponent made during the 30-day period. [\[Note: what if the trial or hearing is less than 30 days after the deposition?\]](#)

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(f) Officer’s Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording; Filing.

- (1) ***Certification and Delivery.*** The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent’s testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked “Deposition of [witness’s name]” and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

- (A) ***Originals and Copies.*** Documents and tangible things produced for inspection during a deposition must, on a party’s request, be marked for identification and attached to the deposition—and any party may inspect and copy them—but if the person who produced them wants to keep the originals, the person may:
 - (i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) *Copies of the Transcript or Recording.* Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. [**JWR Note:** Note that Family Law Rule 30(F)(3) requires that the record may not be kept outside Arizona. That is not part of the old Civil Rule 30(f). No idea why that provision was added and I don't recommend including it here.] Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) **Failure to Attend a Deposition or Serve a Subpoena; Expenses.** A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service. [[Consider merging this with Rule 65\(f\) and the failure of a party to attend his or her deposition.](#)] (will go back to workgroup)

COMMITTEE COMMENT

This rule is based upon Rule 30, Arizona Rules of Civil Procedure.

Committee Comment

1991 Amendment to [Civil] Rule 30(a)

Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without

agreement or leave of court. Any other depositions must be taken either by agreement of the parties, on motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).

Rule 57. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

- (1) ***Depositions Permitted.*** A party may depose: (A) any party; (B) any party's current spouse; and (C) any person disclosed as an expert witness under Rule 49(h). A party also may depose any document custodian to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.
- (2) ***Depositions Earlier Than 30 Days After Serving the Summons and Petition.*** A party must obtain leave of court to take a deposition earlier than 30 days after serving the summons and petition on any other party unless: (A) unless otherwise agreed in writing; or (B) a party certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period.
- (3) ***Incarcerated Deponents.*** Subject to Rule 57(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.
- (4) ***Attendance of a Party.*** A party's attendance at a deposition is required without service of a subpoena.
- (5) ***Compelling Attendance of Non-Party Deponent.*** A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 52.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

- (1) ***Notice Generally.*** Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.
- (2) ***Producing Materials.*** If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a

deponent who is a party to the action may be accompanied by a separate request under Rule 62 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 62 apply to any such request.

(3) *Method of Recording.*

(A) *Permitted Methods.* Unless all parties agree or the court orders otherwise, testimony under oath or affirmation must be recorded by a certified reporter and may in addition be recorded by audio or audiovisual means.

(B) *Notice of Method of Recording.* With at least two days written notice to the deponent and other parties, any party may designate another method for recording the testimony in addition to a certified reporter. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(C) *Transcription.* Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) *By Remote Means.* The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 55(a), 65(a)(2), 62(b)(3)(B), and 62(e), the deposition takes place where the deponent answers the questions, but an Arizona certified court reporter may record the testimony in Arizona. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

(5) *Notice or Subpoena Directed to an Entity.* In a deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This subpart does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel. ~~Written Questions.~~

- (1) *Examination and Cross-Examination.*** The examination and cross-examination of a deponent **must** proceed as they would at trial under the Arizona Rules of Evidence including Rule 615. Parties may not make evidentiary objections, including relevance objections. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without ~~it's~~ the **party's** presence. After putting the deponent under oath or affirmation, ~~the officer~~ **certified court reporter** personally—or a person acting in the presence and under the direction of the officer—must record the testimony by the method(s) designated under Rule 57(b)(3).
- (2) *Objections.*** ~~The officer~~ **A certified court reporter** must note on the record any objection made during the deposition—whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 57(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.
- (3) *Conferences Between Deponent and Counsel.*** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(d) Duration; Sanctions; Motion to Terminate or Limit.

- (1) *Duration.*** **Unless the parties agree or the court orders otherwise, a deposition should be of reasonable length, is presumptively limited to 4 hours unless the parties agree otherwise, and must be completed in a single day.** An unreasonable refusal to extend deposition time may result in sanctions.
- (2) *Sanctions.*** The court may impose appropriate sanctions—including any order under Rule 65—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, or who without good cause terminates or limits a deposition.

(3) Motion to Terminate or Limit.

- (A) *Grounds.* At any time during a deposition, the deponent or a party terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. Within 10 days thereafter, the deponent or party must file a motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order. If the person who limits or terminates the deposition fails to file a timely motion, any other party may move to compel the continuation of the deposition and seek sanctions under Rule 65.
- (B) *Order.* The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 51(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.
- (C) *Award of Expenses.* Rule 65(a)(5) applies to the award of expenses.

(e) Review by the Deponent; Changes.

- (1) *Review; Statement of Changes.* If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which: ~~When the officer has fully transcribed a deposition or has completed the recording of a deposition taken by audio-visual means only, the officer must notify the deponent that the transcript or recording is available for review. After receiving such notice, the deponent has 30 days in which:~~ **[JWR Note:** Note that current Family Law Rule 57(E) departed from the former Civil Rule 30(e). Under the civil rule (like the federal rule), notice was sent only if requested by the deponent at the end of the deposition. The family law rule flipped that, making notice mandatory. (That used to be the federal rule until it was changed.) I revised the draft rule to incorporate the current rule's requirement that the officer must always notify the deponent. I did not, however, retain the requirement of signature, which also was deleted in the old federal rule in 1993 because court reporters often had a hard time getting the deponents to sign the transcript.]
- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign and deliver to the certified reporter **officer** a statement listing the changes and the reasons for making them.

- (2) ***Certified Reporter's Officer's Certificate to Attach Changes.*** The officer must note in the certificate prescribed by Rule 57(f)(1) whether the officer received a statement of changes from the deponent and, if so, the officer must attach any changes the deponent made during the 30-day period. [**Note:** what if the trial or hearing is less than 30 days after the deposition?]

(f) Officer's Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording; Filing.

- (1) ***Certification and Delivery.*** The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) ***Documents and Tangible Things.***

- (A) ***Originals and Copies.*** Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition—and any party may inspect and copy them—but if the person who produced them wants to keep the originals, the person may:

- (i) offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or
- (ii) give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

- (B) ***Order Regarding the Originals.*** On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

- (3) ***Copies of the Transcript or Recording.*** Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. [**JWR Note:** Note that Family Law Rule 30(F)(3) requires that the record may not be kept outside Arizona. That is not part of the old Civil Rule 30(f). No idea why that provision was added and I don't recommend including it

here.] Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

- (1) attend and proceed with the deposition; or
- (2) serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service. [Consider merging this with Rule 65(f) and the failure of a party to attend his or her deposition.] (will go back to workgroup)

COMMITTEE COMMENT

This rule is based upon Rule 30, Arizona Rules of Civil Procedure.

Committee Comment

1991 Amendment to [Civil] Rule 30(a)

Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without agreement or leave of court. Any other depositions must be taken either by agreement of the parties, on motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).

Rule 60. Interrogatories to Parties

(a) Generally.

- (1) **Definition.** Interrogatories are written questions served by a party on another party, and answered in writing and under oath.
- (2) **Number.** ~~Unless in connection with any petition, unless~~ the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories, ~~including all discrete subparts.~~ A uniform interrogatory and its subparts count as one interrogatory. Any ~~discrete~~ subpart to a non-uniform interrogatory is considered a separate interrogatory. [WG note: add spousal maintenance to uniform interrog. WG will propose changes to the nature and number of uniform interrog in Form 7.]
 - (A) **Stipulations.** If a party believes good cause exists for the service of more than 40 interrogatories, that party must consult with the party upon whom the additional interrogatories would be served and request a written stipulation regarding the number of additional interrogatories.
 - (B) **By Motion and Court Order.** If a party cannot obtain a stipulation permitting the service of additional interrogatories, the party may serve additional interrogatories only if a court grants a party's motion to do so. The party requesting additional interrogatories must show that:
 - (i) the issues presented warrant the service of additional interrogatories;
 - (ii) requiring the responding party to answer additional interrogatories is a more practical or less burdensome method of obtaining the information sought than by other alternatives; or
 - (iii) other good cause exists for serving additional interrogatories.
 - (C) **Accompanying the Motion.** ~~A The judge's copy of the motion, and the copy served on the other parties, [JWR Note: I wouldn't limit this to the judge's copy. Such a requirement won't make sense with electronic filing because a paper copy won't be separately served to the court anymore. Additionally, the proposed discovery really ought to be part of the record in case the losing party wants to file a special action] A motion~~ for additional interrogatories must be accompanied by a copy of the proposed additional interrogatories and by a good faith consultation certificate certification of counsel required in by Rule 65(A)(2)(e)***. [JWR Note: Perhaps replace this with the good faith consultation certificate. We have done that elsewhere, and the rule referenced here seems to apply only to motions.]

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(3) **Scope.** An interrogatory may ask about any matter allowed under Rule 51(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts, but the court may, on motion, order that such a contention interrogatory need not be answered until a later time.

(4) **Uniform Interrogatories.** Rule 97, Form 7, contains uniform interrogatories that a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. The use of uniform interrogatories is not mandatory ~~and should serve as a guide only. They are not to be used as a standard set of interrogatories for submission in all cases.~~ A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by requesting a response only as to particular persons, events, or issues—without converting it into a nonuniform interrogatory.

~~(5) **Form.** The party serving interrogatories must leave sufficient space for the answer immediately below each question. The answering party must insert the answer in the space below each interrogatory, or if it requires more space, on a separate sheet which restates the question before giving the answer. [JWR Note: Consider deleting this provision—it is archaic. It comes from a time before photocopying, when the answering party would literally type in the answer in the blank space.]~~

~~(6)~~(5) **Service.**

(A) **Nonuniform Interrogatories.** A party propounding nonuniform interrogatories ~~must serve an original and one copy on the party to whom they are directed, and~~ must serve a copy on every ~~other~~ party who has appeared in the action. [JWR Note: Again, consider just requiring service on the party to whom they are directed and all other parties who have appeared in the action. The two set requirement comes from the time when parties typed in the answers in the copy that was sent to them. The second copy was for answering party's records (they would type in the answers there too).]

(B) **Uniform Interrogatories.** A party propounding uniform interrogatories must serve a Notice of Service of Uniform Interrogatories containing the names of the party and attorney to whom the requests are made, and each uniform interrogatory for which the propounding party requests an answer. The propounding party also must serve the notice on every other party.

(C) *No Filing with the Court.* The propounding party must not file nonuniform interrogatories or a notice of service of uniform interrogatories.

(b) Answers and Objections.

- (1) **Time to Respond.** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within ~~30~~40 days after being served with the interrogatories. But a ~~defendant~~respondent may serve its answers and any objections within 60 days after service—or execution of an ~~waiver~~waiver acceptance of service—of the summons and ~~complaint~~petition. ~~on that defendant.~~
- (2) **Answers Under Oath.** Subject to Rule 60(b)(3), an answering party must answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party ~~—including a public or private entity—~~must furnish the information available to it. ~~[JWR Note: Will public or private entities ever be a party in a family law matter? Perhaps the State?]~~It must also reproduce the text of an interrogatory immediately above its answer to that interrogatory.
- (3) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.
- (4) **Signature.** The party who answers the interrogatories must sign them under oath. ~~If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath.~~An attorney who objects to any interrogatories must sign the objections.
- (5) **Service.** The answering party must serve the original answers, with any objections, on the propounding party, and must serve a copy on every other party who has appeared in the action. The answering party must not file interrogatory answers with the court.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) **Option to Produce Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business, medical, therapeutic, psychological, psychiatric, employment, income tax, or education records (including electronically stored information), and if the burden of determining the answer will be substantially the same for either party, the responding party may answer by:

- (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
- (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Rule 60. Interrogatories to Parties

(a) Generally.

- (1) **Definition.** Interrogatories are written questions served by a party on another party, **and answered in writing and under oath.**
- (2) **Number.** In connection with any petition, unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories. A uniform interrogatory and its subparts count as one interrogatory. Any subpart to a non-uniform interrogatory is considered a separate interrogatory. [WG note: add spousal maintenance to uniform interrog. WG will propose changes to the nature and number of uniform interrog in Form 7.]
 - (A) **Stipulations.** If a party believes good cause exists for the service of more than 40 interrogatories, that party must consult with the party upon whom the additional interrogatories would be served and request a written stipulation regarding the number of additional interrogatories.
 - (B) **By Motion and Court Order.** If a party cannot obtain a stipulation permitting the service of additional interrogatories, the party may serve additional interrogatories only if a court grants a party's motion to do so. The party requesting additional interrogatories must show that:
 - (i) the issues presented warrant the service of additional interrogatories;
 - (ii) requiring the responding party to answer additional interrogatories is a more practical or less burdensome method of obtaining the information sought than by other alternatives; or
 - (iii) other good cause exists for serving additional interrogatories.
 - (C) **Accompanying the Motion.** ~~judge's copy of the motion, and the copy served on the other parties,~~ A motion for additional interrogatories must be accompanied by a copy of the proposed additional interrogatories and by a good faith consultation certificate required by Rule ***.
- (3) **Scope.** An interrogatory may ask about any matter allowed under Rule 51(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts, but the court may, on motion, order that such a contention interrogatory need not be answered until a later time.

(4) **Uniform Interrogatories.** Rule 97, Form 7, contains uniform interrogatories that a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. The use of uniform interrogatories is not mandatory. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by requesting a response only as to particular persons, events, or issues—without converting it into a nonuniform interrogatory.

(5) **Service.**

(A) **Nonuniform Interrogatories.** A party propounding nonuniform interrogatories must serve a copy on every party who has appeared in the action. [**JWR**

Note: Again, consider just requiring service on the party to whom they are directed and all other parties who have appeared in the action. The two set requirement comes from the time when parties typed in the answers in the copy that was sent to them. The second copy was for answering party's records (they would type in the answers there too).]

(B) **Uniform Interrogatories.** A party propounding uniform interrogatories must serve a Notice of Service of Uniform Interrogatories containing the names of the party and attorney to whom the requests are made, and each uniform interrogatory for which the propounding party requests an answer. The propounding party also must serve the notice on every other party.

(C) **No Filing with the Court.** The propounding party must not file nonuniform interrogatories or a notice of service of uniform interrogatories.

(b) **Answers and Objections.**

(1) **Time to Respond.** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 40 days after being served with the interrogatories. But a respondent may serve its answers and any objections within 60 days after service—or execution of a waiver acceptance of service—of the summons and petition.

(2) **Answers Under Oath.** Subject to Rule 60(b)(3), an answering party must answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party must furnish the information available to it. It must also reproduce the text of an interrogatory immediately above its answer to that interrogatory.

- (3) **Objections.** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.
- (4) **Signature.** The party who answers the interrogatories must sign them under oath. An attorney who objects to any interrogatories must sign the objections.
- (5) **Service.** The answering party must serve the original answers, with any objections, on the propounding party, and must serve a copy on every other party who has appeared in the action. The answering party must not file interrogatory answers with the court.

(c) **Use.** An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) **Option to Produce Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business, medical, therapeutic, psychological, psychiatric, employment, income tax, or education records (including electronically stored information), and if the burden of determining the answer will be substantially the same for either party, the responding party may answer by:

- (1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and
- (2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Rule 63. Physical, Mental, and Vocational Evaluations of Persons

(a) Examination on Order.

(1) **Generally.** The court where the action is pending may order a party whose physical or mental condition **or ability to work** is in controversy to submit to a physical or mental examination or a vocational evaluation by a physician, psychologist, or designated expert. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

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(2) **Motion and Notice; Contents of the Order.** An order under Rule 35(a)(1):

(A) may be entered only on motion for good cause and on notice to all parties and the person to be examined; **by agreement of the parties, or on the court's own motion.**

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(B) must specify the time, place, manner, conditions, and scope of the examination; and

(C) must specify the person or persons who will perform the examination.

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

(1) **Notice.** When the parties agree that an examination is appropriate but do not agree on the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:

(A) identify the party or person to be examined;

(B) specify the time, place, and scope of the examination; and

(C) identify the examiner(s).

(2) **Motion Objecting to Examiner.** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a physician, ~~or~~ psychologist, or designated expert other than the one specified in the notice.

(3) **Failure to Appear.** Unless the party has filed a motion under Rule 53(a), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may, on motion, make such orders concerning the failure as

are just, including those under Rule ~~37(f)~~ 65(a)(4). ~~[JWR Note: Cross-reference is wrong. It is going to be somewhere in Rule 65.]~~

(c) Attendance of Representative; Recording.

~~(1) *Attendance of Representative Physical or Vocational Exam.* Unless his or her presence it may adversely affect the examination's outcome, the person to be examined at a physical or vocation examination has the rights to have a representative present during the examination; and to make a video or audio recording of the examination.~~

~~(2) *Mental Exam.* The person to be examined at a mental examination may have a representative present during the examination, or may make a video or audio recording of the examination, only if and the examiner all agrees, or if the court orders.~~

~~(2)(3) *Recording.* [JWR Note: The Civil Justice Reform Committee proposes major changes in this rule. The changes make it easier to video record the exam, but a similar proposal was widely objected to back in 2009-10.]~~

~~(A) *Audio Recording.* The person to be examined may audio record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio record any mental examination.~~

~~(B) *Video Recording.* On order for good cause or on agreement of the parties and the person to be examined an examination may be video recorded. Note: WG-3 discussed and decided against including the change to Civil Rule 35 proposed by the Civil Justice Reform Committee regarding recording of examinations.~~

~~(A) *Copy of Recording.* A copy of a recording made of an examination must be provided to any party upon request.~~

~~(C)~~

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

(1) *Contents.* The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(2) *Request by the Party or Person Examined.* The party who is examined—or who produces the person examined—may request the examiner's report, ~~like reports of the same condition,~~ and written or recorded notes from the examination. ~~If~~

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such a request is made, the party who moved for or noticed the examination must, within 20 days of the examination or request—whichever is later—deliver to the requestor copies of:

- (A) the examiner’s report; and
 - (B) ~~like reports of all earlier examinations of the same condition;~~ all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing them with the copies.
- (3) ~~*Request by the Examining Party Disclosure of Other Reports.* After delivering the materials required in (d)(2), the party who moved for or noticed the examination is entitled, on its request, to receive from the party who was examined—or who produced the person examined—~~Absent good cause, the party who is examined must disclose like reports of all other earlier or later examinations of ffor the same condition, except for a vocational exam protected by the work product privilege. ~~But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.~~
- (4) ~~*Waiver of Privilege.* By requesting and obtaining the examiner’s report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony by any other person who has examined or who later examines the same condition.~~An examination conducted under this rule does not constitute a waiver of any privilege that the examined party is otherwise entitled to assert under law.
- (5) ~~*Failure to Deliver a Report as Ordered.* On motion, the court may order—on terms that are just—that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examiner’s testimony at trial.~~
- (6) ~~*Scope.* This Rule 63(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude a party from obtaining an examiner’s report, or deposing an examiner, under other rules.~~

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COMMITTEE COMMENT

This rule is based upon Rule 35, Arizona Rules of Civil Procedure.

Rule 63. Physical, Mental, and Vocational Evaluations of Persons

(a) Examination on Order.

- (1) **Generally.** The court where the action is pending may order a party whose physical or mental condition **or ability to work** is in controversy to submit to a physical or mental examination or a vocational evaluation by a physician, psychologist, or designated expert. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.
- (2) **Motion and Notice; Contents of the Order.** An order under Rule 35(a)(1):
 - (A) may be entered only on motion for good cause and on notice to all parties and the person to be examined; **by agreement of the parties, or on the court's own motion.**
 - (B) must specify the time, place, manner, conditions, and scope of the examination; and
 - (C) must specify the person or persons who will perform the examination.

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

- (1) **Notice.** When the parties agree that an examination is appropriate but do not agree on the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:
 - (A) identify the party or person to be examined;
 - (B) specify the time, place, and scope of the examination; and
 - (C) identify the examiner(s).
- (2) **Motion Objecting to Examiner.** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a physician, psychologist, or designated expert other than the one specified in the notice.
- (3) **Failure to Appear.** Unless the party has filed a motion under Rule 53(a), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may, on motion, make such orders concerning the failure as are just, including those under Rule 65(a)(4).

(c) Attendance of Representative; Recording.

- (1) **Physical or Vocational Exam.** Unless it may adversely affect the examination's outcome, the person to be examined at a physical or vocation examination has the right to have a representative present during the examination and to make a video or audio recording of the examination.
- (2) **Mental Exam.** The person to be examined at a mental examination may have a representative present during the examination, or may make a video or audio recording of the examination, only if **the examiner all agrees, or if the court orders.**
- ~~(3) **Recording.** [**JWR Note:** The Civil Justice Reform Committee proposes major changes in this rule. The changes make it easier to video record the exam, but a similar proposal was widely objected to back in 2009-10.]~~
 - ~~(A) **Audio Recording.** The person to be examined may audio record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio record any mental examination.~~
 - ~~(B) **Video Recording.** On order for good cause—or on agreement of the parties and the person to be examined—an examination may be video recorded.~~

Note: WG-3 discussed and decided against including the change to Civil Rule 35 proposed by the Civil Justice Reform Committee regarding recording of examinations.
- (A) **Copy of Recording.** A copy of a recording made of an examination must be provided to any party upon request.

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

- (1) **Contents.** The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.
- (2) **Request by the Party or Person Examined.** The party who is examined—or who produces the person examined—may request the examiner's report, and written or recorded notes from the examination. If such a request is made, the party who moved for or noticed the examination must, within 20 days of the examination or request—whichever is later—deliver to the requestor copies of:
 - (A) the examiner's report; and

(B) all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing them with the copies.

(3) **Disclosure of Other Reports.** Absent good cause, the party who is examined must disclose reports of all other examinations for the same condition, except for a vocational exam protected by the work product privilege.

(4) **Waiver of Privilege.** An examination conducted under this rule does not constitute a waiver of any privilege that the examined party is otherwise entitled to assert under law.

COMMITTEE COMMENT

This rule is based upon Rule 35, Arizona Rules of Civil Procedure.

Rule 64. Requests for Admission

(a) Scope and Procedure.

- (1) **Scope.** A party may serve on any other party a written request to admit, ~~for purposes of the pending action only,~~ the truth of any matters within the scope of Rule 51(b) relating to:
 - (A) facts, the application of law to fact, or opinions about either; and
 - (B) the genuineness of any described documents.
- (2) **Form; Copy of a Document.** Each ~~matter-request~~ must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document, ~~unless it is, or has been, otherwise furnished or made available for inspection and copying.~~
- (3) **Number.** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.
- (4) **Time to Respond; Effect of Not Responding.** A matter is ~~deemed~~ admitted unless, ~~timely denied or objected to.~~ The responding party must serve his or her response within 30 ⁴⁰ days after being served service, or within 40 days after being served with the request, or within 60 days after service of the summons and petition upon the respondent or execution of an acceptance of service by that respondent. ~~the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and A response must be signed by the party or the party's attorney. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of a summons and petition on that defendant. The parties may agree to, or the court may order, a shorter or longer time for responding may be agreed to by the parties or ordered by the court.~~
- (5) **AnswerResponse.** If a ~~matter-request~~ is not admitted, the ~~answer-response~~ must specifically deny it or state in detail why the ~~answering-responding~~ party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the ~~matter-request~~; and when good faith requires that a party qualify ~~an answer-a response~~ or deny only part of a ~~matter-request~~, the ~~answer response~~ must specify the part admitted and qualify or deny the rest. The ~~answering-responding~~ party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that ~~he or she~~ ~~it~~ has made reasonable inquiry and that the information ~~it~~ ~~he or she~~ knows or can readily obtain is insufficient to enable ~~it~~ an admission or denial. ~~to admit or deny.~~

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(6) **Objections.** ~~Th~~A party must state grounds for objecting to a request ~~must be stated.~~ A party may not object solely on the ground that the request presents a genuine issue for trial.

(7) **Motion Regarding the Sufficiency of ~~an Answer~~ a Response or Objection.** The requesting party may move to determine the sufficiency of ~~an answer~~ a response or objection. ~~Unless the court finds an objection justified, it must order that an answer be served. If the court finds that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 65(e) applies to an award of expenses.~~

(b) **Effect of an Admission; ~~Withdrawing or Amending It.~~** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. ~~The court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.~~ Subject to Rule 16, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding. ~~(send back to workgroup)~~

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COMMITTEE COMMENT

This rule is based upon Rule 36, Arizona Rules of Civil Procedure.

Rule 64. Requests for Admission

(a) Scope and Procedure.

- (1) **Scope.** A party may serve on any other party a written request to admit the truth of any matters within the scope of Rule 51(b) relating to:
 - (A) facts, the application of law to fact, or opinions about either; and
 - (B) the genuineness of any described documents.
- (2) **Form; Copy of a Document.** Each request must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document.
- (3) **Number.** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.
- (4) **Time to Respond; Effect of Not Responding.** A matter is deemed admitted unless timely denied or objected to. The responding party must serve his or her response within ~~30~~ 40 days after service, or within 40 days after being served with the request, or within 60 days after service of the summons and petition upon the respondent or execution of an acceptance of service by that respondent. A response must be signed by the party or the party's attorney. The parties may agree to, or the court may order, a shorter or longer time for responding.
- (5) **Response.** If a request is not admitted, the response must specifically deny it or state in detail why the responding party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the request; and when good faith requires that a party qualify a response or deny only part of a request, the response must specify the part admitted and qualify or deny the rest. The responding party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that he or she has made reasonable inquiry and that the information he or she knows or can readily obtain is insufficient to enable an admission or denial.
- (6) **Objections.** A party must state grounds for objecting to a request. A party may not object solely on the ground that the request presents a genuine issue for trial.
- (7) **Motion Regarding the Sufficiency of a Response or Objection.** The requesting party may move to determine the sufficiency of a response or objection.

(b) **Effect of an Admission.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16, the court may permit withdrawal or amendment if it

would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

COMMITTEE COMMENT

This rule is based upon Rule 36, Arizona Rules of Civil Procedure.

Rule 73. Family Law Conference Officer

(a) Generally.

- (1) **Appointment.** The presiding judge or the judge’s designee may appoint a conference officer to conduct conferences, ~~make recommendations, and obtain~~ facilitate agreements ~~in family law cases that establish, enforce, or modify concerning the establishment, enforcement, and modification of~~ child support, ~~enforce~~ legal decision-making, or parenting time, ~~and that~~ affirm or divide property, or determine and allocate responsibility for debts.
- (2) **Neutral.** The conference officer is a neutral employee of the court and does not represent or advocate for either party.
- (3) **Qualifications.** The superior court must establish and file written qualifications for the position of conference officer. At a minimum, a conference officer must have a bachelor’s degree and must abide by the Code of ~~Judicial Conduct for~~ Judicial Employees. A conference officer also must attend have completed 40 hours of basic mediation training, or must complete that training within 6 months of appointment.
- (4) **Applicability.** A county is not required to use conference officers, but this rule applies if a county elects to use them. ~~[Note: This is currently Rule 73(G).]~~

- (b) **Powers and Duties Report.** ~~After the conference concludes, the conference officer must prepare a report to the court listing the parties’ agreements or disagreements on the following issues: legal decision-making, parenting time, child support, spousal maintenance, property division, debt allocation, and attorney’s fees. The conference officer’s report must not contain his or her recommendations concerning these issues.~~
 - (1) ~~**Establishment, Enforcement or Modification of Support.** If the establishment, enforcement, or modification of child support is at issue, the conference officer must submit to the assigned judge either:
 - (A) a written agreement signed by all parties; or
 - (B) a report and recommendation that includes an assessment of circumstances concerning payment of support.~~
 - (2) ~~**Enforcement of Legal Decision-Making or Parenting Time.** If legal decision-making or parenting time is at issue, the conference officer may submit a written agreement signed by all parties, or recommend any or all of the following to the assigned judge:
 - (A) entering an order based on the parties’ agreement;~~

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- ~~(B) setting the case for an evidentiary hearing;~~
- ~~(C) ordering specific relief;~~
- ~~(D) scheduling the case for a review hearing;~~
- ~~(E) referring the matter to case supervision, which may include counseling, substance abuse testing and monitoring, supervised parenting time or supervised exchange of children, or other appropriate programs;~~
- ~~(F) appointing a volunteer who is approved by all parties to supervise parenting time;~~
- ~~(G) referring the matter to a local social service agency to exercise continuing supervision of custody or parenting time terms, pending an evidentiary hearing; or~~
- ~~(H) ordering any other relief as appropriate, such as parent education.~~

~~(3) **Voluntary Paternity.** If the parties agree regarding paternity, the conference officer must prepare an agreement or acknowledgement of paternity and, if appropriate, a paternity order, and submit the documents to a judicial officer [**JWR Note:** Wouldn't this be the assigned judge?], who is authorized to sign and enter the paternity order.~~

~~(4) **Division of Property and Debt.** If the parties agree on the designation of property interests as sole and separate or community property, the division of those property interests, or the appropriate designation and allocation of separate or community debts, the conference officer may submit to an appropriate judicial officer [**JWR Note:** Wouldn't this be the assigned judge?] a written agreement signed by all parties and an appropriate decree, judgment, or order that contains the parties' agreements.~~

(c) Procedures,

~~(1) **Conducting a Conference.** The conference officer should conduct the proceedings in an informal manner, but must give the parties an full opportunity to present their positions. The conference officer also ~~may administer an oath to the parties, and~~ may record the proceedings by audiotape or by a court ~~reporter's reporter. transcription.~~ A party ~~who is~~ represented by an attorney has the right to have the attorney present at the conference.~~

~~(2) **Witnesses.** If a party requests to present witness testimony at a conference, the conference officer may either allow the testimony or refer the matter to the assigned judge for a hearing.~~

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~~(3) **Documents.** When documents are presented at a conference, the conference officer must review them and then place them in the court's nonpublic working file. The documents must be kept in the file until the time for objections has expired. These documents will not be marked as exhibits and will not be part of the court's file. In the event of an objection, the documents will be provided to the court upon request. [Note: The last three sentences of this paragraph seem to lack coherence.]~~

~~(4)(2) **Agreements.** If the parties agree on issues raised during the conference, the conference officer may prepare a stipulation, consent decree, consent judgment, written agreement, or order for signature by the parties or their attorneys. If the parties are unable to agree on all issues, the conference officer may assist the parties in preparing a partial agreement and any documents necessary to effectuate that agreement. The conference officer must forward these documents to the assigned judge for approval and signature.~~

~~(5) **Recommendation of Conference Officer.**~~

~~(A) **Generally.** The conference officer may recommend a disposition to the assigned judge. The officer also may recommend that the judge hold an evidentiary hearing and, if authorized to do so, the officer may schedule and notify the parties of the hearing date.~~

~~(B) **Notice.** The conference officer must advise the parties of their right to object to any the conference officer's recommendations and to request a hearing before a judge concerning the objection.~~

~~(C) **Other Disposition.** The conference officer may continue the conference for good cause, or decline to proceed due to the complexity of issues and refer the matter to the assigned judge for further action.~~

~~(6) **Actions by a Judge.** After receiving an agreement, consent decree, judgment, order, or a report and recommendation of a conference officer, an assigned judge may make findings of fact and conclusions of law, and also may:~~

~~(A) enter an order of paternity, consent decree, consent judgment, or order approving agreements of the parties;~~

~~(B) approve the conference officer's recommendation and adopt it as an interim order of the court; [JWR Note: I incorporated the objection provisions and deadlines into (7)]~~

~~(C) modify the conference officer's recommendation and adopt the modified recommendation as an interim order of the court;~~

~~(D) reject the recommendation completely or in part and affirm the current order;
or~~

~~(E) set a hearing on the judge's calendar.~~

~~(7) **Objection to Recommendation, Interim Order, or Affirmation of Existing Order.**~~

~~(A) **Right to Object; Timing.** A party may file an objection to a conference officer's recommendation or the court's order regarding a conference officer's recommendation, but must do so no later than 25 days after the recommendation is submitted to the court or the order is filed. **[JWR Note: The rule is really confusing. The title and the previous section (6) refers to a party's objection to the court's order but the text of this rule and (5) refers to objections to the recommendations. The Task Force really needs to settle this, but, for now, I've revised the rule to apply to either the recommendation or the resulting order. Making this change also renders unnecessary the provisions of the parties' right to object in (6).]**~~

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~~(B) **Content.** A party who objects must clearly state the objection to the recommendation or order, the basis for the objection, a proposed solution, and whether the party requests a hearing on the objection.~~

~~(C) **Service and Delivery.** The party must serve the objection on the other parties, and provide copies to the assigned judge, the conference officer, and in IV-D cases, the Attorney General's office.~~

~~(D)(3) **Ruling and Hearing.** The assigned judge must review the objection and hold a hearing if requested.~~

~~(8) **Sanctions.** The court may assess sanctions against a party who objects to a recommendation or order, or requests a hearing, if the judge finds that the objection or request was made:~~

~~(A) without a reasonable belief in the merit of the objection or request;~~

~~(B) for the purpose of delay; or~~

~~(C) without other good cause.~~

~~(9) **Non-Appearance.** If a party on whom an Order to Appear is served does not appear at a scheduled hearing or conference, the court may issue a civil arrest warrant or a child support arrest warrant, or it may enter a default judgment.~~

~~(10) **Appeal Time.** The appeal time begins when the interim order becomes a final, appealable order after the objection period if there has been no objection; or, if~~

~~there has been an objection, following the court's ruling on the objection when it enters a final, appealable order. [Note: Is this subpart necessary in Rule 73?]~~

~~(11)(4) **Exceptions.** A conference officer may not conduct a proceeding for which a hearing is required by statute, including a denial of parenting time, license suspension, UCCJEA, or custody establishment or modifications, unless the hearing is waived.~~

~~(d) **Failure to Comply with an Order to Bring Information.** If ~~a party~~a party does not appear and participate, or provide information at the conference as ordered, the conference officer may: vacate the conference and report the failure to the court.~~

~~(1) — make a recommendation to the assigned judge [**JWR Note:** Throughout the rest of the rule the reference is to “assigned judge” and not “court”] to hold the party in contempt until the party either produces the information or persuades the judge that production of the information is not within the party's power;~~

~~(2) — proceed with the conference and make a recommendation to the assigned judge based on information presented at the conference; or,~~

~~(3) — make a recommendation to the assigned judge to impose other sanctions.~~

~~(e) **Immunity.** A conference officer has immunity in accordance with Arizona law regarding all acts taken under and consistent with this rule and court orders.~~

COMMITTEE COMMENT

This rule is based on former Rule 53(k), Arizona Rules of Civil Procedure, an experimental rule that was abrogated simultaneously with the effective date of these rules.

Rule 73. Family Law Conference Officer

(a) Generally.

- (1) *Appointment.*** The presiding judge or the judge's designee may appoint a conference officer to conduct conferences and facilitate agreements concerning the establishment, enforcement, and modification of child support, legal decision-making, or parenting time, and that affirm or divide property, or determine and allocate responsibility for debts.
- (2) *Neutral.*** The conference officer is a neutral employee of the court and does not represent or advocate for either party.
- (3) *Qualifications.*** The superior court must establish and file written qualifications for the position of conference officer. At a minimum, a conference officer must have a bachelor's degree and must abide by the Code of Conduct for Judicial Employees. **A conference officer also must have completed 40 hours of basic mediation training, or must complete that training within 6 months of appointment.**
- (4) *Applicability.*** A county is not required to use conference officers, but this rule applies if a county elects to use them.

(b) Report. After the conference concludes, the conference officer must prepare a report to the court listing the parties' agreements or disagreements on the following issues: legal decision-making, parenting time, child support, spousal maintenance, property division, debt allocation, and attorney's fees. The conference officer's report must not contain his or her recommendations concerning these issues.

(c) Procedures.

- (1) *Conducting a Conference.*** The conference officer should conduct the proceedings in an informal manner, but must give the parties an opportunity to present their positions. The conference officer also may record the proceedings by audiotape or by a court reporter. A party represented by an attorney has the right to have the attorney present at the conference.
- (2) *Agreements.*** If the parties agree on issues raised during the conference, the conference officer may prepare a stipulation, consent decree, consent judgment, written agreement, or order for signature by the parties or their attorneys. If the parties are unable to agree on all issues, the conference officer may assist the parties in preparing a partial agreement and any documents necessary to effectuate that agreement. The conference officer must forward these documents to the assigned judge for approval and signature.

(3) *Objection to Recommendation, Interim Order, or Affirmation of Existing*

(4) *Exceptions.* A conference officer may not conduct a proceeding for which a hearing is required by statute, including a denial of parenting time, license suspension, UCCJEA, or custody establishment or modifications, unless the hearing is waived.

(d) *Failure to Comply with an Order to Bring Information.* If a party does not appear and participate, or provide information at the conference as ordered, the conference officer may vacate the conference and report the failure to the court.

Rule 76.1. Pretrial Statement; ~~Scheduling Pretrial~~Conference; ~~Scheduling Conference Statement~~

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

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(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. The ~~petitioner party who initiated the action set for hearing~~ must ~~initiate take the lead to the~~ preparation of a draft joint statement, and must communicate with every other party concerning the ~~draft statement~~. Every ~~pretrial~~ statement must be signed by each party or counsel.

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

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~~(1) If the statement is filed for purposes of a scheduling conference:~~

~~(A) a brief description of the nature of the action;~~

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

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

~~(D) the anticipated length of trial;~~

~~(E) the parties' stipulations or agreements;~~

~~(F) a statement of uncontested facts or law;~~

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

~~(H) a position on each contested issue;~~

~~(9) a list of witnesses each party intends expects 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 may 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 providing the status of pretrial discovery and disclosure, existing discovery disputes, discovery and disclosure that each party believes must be pursued before trial, and a proposed schedule for remaining 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;~~

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~~(K14)~~ a statement as to the parties positions regarding processes to facilitate settlement applicable to the case and the estimated timing for mediation, if that is expected to occur whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement; and

~~(L15)~~ if any request for attorney's fees will be made for purposes of trial, and

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

(2) If the statement is filed for purposes of trial:

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

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

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

(D) the parties' stipulations or agreements;

(E) a statement of uncontested facts or law;

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

(G) a position on each contested issue;

(H) If spousal maintenance is at issue, the amount and duration of support sought;

(I) If parenting time is at issue, the schedule of parenting time, including for holidays and vacations, each party maintains is in the best interest of the child;

(J) a list of witnesses each party intends to call testify duringat the trial;

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

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

(M) 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;

(N) 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;

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

(P) any request for attorney's fees; and

(Q) 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.~~

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

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(1) ~~If child support, spousal maintenance or attorneys' fees are at issue:~~

~~(A) if the statement is submitted prior to a scheduling conference, a summary statement of income and expenses substantially in the form set forth in Rule 97, Form X ("Simplified Affidavit of Financial Information") or in such other form permitted by local Rule;~~

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~~(B) if the statement is submitted prior to trial,~~ 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 child support is at issue, 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;

~~(B) listing,~~ and the separate property and debts of each party;

~~(C) listing any equitable lien claims regarding any separate property;~~

(B) including for each property ~~the date of acquisition,~~ the title by which ~~the parties hold~~ the property ~~is held,~~ the amount of encumbrances, and each party's ~~evaluation position regarding 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 ~~submitted before the scheduling conference or trial,~~ 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, ~~or claim~~ is not raised in the ~~pretrial~~ statement ~~submitted pursuant to subsection (c)(2) of this rule.~~

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~~(g) Failure to Prepare or Participate. (1) If there has been a failure by either or both counsel, or the parties if not represented by counsel, to meet and prepare a required 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 scheduling conference pretrial hearing, or 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.]~~

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~~(hg) Pretrial Scheduling Conference.~~ The court may on its own, and on request of a party must, ~~schedule conduct or hold?~~ a ~~pretrial scheduling~~ conference to formulate a plan for trial, including

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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.

Rule 76.1. Pretrial Statement; Scheduling Conference; Scheduling Conference Statement

- (a) Timing.** Unless the court orders otherwise, the parties must file a scheduling conference statement 20 days before the date set for a scheduling conference, if one is set, and a pretrial conference statement 20 days before a trial.
- (b) Joint and Separate Statements.** Unless the court orders otherwise, the parties may file joint or separate statements. However, if the parties are unrepresented and domestic violence between them is alleged, the parties must file separate statements. The party who initiated the action set for hearing must take the lead to prepare a draft joint statement, and must communicate with every other party concerning the statement. Every statement must be signed by each party or counsel.
- (c) Contents.** The parties may use the form of statement provided in Rule 97, Form 16. Each statement must include the following:
- (1)** If the statement is filed for purposes of a scheduling conference:
 - (A)** a brief description of the nature of the action;
 - (B)** each party's name and address, if not confidential;
 - (C)** the name and date of birth of each minor child;
 - (D)** the anticipated length of trial;
 - (E)** the parties' stipulations or agreements;
 - (F)** a statement of uncontested facts or law;
 - (G)** detailed and concise statements of contested issues of fact and law;
 - (H)** a list of witnesses each party expects to call testify during the trial;
 - (I)** a list of the exhibits that each party may use at trial;
 - (J)** a statement by each party providing the status of pretrial discovery and disclosure, existing discovery disputes, discovery and disclosure that each party believes must be pursued before trial, and a proposed schedule for remaining discovery and disclosure;
 - (K)** a statement as to the parties' positions regarding processes to facilitate settlement applicable to the case and the estimated timing for mediation, if that is expected to occur; and
 - (L)** if a request for attorney's fees will be made for purposes of trial.

- (2) If the statement is filed for purposes of trial:
- (A) a brief description of the nature of the action;
 - (B) each party's name and address, if not confidential;
 - (C) the name and date of birth of each minor child;
 - (D) the parties' stipulations or agreements;
 - (E) a statement of uncontested facts or law;
 - (F) detailed and concise statements of contested issues of fact and law;
 - (G) a position on each contested issue;
 - (H) If spousal maintenance is at issue, the amount and duration of support sought;
 - (I) If parenting time is at issue, the schedule of parenting time, including for holidays and vacations, each party maintains is in the best interest of the child;
 - (J) a list of witnesses each party intends to call at the trial;
 - (K) designation of deposition testimony under Rule 59(c)(2);
 - (L) each party's list of objections to any witness, and the basis for each objection;
 - (M) 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;
 - (N) 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;
 - (O) a statement as to whether the parties have in good faith discussed settlement, and if not, the reasons for not discussing settlement;
 - (P) any request for attorney's fees; and
 - (Q) a statement about how a verbatim record of the trial will be made.

(d) Attachments to the Statement. Each of the parties must each file with the statement the following:

- (1) If child support, spousal maintenance or attorneys' fees are at issue:

- (A) if the statement is submitted prior to a scheduling conference, a summary statement of income and expenses substantially in the form set forth in Rule 97, Form X (“Simplified Affidavit of Financial Information”) or in such other form permitted by local Rule;
 - (B) if the statement is submitted prior to trial, 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 child support is at issue, 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;
 - (B) listing the separate property and debts of each party;
 - (C) listing any equitable lien claims regarding any separate property;
 - (D) including for each property the title by which the property is held, the amount of encumbrances, and each party’s position regarding the value of the property; and
 - (E) setting forth each party’s proposed distribution of property and debts.
- (e) **Failure to List.** A party may not present a witness or offer an exhibit during trial other than those listed and exchanged in a statement submitted before the scheduling conference or trial, 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, exhibit, or claim is not raised in the statement submitted pursuant to subsection (c)(2) of this rule.
- (f) **Failure to Prepare or Participate.** If there has been a failure by either or both counsel, or the parties if not represented by counsel, to prepare a required 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 scheduling conference or trial scheduled by the court.

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