

New (Restyled) Rules of Family Law Procedure

Task Force on the Rules of Family Law
Procedure

Hon. Mark Armstrong (ret.), Vice Chair



Background and History

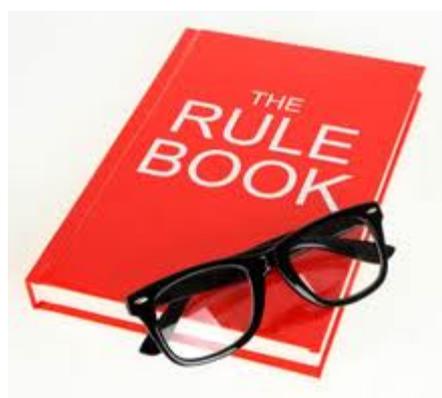


Arizona Supreme Court AO 2003-63

- Created Committee on Rules of Procedure in Domestic Relations Cases.
- Purpose: The Committee shall review current statewide and local rules of procedure, evidence and alternative dispute resolution applicable to domestic relations cases as well as those used in other states, identify areas in which current rules impede the fair and efficient disposition of domestic relations cases and propose substitute or additional rules as needed.
- Mission: To establish a comprehensive, statewide set of rules of procedure for domestic relations/ family law cases aimed at achieving fair, effective, uniform, and timely resolution of family disputes, using non-adversarial, problem-solving means to the extent possible and appropriate.

Arizona Supreme Court No. R-05-0008

- Adopted New Arizona Rules of Family Law Procedure, effective January 1, 2006. 
- Recommended creation of Family Law Rules Review Committee



Arizona Supreme Court AO 2016-131

- Created Task Force on the Arizona Rules of Family Law Procedure
- Purpose: The Task Force shall review the Arizona Rules of Family Law Procedure to identify possible changes to conform to modern usage and to clarify and simplify language. The Task Force shall seek input from various interested persons and entities with the goal of submitting a rule petition by January 10, 2018, with respect to any proposed rule changes.

Task Force Membership

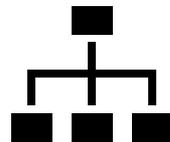
- Justice Rebecca Berch (ret.), Chair
- Judge Mark Armstrong (ret.), Vice Chair
- Michael Aaron, Aaron and Rogers PC
- Commissioner John Assini, Superior Court in Pima County
- Keith Berkshire, Berkshire Law Office PLLC
- Mary Boyte Henderson, Solo Practitioner
- Annette Burns, Law Offices of Annette T. Burns
- Commissioner Dean Christoffel, Superior Court in Pima County
- Cheri Clark, Family Court Administrator, Superior Court in Maricopa County
- Judge Suzanne Cohen, Family Court Presiding Judge, Superior Court in Maricopa County
- Helen Davis, The Cavanagh Law Firm PA

Task Force Membership (cont'd)

- Kiilu Davis, Law Offices of Stone & Davis PC
- Judge Karl Eppich, Arizona Court of Appeals, Division Two
- Joi Hollis, Conciliation Court Director, Superior Court in Pima County
- David N. Horowitz
- Judge Paul McMurdie, Arizona Court of Appeals, Division One
- Aaron Nash, Clerk of Court's Office, Superior Court in Maricopa County
- Jeffery Pollitt, Jeffrey G. Pollitt PC
- Janet Sell, Unit Chief Counsel, Arizona Office of the Attorney General
- Judge Peter Swann, Arizona Court of Appeals, Division One
- Steven Wolfson, Dickinson Wright PLLC
- Gregg Woodnick, Gregg R. Woodnick PLLC
- Mark Meltzer, Staff to Task Force

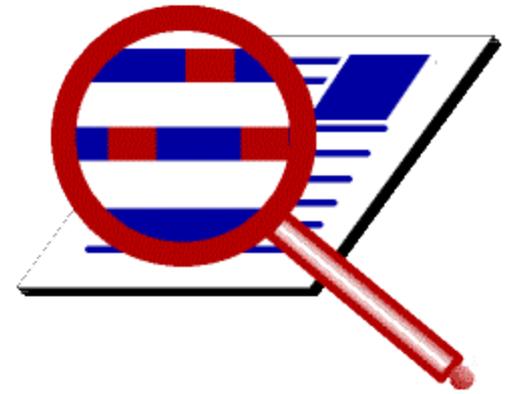
Restyling Arizona Rules

- Chief Justice's Strategic Agenda
- Other rule sets restyled: Evidence (2012), ARCAP (2015), Protective Order (2016), Civil (2017), Criminal (2018)
- On the horizon: Family (2019), Probate (2020)



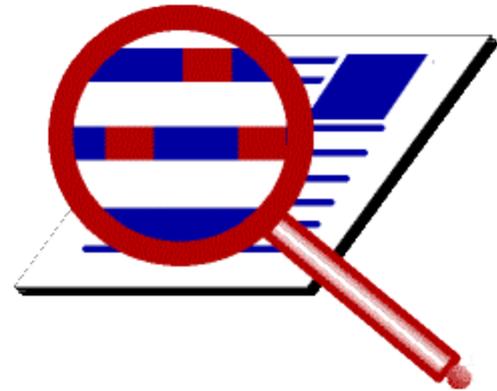
Restyling

- Guidelines for Drafting and Editing Court Rules by Bryan A. Garner
- Attempts to be more user-friendly; more functional; easier to read; with more consistent formatting and terminology.
- Adds informative titles and headings.
- Avoids long sentences and paragraphs, ambiguous terminology, and legal jargon.



Restyling (cont'd)

- Changes designation of paragraphs and subdivisions to sections and subparts consistent with Civil Rules.
- Eliminates most comments.
- Includes Family/Civil Rules Correlation Table.
- Includes Prefatory Comment.



Substantive Changes

Part I. General Administration

- Rules 1 - 22
- Former Rule 17 (Limitation on Examination of Witness; Exception) moved to Rule 22 (Conduct of Proceedings)
- Rule 30 moved to Rule 20. Form of Documents (including electronically filed documents)



Substantive Changes

- Rule 2. Applicability of the Arizona Rules of Evidence (limited to Evidence Rules; reference to Civil Rules moved to Rule 1)
- Incorporates by reference Ariz. R. Evid. 403 standard.
- Eliminates Rule 2(B)(3)(b) but relaxes the foundation requirements for documents required to be submitted to the court.
- Retains automatic admissibility of Affidavits of Financial Information (AFIs)



Substantive Changes

- Rule 5.1. Simultaneous Dependency and Legal Decision-Making/Parenting Time Proceedings.
- Includes a new provision that requires parties to notify the family division of a pending dependency proceeding.



Substantive Changes

- Rule 6. Change of Judge as a Matter of Right
- Current rule merely incorporates by reference Rule 42(f), Ariz. R. Civ. P.
- New rule provides procedure for filing a notice of change of judge.
- In each action, whether single or consolidated, each party is entitled as a matter of right to a change of judge.
- Rule includes provisions for timeliness and waiver.

Substantive Changes

- Rule 6.1 Change of Judge for Cause
- Current rule merely incorporates by reference Rule 42(f), Ariz. R. Civ. P.
- New rule provides procedure for filing a motion and affidavit for change of judge for cause pursuant to A.R.S. § 12-409.



Substantive Changes

- Rule 9. Duties of Parties and Counsel
- Current rule applies only to attorneys.
- Adds new section (c) with requirements for a “good faith consultation certificate.”
- Includes exception for domestic violence.



Substantive Changes

- Rule 10 broken down as follows:
- Rule 10. Representation of Children (best interests attorney and child's attorney)
- Rule 10.1. Court-Appointed Advisor
- Court may appoint any of these roles for any reason the court deems appropriate.
- Rules now track grounds, qualifications, the appointment order (including any reference to fees), and participation of these types of appointees.



Substantive Changes

- Rule 12. Court Interviews of Children
- Rule requires the interview to be recorded and the parties may stipulate to not receive the recording. The rule provides “unless the parties stipulate otherwise the court must record the interview.”
- If a judicial officer does the interview it must be recorded.



Substantive Changes

- Rule 17. Sealing, Redacting, and Unsealing Court Records
- Previously part of Rule 71
- Tracks Maricopa County Local Rule 2.19.



Substantive Changes

- Rule 22. Improper Venue
- Formerly Rule 23.1 in Part II
- Upon 10 days notice, allows court to transfer case to proper venue.



Substantive Changes

Part II. Pleadings and Motions

- Rules 23-35 reorganized to be more sequential and simpler.
- Rule 24 to 23. Pleadings: Petition and Response
- Rule 29 to 24. Contents of Pleading
- New Rule 24.1. Time for Filing and Serving a Response to a Petition
- Rule 26 to 25. Additional Filings

Substantive Changes

Part II. Pleadings and Motions (cont'd)

- Rule 31 to 26. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions
- Rule 34 to 28. Amended and Supplemental Pleadings
- Rule 32 to 29. Defenses and Objections; Motion for Judgment on the Pleadings; Joining Motions; Waiving Defenses; Pretrial Hearing
- Rules 30-32, and 34 are reserved.

Substantive Changes

- Rule 27. Service of the Petition
- Section (c) requires service of an order to appear not later than 20 days before the scheduled hearing, or 10 days before the scheduled hearing if the only issue is child support, unless the court orders otherwise.



Substantive Changes

- Rule 33. Third Party Rights and Other Claims in an Existing Action
- Refers to the use of A.R.S. § 25-409 for third party rights.
- Refers to Rules 13, 14, 18-22 and 24 of the Rules of Civil Procedure so that the bases for actions such as counterclaims, third-party practice, joinder, interpleader or intervention are the same in family cases as in civil cases.



Substantive Changes

- Rule 35. Family Law Motion Practice
- Simplified in several ways; references to “memoranda” were replaced with “motion”, “response” or “reply”.
- Permits the parties to agree to extensions of time without necessity of a court order, as new section (d) permits “agreements to extend time for filing” by filing a notice with the Court.
- Page limits (17 pages for motion or response, and 11 pages for reply) are based on the limits set in the Civil Rules.
- Prohibits responses to replies, absent permission of the court.

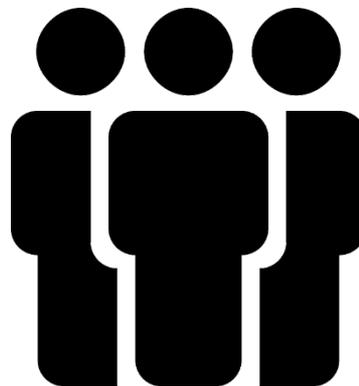
Substantive Changes

- New Rule 35.1 Motion for Reconsideration
- Does not extend time to appeal

Substantive Changes

Part III. Parties

- Rules 36 to 38, with Rule 38 reserved
- Former Rule 39 (Proof of Authority for Respondent Not Personally Served) has been abrogated, and the rule number has been moved to Part IV (Service), and retitled “Meaning of Service.”



Substantive Changes

Part IV. Service

- Rules 39 to 43.1, with Rule 42 reserved



Substantive Changes

- Rule 39. Meaning of Service
- New rule defining “service” of summons and petition, documents filed in the course of the case, and contempt petitions.
- Old rule abrogated.



Substantive Changes

- Rule 40. Summons
- Eliminates waiver of service in favor of acceptance of service.
- Restyled and simplified.



Substantive Changes

- Rule 41. Service Within and Outside Arizona
- Combines current Rules 41 and 42 (now reserved).
- *Adds* Comment to 2019 Amendment, stating “rule now follows the holding in *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 73-75 ¶¶ 15-22 (App. 2004). *See also Ruffino v. Lokosky*, ___ Ariz. ___, 2018 WL 3384998 (App. 2018). However, the revised rule [41(m)] requires court approval before service by publication. Moreover, service by publication is subject to subsequent challenge if it does not satisfy due process standards of being reasonably calculated to give notice to the party being served and providing the best practicable notice under the circumstances. *See* Rules 83 and 85.”

Substantive Changes

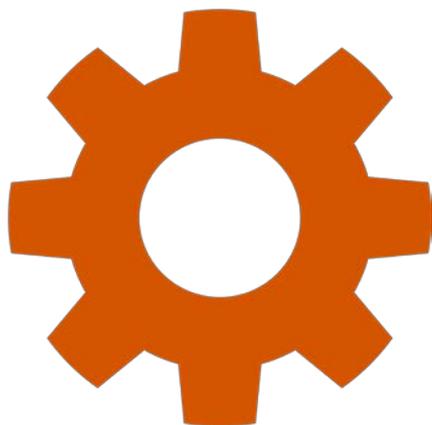
- Rule 43. Service of Other Documents After Service of the Summons, Petition, and Order to Appear
- Rule 43.1. Filing Pleadings and Other Documents (includes sensitive data section); adds new section (g) that permits the clerk to treat as confidential “any medical, mental health, or behavioral health records, reports, ,or evaluations filed with the court.”
- Breaks current Rule 43 into two rules, like Civil Rules, which have separate rules for “service” and “filing.”



Substantive Changes

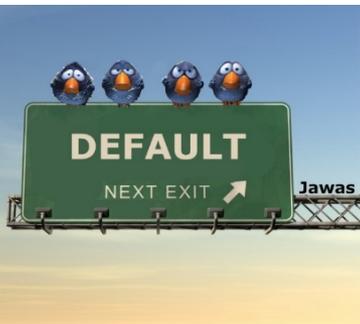
Part V. Default Decree and Consent Decree, Judgment, or Order; Dismissal

- Rules 44 to 46, with new Rules 44.1 and 44.2



Substantive Changes

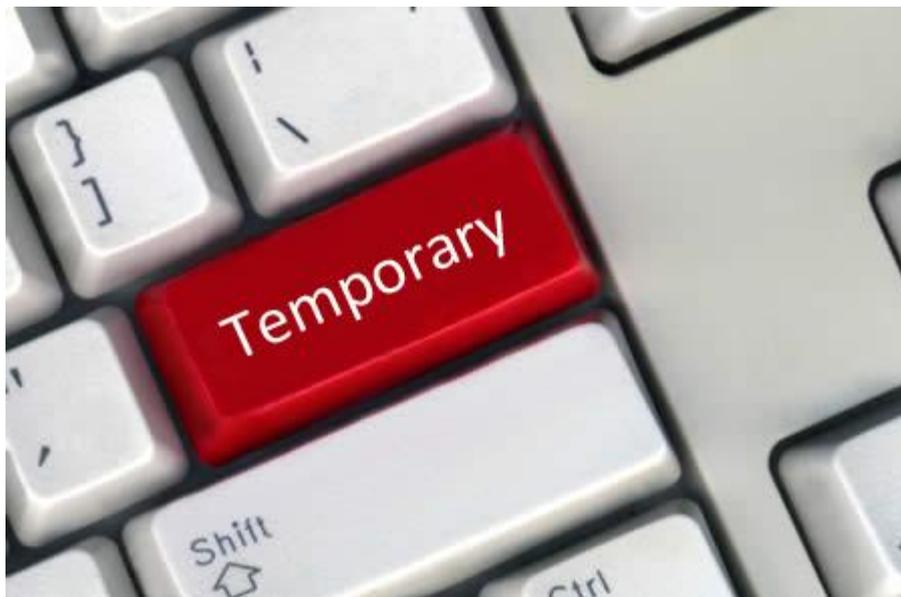
- Rule 44. Default (“effective 10 days after the application is filed”)
- Rule 44.1. Default Decree or Judgment by Motion and Without a Hearing
- Allows default without hearing of all issues, but requires new Form 6. Default Information for Spousal Maintenance; but no default without a hearing after service by publication.
- Rule 44.2. Default Decree or Judgment by Hearing



Substantive Changes

Part VI. Temporary Orders

- Rules 47 to 48, with new Rules 47.1 and 47.2



Substantive Changes

- Rule 47. Motions for Temporary Orders (provides for the scheduling of a resolution management conference (“RMC”) when a party files a motion for temporary orders but also provides that any county may establish its own procedure by local rule or administrative order)
- Rule 47(d) (Service) provides in part: “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 not later than 14 days before the date set in the order.”
- Rule 47.1. Simplified Child Support Orders

Substantive Changes

- Rule 47.2. Motions for Post-Decree Temporary Legal Decision-Making Orders
- Rule 48. Temporary Orders Without Notice

Substantive Changes

Part VII. Disclosure and Discovery

- Rules 49 to 65, with Rules 58 (formerly Depositions upon Written Questions; now abrogated) and 61 (formerly Uniform and Non-Uniform Interrogatories; Limitations; Procedure; now combined with Rule 60) reserved



Substantive Changes

- Rule 49. Disclosure (requires exchange of Resolution Statements 30 days after initial disclosure)
- Rule 50. Complex Case Designation (now requires filing of a motion; includes factors; min. of 12 hours of trial time)
- Rule 52. Subpoena (no fees need be tendered when serving subpoena for trial or hearing, consistent with Civil Rule 45)
- Rule 65. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions (rule has been streamlined; sanction of dismissal includes limitation, “unless dismissal would be contrary to the best interests of a child.”)

Substantive Changes

Part VIII. Settlement and Alternate Dispute Resolution ("ADR")

- Rules 66 to 75, with Rule 75 (formerly Plan for Expedited Process; now abrogated) reserved
- Rules reorganized and streamlined



Substantive Changes

- Rule 66. Duties to Consider and Attempt Settlement by Alternative Dispute Resolution (“ADR”)
- Rule 67. Types of Alternative Dispute Resolution
- Rule 67.1. Collaborative Law Proceedings
- Rule 67.2. Uniform Family Law Arbitration Rule
- Rule 67.3. Private Mediation
- Rule 67.4. Settlement Conferences
- Rule 68. Conciliation Court (removes references to conciliation counseling)



Substantive Changes

- **Rule 69. Binding Agreements**

(a) Validity. An agreement between the parties is valid and binding on the parties if:

(1) the agreement is in writing and signed by the parties personally or by counsel on a party's behalf;

(2) the agreement's terms are stated on the record before a judge, commissioner, judge pro tempore, or court reporter; or

(3) the agreement's terms are stated in an audio recording made before a mediator or a settlement conference officer appointed by the court.

(b) Court Approval. An agreement under this rule is not binding on the court until it is submitted to and approved by the court.

(c) Challenge to Validity. An agreement under section (a) is presumed valid, and a party who challenges the validity of an agreement has the burden to prove any defect in the agreement. Under A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or maintaining or defending a challenge to the validity of an agreement that was made in accordance with this rule.

Substantive Changes

- Rule 70. Notice of Settlement
- Rule 71. Sanctions (sealing provision moved to Rule 17)
- Rule 72. Family Law Master
- Rule 72.1. Retirement, Benefits, Stock Options, and Other Employment Related Compensation (new rule for QDRO preparation, etc.; changes “master” to “professional”; if the professional requires use of discretion, the professional must request court approval)
- Rule 73. Family Law Conference Officer (strictly a facilitator now without the authority to make recommendations; includes requirement of 40 hours training in basic mediation)
- Rule 74. Parenting Coordinator

Substantive Changes

Part IX. Pretrial and Trial Procedures

- Rules 76 to 77



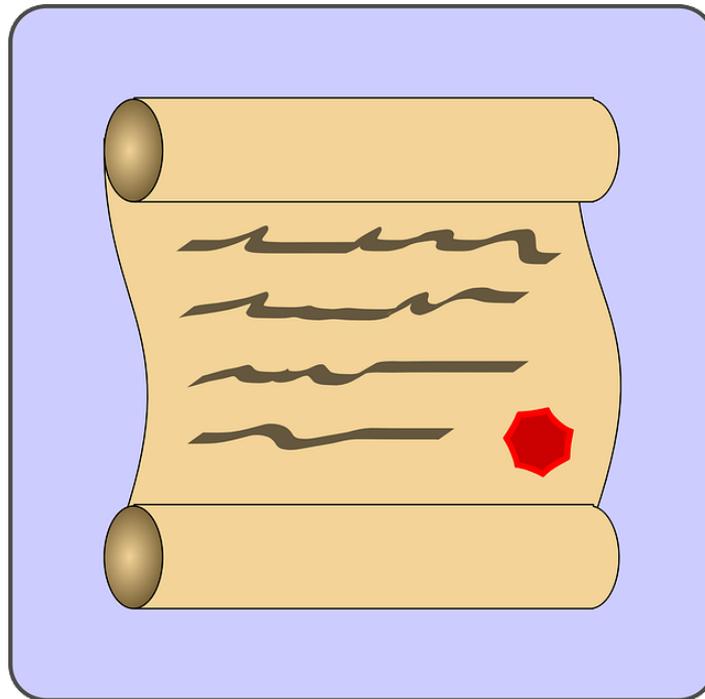
Substantive Changes

- Rules 76. Resolution Management Conference
- Rule 76.1. Pretrial Statement; Scheduling Conference; Scheduling Conference Statement (new)
- Rule 76.2. Sanctions for Failure to Participate in a Court Proceeding (new; imported from former Rule 76)
- Rule 77. Trials

Substantive Changes

Part X. Judgments and Decrees

- Rules 78 to 90, with Rule 81 (formerly Entry of Judgment) reserved



Substantive Changes

- Rules 78. Judgment; Attorney's Fees, Costs, and Expenses
- Includes provisions formerly contained in Rule 81, which is now reserved.
- To be appealable, a judgment must include language under Rule 78(b) or 78(c).
- Section (e) addresses concerns raised in *Bollerman v. Nowlis*, 234 Ariz. 340 (2014), by providing that if a party asserts a claim for attorney's fees, costs, and expenses, and a judgment is entered under this rule that omits a ruling on the claim, the claim is deemed denied unless the party files a Rule 83 motion within 15 days after entry of the judgment.

Substantive Changes

- Rules 83. Altering or Amending a Judgment; Supplemental Hearings
- No longer contains a reference to “new trial” because in a family case, the granting of a motion under this rule does not result in a new trial.
- Changes time for filing from 15 to 25 days.
- A party’s response to a Rule 83 motion must address any issue that might arise if the court grants the motion.



Substantive Changes

- Rules 84. Motion for Clarification
- No longer provides for a motion for reconsideration; now provided for in new Rule 35.1.
- May be filed at any time but does not extend the time for filing a notice of appeal.
- A motion under this rule may not be combined with a Rule 83 motion.
- Court may not open the judgment or accept additional evidence as it may under Rule 83.

Substantive Changes

- Rules 85. Relief from Judgment or Order
- Similar to Civil Rule 60 but now provides that “[a] court must correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record.”
- Responds to *Vincent v. Shanovich*, 243 Ariz. 269 (2017)



Substantive Changes

Part XI. Post-Decree/Post-Judgment Proceedings

- Rules 91 to 91.6
- Rule 91 is a general rule. Section (d) removes requirement for mediation before filing although local rule or order may require it before an evidentiary hearing. Section (i) provides court will either reject the petition or issue an order to appear.



Substantive Changes

Part XI. Post-Decree/Post-Judgment Proceedings

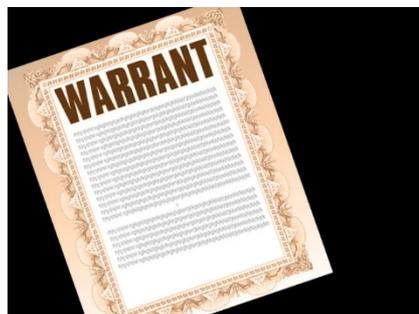
- New Rules 91.1 through 91.6 contain provisions applicable to specific types of modification or enforcement actions (i.e., spousal maintenance and child support, legal decision-making and parenting time, and relocation).



Substantive Changes

Part XII. Civil Contempt and Arrest Warrants

- Rules 92 to 94, with Rule 93 (formerly Seizure of Person or Property; now abrogated) reserved
- Rule 92(d) eliminates willfulness as an element of contempt but section (e) states absence of willfulness is a defense to contempt
- Rule 94(d) requires arrestee to be brought before a magistrate within 24 hours rather than 24 judicial hours.



Substantive Changes

Part XIII. Other Family Law Services and Resources

- Rules 95 to 96, with Rule 96 (formerly reserved) reserved
- Rule 95(a) provides “[t]he court must determine on the record whether the parties have the ability to pay for private services as well as allocate the costs of those services.



Substantive Changes

Part XIV. Family Law Forms

- Rule 97. Family Law Forms
- New Form 6. Default Information for Spousal Maintenance (provides evidentiary basis for award of maintenance under A.R.S. § 25-319)
- Former Form 6 (Joint Alternative Dispute Resolution Statement to the Court) abrogated



Substantive Changes

Arizona Rules of Civil Appellate Procedure

- Petition will include conforming changes to ARCAP 9(e) and (f)



Timeline for Approval Process

- March 22, 2018: Petition filed (R-17-0054)
- June 1, 2018: Deadline for filing comments
- July 6, 2018: Deadline for filing reply
- August 2018: Arizona Supreme Court Rules Agenda
- January 1, 2019: Effective date of restyled rules

Task Force on Rules of Family Law Procedure

- Website for the Task Force on Rules of Family Law Procedure: <http://www.azcourts.gov/cscommittees/Family-Law-Rules-Task-Force>

Questions

