INTERIM EN BANC

MINUTES

Arizona Supreme Court

Monday, August 26, 2019

FILED
AUG 29 2019
JANET JOHNSON
CLERK SUPREME COURT
BY:

No. 6663

R-18-0027
(1)

RULE 123, RULES OF THE SUPREME COURT

WOULD AMEND RULE 123 TO REQUIRE COURTS TO PROVIDE REMOTE ELECTRONIC ACCESS TO NON-CONFIDENTIAL JUDICIAL RECORDS USING OPEN, NON-PROPRIETARY FORMAT

ORDERED: First Amended and Restated Petition = DENIED.

R-18-0040
(2)

RULE 38(a)(1), RULES OF CIVIL PROCEDURE

WOULD AMEND ARIZONA RULES OF CIVIL PROCEDURE TO ADD RULE 38(a)(1) TO CITE SOURCES FOR THE RIGHT OF TRIAL BY JURY (U.S. CONST. ART. 3 AND 10TH AMEND)

ORDERED: Petition to Amend ARCP Rule 38(a) Right to a Jury Trial (for Clarification Only) = DENIED.

R-18-0042
(3)

RULE 13, JUDICIAL REVIEW OF ADMIN DECISIONS

WOULD AMEND ARPJRAD 13 TO REQUIRE THAT ONE MAY APPEAL ONLY A SUPERIOR COURT RULING IN AN ADMINISTRATIVE APPEAL THAT COMPLIES WITH ARIZONA RULES OF CIVIL PROCEDURE 54(b) OR (c)

ORDERED: Petition to Amend Rule 13, Rules of Procedure for Judicial Review of Administrative Decision = ADOPTED, effective January 1, 2020.

R-19-0004
(4)

RULE 34(b)(1)(D), RULES OF THE SUPREME COURT

WOULD PERMIT ATTORNEYS WHO HAVE PRACTICED LAW IN ARIZONA UNDER RULE 38(f) OF THE RULES OF THE SUPREME COURT TO APPLY TO SIT FOR THE ARIZONA UNIFORM BAR EXAMINATION

ORDERED: Petition to Amend Rule 34(b)(1)(D), Rules of the Supreme Court of Arizona = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0016
(5)

RULE 39, RULES OF CRIMINAL PROCEDURE

WOULD REPEAL RULE 39, ARIZONA RULES OF CRIMINAL PROCEDURE, AND INTEGRATE VICTIMS' RIGHTS PROVISIONS THROUGHOUT THE RULES

ORDERED: Petition to Amend the Arizona Rules of Criminal Procedure = DENIED.

R-19-0019
(6)

RULE 26(c), RULES OF CIVIL PROCEDURE

WOULD AMEND RULE 26(c), ARIZONA RULES OF CIVIL PROCEDURE, TO CLARIFY THAT REQUESTS FOR AND ORDERS RE: DOCUMENTS FILED UNDER SEAL MUST COMPLY WITH RULE 5.4.

ORDERED: Petition to Amend Rule 26(c), Arizona Rules of Civil Procedure = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0027
(7)

RULE 27.1, RULES OF PROBATE PROCEDURE

WOULD AMEND RULE 27.1, RULES OF PROBATE PROCEDURE, TO ALLOW FOR JURY TRIALS IN CONTESTED PROBATE COURT PROCEEDINGS

ORDERED: Petition to Create ARPP Rule 27.1 The Application of Juries in a Contested Probate Proceedings (for Direction and Clarification) = DENIED.

R-19-0028
(8)

RULE 6.2, RULES OF JUVENILE PROCEDURE

WOULD AMEND RULE 6.2, RULES OF JUVENILE PROCEDURE, TO ALLOW FOR JURY TRIALS IN CONTESTED PROCEEDINGS

ORDERED: Petition to Create ARJP Rule 6.2 The Application of Juries in a Contested Juvenile Proceeding (for Direction and Clarification) = DENIED.

R-19-0029
(9)

RULE 2.1, RULES OF FAMILY LAW PROCEDURE

WOULD AMEND RULE 2.1, RULES OF FAMILY LAW PROCEDURE, TO ALLOW FOR JURY TRIALS IN CONTESTED PROCEEDINGS

ORDERED: Petition to Create ARFP Rule 2.1 The Application of Juries in a Contested Family Proceeding (for Direction and Clarification) = DENIED.

R-19-0030
(10)

RULE 43, RULES OF THE SUPREME COURT

WOULD AMEND RULE 43, ARIZONA RULES OF THE SUPREME COURT, TO CLARIFY TRUST ACCOUNT RECORD-KEEPING REQUIREMENTS AND TO ALLOW FOR USE OF ADVANCING TECHNOLOGY

ORDERED: Petition to Amend Rule 43, Ariz. R. Sup. Ct. = DENIED.

R-18-0024
(11)

RULE 64(f)(1)(B), RULES OF THE SUPREME COURT

WOULD CLARIFY THE LANGUAGE OF RULE 64(f)(1)(B), ARIZ.R.S.CT. AND ELIMINATE REFERENCE TO BAR COUNSEL RENDERING FINDINGS RE THE NEED TO SHOW REHABILITATION

ORDERED: Petition to Amend Rule 64(f)(1)(B) = ADOPTED AS MODIFIED, effective January 1, 2020.

R-18-0035
(12)

RULE 15.3 (a), RULES OF CRIMINAL PROCEDURE

WOULD REVERT LANGUAGE IN CRIMINAL RULE 15.3(a) FROM "VICTIM" TO "THOSE EXCLUDED BY RULE 39(b)" TO ALLOW PROSECUTORS TO SEEK DEPOSITIONS OF CRIME VICTIMS WHO ARE UNAVAILABLE TO TESTIFY AT TRIAL

ORDERED: Petition to Amend Rule 15.3(a) of the Rules of Criminal Procedure = ADOPTED on a permanent basis.

R-18-0036
(13)

RULES 4(e), 8(a), 12(d), SUP CT R APP PROC - CIV

WOULD REPLACE REFERENCES TO THE RULES OF CIVIL PROCEDURE IN THE RULES OF SUPERIOR COURT APPELLATE PROCEDURE--CIVIL WITH REFERENCES TO THE JUSTICE COURT RULES OF CIVIL PROCEDURE

ORDERED: Petition to Amend Rules 4(e), 8(a) and 12(d), Superior Court Rules of Appellate Procedure - Civil = ADOPTED AS MODIFIED, effective January 1, 2020.

R-18-0037
(14)

RULE 31(d), RULES OF THE SUPREME COURT

WOULD AMEND RULE 31(d) TO ADD SUBSECTION 32, WHICH WOULD PERMIT AN OWNER, OFFICER OR FULL-TIME, PERMANENT EMPLOYEE OF A LEGAL ENTITY OR SOLE PROPRIETORSHIP TO REPRESENT THE LEGAL ENTITY OR SOLE PROPRIETORSHIP BEFORE THE ARIZONA STATE BOARD OF ACCOUNTANCY PROVIDED THAT THEY MEET CERTAIN CRITERIA

ORDERED: Petition to Amend Rule 31, Rules of the Supreme Court = CONTINUED.

R-19-0015
(15)

RULE 68, RULES OF CIVIL PROCEDURE

WOULD ABROGATE RULE 68, ARIZONA RULES OF CIVIL PROCEDURE

ORDERED: Petition to Abrogate Rule 68, Arizona Rules of Civil Procedure = DENIED.

R-19-0021
(16)

RULE 14, RULES OF PROTECTIVE ORDER PROCEDURE

WOULD AMEND RULE 14, ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE, TO ELIMINATE CHARGING LITIGANTS FOR THE COST OF PREPARING THE RECORD AND FOR THE COST TO SERVE A DEFENDANT'S PAPERWORK

ORDERED: Petition to Amend Rule 14, Arizona Rules of Protective Order Procedure = DENIED.

R-19-0022
(17)

RULE 25(b), RULES OF PROTECTIVE ORDER PROCEDURE

WOULD AMEND RULE 25(b), ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE, TO DEFINE "SERIES" TO MEAN AT LEAST THREE EVENTS

ORDERED: Petition to Amend Rule 25(b), Arizona Rules of Protective Order Procedure = DENIED.

R-19-0023
(18)

RULE 25(g), RULES OF PROTECTIVE ORDER PROCEDURE

WOULD ABROGATE RULE 25(g), ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE

ORDERED: Request for Expedited Consideration = GRANTED.

FURTHER ORDERED: Petition to Abrogate Rule 25(g), Arizona Rules of Protective Order Procedure = DENIED.

R-19-0024
(19)

RULE 38(g), RULES OF PROTECTIVE ORDER PROCEDURE

WOULD AMEND RULE 38(g), ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE, TO RAISE THE STANDARD OF PROOF FOR A PROTECTIVE ORDER TO REMAIN IN EFFECT FROM "A PREPONDERANCE OF THE EVIDENCE" TO "CLEAR AND CONVINCING EVIDENCE"

ORDERED: Petition to Amend Rule 38(g), Arizona Rules of Protective Order Procedure = DENIED.

R-19-0031
(20)

RULE 45(a)(2) AND (b)(1), RULES OF CIVIL PROCEDURE

WOULD AMEND RULES 45(a)(2) AND (b)(1), ARIZONA RULES OF CIVIL PROCEDURE, TO PERMIT ATTORNEYS TO ISSUE SUBPOENAS IN THEIR OWN CASES

ORDERED: Petition to Amend ARCP, Rule 45(a)(2) and (b)(1) = DENIED.

R-18-0039
(21)

RULE 28.2, RULES OF PROBATE PROCEDURE

WOULD PRESERVE THE DEFAULT OF NO JURY TRIAL UNLESS REQUESTED IN PROBATE GUARDIANSHIP AND CONSERVATORSHIP MATTERS, CONSONANT WITH TITLE 14, A.R.S.

ORDERED: Petition to Adopt Rule 28.2, Arizona Rules of Probate Procedure = EMERGENCY ADOPTION CONTINUED as Rule 28.1 until January 1, 2020, at which time it will be abrogated and replaced by new Rule 29.

R-18-0041
(22)

RULE 807, RULES OF EVIDENCE

WOULD CONFORM THE COMMENT TO RULE 807, ARIZONA RULES OF EVIDENCE TO REFLECT THE PROJECTED EFFECTIVE DATE OF CHANGES TO FEDERAL RULE OF EVIDENCE 807

ORDERED: Petition to Amend Arizona Rule of Evidence 807 = ADOPTED, effective January 1, 2020.

R-18-0045
(23)

RULES 102 AND 101(b), JUSTICE COURT RULES

WOULD AMEND THE JUSTICE COURT RULES OF CIVIL PROCEDURE TO REQUIRE FILING OF A SATISFACTION OF JUDGMENT AND, FAILING THAT, A PROCEDURE TO DEEM A JUDGMENT SATISFIED

ORDERED: Petition to Amend Rule 102 and Modify Rule 101(b), Justice Court Rules of Civil Procedure = DENIED.

R-19-0001
(24)

RULE 68(g), RULES OF CIVIL PROCEDURE

WOULD AMEND RULE 68(g), ARIZONA RULES OF CIVIL PROCEDURE, TO ELIMINATE SANCTIONS FOR ACTIONS SEEKING DECLARATORY OR INJUNCTIVE RELIEF OR NOMINAL DAMAGES AND TO ALLOW DISCRETION IN SANCTION AWARDS IN PUBLIC INTEREST LITIGATION

ORDERED: Petition to Amend Rule 68(g), Arizona Rules of Civil Procedure = DENIED.

R-19-0005
(25)

RULES 32 (c) and (d), RULES OF THE SUPREME COURT

WOULD AMEND RULES 32(c) AND (d), RULES OF THE SUPREME COURT, TO MAKE VOLUNTARY SOME ASPECTS OF BAR MEMBERSHIP AND TO PROVIDE FOR AUDIT TO VERIFY THE USE OF MANDATORY DUES

ORDERED: Petition to Amend Rules 32(c) and (d), Rules of the Supreme Court = DENIED.

R-19-0010
(26)

RULE 37 (c), RULES OF THE SUPREME COURT

WOULD AMEND RULE 37(c) TO PERMIT DISCLOSURE TO A BAR APPLICANT'S LAW SCHOOL OF DETAILED, APPLICANT-SPECIFIC INFORMATION TO ANALYZE ITS GRADUATES' PERFORMANCE ON EACH PART OF THE ARIZONA BAR EXAM

ORDERED: Petition to Amend Rule 37, Rules of the Supreme Court of Arizona = ADOPTED AS MODIFIED, effective March 1, 2020.

R-19-0012
(27)

RULE 32 and 33, RULES OF CRIMINAL PROCEDURE

WOULD AMEND SUBSTANTIVELY AND REORGANIZE RULES 32 AND 33, ARIZONA RULES OF CRIMINAL PROCEDURE, CONCERNING POST-CONVICTION RELIEF

ORDERED: Amended Petition = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0017
(28)

RULE 47.2(a), RULES OF FAMILY LAW PROCEDURE

WOULD AMEND RULE 47.2(a), ARIZONA RULES OF FAMILY LAW PROCEDURE, TO ADD A PROCESS FOR POST-DECREE TEMPORARY ORDERS FOR CHILD SUPPORT

ORDERED: Petition to Amend Rule 47.2(a), Arizona Rules of Family Law Procedure = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0018
(29)

RULES 5(d) and 10(a), RULES OF PROC. FOR EVICTION

WOULD AMEND RULES 5(d) AND 10(a), ARIZONA RULES OF PROCEDURE FOR EVICTION ACTIONS, TO REQUIRE THE LANDLORD TO SERVE ADDITIONAL RELEVANT DOCUMENTS WITH THE COMPLAINT

ORDERED: Petition to Amend Rule 5(d) and Rule 10(a), Arizona Rules of Procedure Eviction Actions = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0025
(30)

RULE 20(b)(1), RULES OF CRIMINAL PROCEDURE

WOULD AMEND RULES 20(b)(1), ARIZONA RULES OF CRIMINAL PROCEDURE, TO PERMIT A MOTION FOR JUDGMENT OF ACQUITTAL WHEN THE JURY FAILS TO REACH A UNANIMOUS VERDICT

ORDERED: Petition to Amend Arizona Rules of Criminal Procedure 20(b)(1) = DENIED.

R-18-0044
(31)

RULES OF PROBATE PROCEDURE

WOULD AMEND THE ARIZONA RULES OF PROBATE PROCEDURE TO CONFORM TO MODERN USAGE AND TO CLARIFY AND SIMPLIFY LANGUAGE

ORDERED: Petition to Amend the Arizona Rules of Probate Procedure = ADOPTED IN PART and CONTINUED IN PART.

Separate Order.

R-19-0002
(32)

RULE 123, RULES OF THE SUPREME COURT

WOULD AMEND RULE 123, RULES OF THE ARIZONA SUPREME COURT TO MAKE SUPREME COURT PETITION FOR REVIEW CASE INFORMATION PUBLICLY AVAILABLE ONLINE

ORDERED: Petition to Amend Rule 123, Rules of the Supreme Court = DENIED.

R-19-0003
(33)

RULE 5.4, RULES OF CIVIL PROCEDURE

WOULD AMEND RULE 5.4, ARIZONA RULES OF CIVIL PROCEDURE TO ADD A DEFINITION AND SUBSECTION SETTING PROCEDURES FOR PLACING CASE-INITIATING DOCUMENTS UNDER SEAL

ORDERED: Petition to Amend Rule 5.4 of the Arizona Rules of Civil Procedure = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0006
(34)

RULE 31.5, RULES OF CRIMINAL PROCEDURE

WOULD AMEND RULE 31.5, ARIZONA RULES OF CRIMINAL PROCEDURE, TO REQUIRE THE SUPREME COURT TO APPOINT COUNSEL FOR AN INDIGENT DEFENDANT ON DIRECT APPEAL OF A CAPITAL CASE

ORDERED: Petition to Amend Rule 31.5, Arizona Rules of Criminal Procedure = DENIED.

R-19-0008
(35)

RULES 18.5, 22.5, and 32.1, RULES OF CRIMINAL PROC

WOULD AMEND RULES 18.5, 22.5, AND 32.1, ARIZONA RULES OF CRIMINAL PROCEDURE, TO LIMIT SPECIFIC CONTACT WITH JURORS IN PRE-TRIAL, TRIAL, AND POST-CONVICTION PROCEEDINGS

ORDERED: Petition to Modify Rules 18.5, 22.5, and 32.1, Arizona Rules of Criminal Procedure = DENIED.

R-19-0009
(36)

SUPREME COURT RULE 123/PROTECTIVE ORDER PROC RULES

WOULD AMEND RULE 123, RULES OF THE SUPREME COURT, AND THE ARIZONA RULES OF PROTECTIVE ORDER PROCEDURE TO COMPLY WITH STATUTORY AMENDMENTS RE: ORDERS OF PROTECTION AND INJUNCTIONS AGAINST HARASSMENT

ORDERED: Petition to Amend Rule 123, Rules of the Supreme Court, and Rules 7, 10, 20, 23, 24, 25, 26, 31, 32, 33, 36, and 42 of the Arizona Rules of Protective Order Procedure = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0011
(37)

RULES 38 AND 39, ABROGATE RULE 40 OF SUPREME CT

WOULD AMEND RULES 38 AND 39 AND ABROGATE RULE 40, RULES OF THE ARIZONA SUPREME COURT, TO RATIONALIZE EXCEPTIONS TO THE USUAL ATTORNEY ADMISSION PROCESS

ORDERED: Petition to Amend Rules 38 and 39 and Abrogate Rule 40, Rules of the Arizona Supreme Court = CONTINUED.

R-19-0013
(38)

RULES 5.4, 7.2, AND 7.4, RULES OF CRIMINAL PROC

WOULD MODIFY RULES 5.4, 7.2, AND 7.4, ARIZONA RULES OF CRIMINAL PROCEDURE, TO PERMIT THE STATE TO USE BAIL ELIGIBILITY HEARING FINDINGS TO ESTABLISH PROBABLE CAUSE; AND TO ALLOW FOR CONTINUANCES

ORDERED: Petition to Modify Rules 5.4, 7.2, and 7.4, Arizona Rules of Criminal Procedure = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0014
(39)

RULES 27.1, 27.3, AND 27.4, RULES OF CRIMINAL PROC

WOULD AMEND RULES 27.1, 27.3, AND 27.4, ARIZONA RULES OF CRIMINAL PROCEDURE, TO SET AND CLARIFY REQUIREMENTS FOR MODIFICATION OF CONDITIONS OF PROBATION AND EARLY TERMINATION OF PROBATION

ORDERED: Petition to Amend Rules 27.1, 27.3, and 27.4, Rules of Criminal Procedure = ADOPTED, effective January 1, 2020.

R-19-0020
(40)

RULES 123, 124, 125, AND 126, JUSTICE COURT RULES

WOULD AMEND RULES 123, 124, 125, AND 126, ARIZONA JUSTICE COURT RULES OF CIVIL PROCEDURE, TO LIMIT DISCOVERY TO ALIGN WITH THE RULES OF CIVIL PROCEDURE

ORDERED: Petition for Conforming Amendments to the Arizona Justice Court Rules of Civil Procedure = CONTINUED.

R-19-0026
(41)

RULE 70, RULES OF THE SUPREME COURT

WOULD AMEND RULE 70, ARIZONA RULES OF THE SUPREME COURT, TO CLARIFY THE SCOPE OF PUBLIC ACCESS TO STATE BAR INFORMATION AND RECORDS

ORDERED: Petition to Amend Rule 70 of the Rules of the Supreme Court = ADOPTED, effective January 1, 2020.

R-18-0021
(42)

RULE 101, JUSTICE COURT CIVIL PROCEDURE RULES

WOULD ENACT NEW RULES OF PROCEDURE FOR SMALL CLAIMS LAWSUITS IN JUSTICE COURTS

ORDERED: Third Amended Petition (to Adopt Arizona Rules of Small Claims Procedure and Modify Rule 101(b) of the Justice Court Rules of Civil Procedure) = ADOPTED AS MODIFIED, effective January 1, 2020.

R-19-0039
(43)

RULES OF PROCEDURE FOR JUDICIAL PERFORMANCE REVIEW

WOULD AMEND RULES GOVERNING THE JUDICIAL PERFORMANCE REVIEW OF MERIT-SELECTED JUDGES AND JUSTICES AS RECOMMENDED BY THE JUDICIAL PERFORMANCE REVIEW TASK FORCE

ORDERED: Expedited Consideration Requested = GRANTED.

FURTHER ORDERED: Petition to Amend the Rules of Procedure for Judicial Performance Review in the State of Arizona = ADOPTED AS MODIFIED on an emergency basis.

FURTHER ORDERED opening this matter for public comments. Comments are due October 7, 2019, and any reply due October 18, 2019.

The foregoing action was taken by the Arizona Supreme Court on Monday, August 26, 2019.

/S/ **Date:** 8/29/2019

Ann A. Scott Timmer, Vice Chief Justice