

COCONINO COUNTY'S INFORMAL COMMENTS TO THE COMMITTEE ON RULES OF PROCEDURE FOR DOMESTIC RELATIONS CASES

GENERAL COMMENTS

The family law rules are obviously the result of countless hours of dedication and hard work. We suggest taking this opportunity to put the rules into plain English to make them accessible to pro pers, who participate in approximately 75% of family law cases in Coconino County. Taking the time now to simplify the language of the rules will save untold time and money in the long run for the courts and litigants.

We suggest preparing a timeline of the procedures in the rules to clarify procedures and deadlines that seem confusing and/or burdensome.

We recommend including a global statement that the family law rules are intended to comply with civil rules case law and comments.

SECTION I. GENERAL ADMINISTRATION

Rule 2. Applicability of Other Rules

Section A:

The word “only” may be too exclusionary.

Rule 3. Definitions

Section 8:

The meaning of “seal” and “record” is unclear. Different counties have different definitions. It would be helpful to specify whether the rule refers to electronic and/or paper records, for example.

Rule 5. Consolidation

Section C:

Family law case records may be restricted unintentionally when they're consolidated with a sealed file.

Rule 7. Protected and Unpublished Addresses

Section A:

Add an “and” to the end of section A(3).

Section B(1):

If the court sets a hearing, is it an ex parte hearing? If not, is notice required?

The timeline seems unreasonable.

Section B(2):

Delete the extra “any” from the first sentence.

Section C:

This seems burdensome on the clerk. Would a return receipt be sufficient?

Section D:

The first paragraph might give the erroneous impression that not all parties are subject to this requirement.

Rule 8. Telephonic Appearances and Testimony

Section D:

Under this timeline, the date by which to respond could be the hearing date.

Rule 9. Duties of Counsel

Section A(2):

In the first paragraph, the requirement for the address and phone number doesn’t take into account confidential information.

Section B(2)(a):

The requirement for the address and phone number doesn’t take into account confidential information.

Rule 10. Representation of Children

Section A:

We recommend that the rule state that the court may appoint an attorney or guardian ad litem and that the guardian ad litem has party status.

The term “best interests attorney” confusingly combines the role of an attorney and the role of a guardian ad litem and unnecessarily restricts the appointment to attorneys. An attorney but not a guardian ad litem must follow the client’s wishes and maintain attorney-client privilege and may not be called to testify.

Section A(1):

The required findings seem too restrictive. Why is the court being limited more than 25-321 limits it?

Section B:

Why is CASA included when these rules don’t include dependencies?

Rule 11. Presence of Children

Must the judge make a finding and/or have a hearing?

The second sentence seems to be more commentary than rule and seems to contradict the first sentence (“the court may ... exclude ... children” v. “a minor child ... shall not be present”).

We recommend that the rule merely allow the court, in its discretion, to exclude children.

Rule 13. Public Access to Proceedings

It would be helpful to cite in the Comment the standard for the findings.

SECTION II. PLEADINGS AND MOTIONS

Rule 31. Signing of Pleadings

Coconino expects all pleadings to have an original signature, but some firms submit stamped signatures.

SECTION IV. SERVICE OF PROCESS

Rule 40. Process

Section D:

Is it problematic that Administrative Order 93-25 explicitly names Rule 4(e) of the Rules of Civil Procedure as the rule it regards?

Section F:

Should the rules require that the form be filed?

Section I:

The word “petitioner” is missing in the phrase “if the [petitioner] shows good cause for the failure”.

Rule 41. Service of Process within Arizona

Section A:

Insert a period at the end of the rule.

Section C(2):

Though the affidavit requirements make it clear, the rule doesn’t specifically require service by certified mail; technically, the first sentence merely requires service by a postal agency “that provides” a return mail service.

It’s unclear whether the person being served is the person who must sign.

Section G:

Is the omission intentional of the state’s option to accept or waive service?

Section M:

The first sentence is missing a comma: “paternity, child support, spousal maintenance[,] division of marital property”

Rule 42. Service of Process Outside the State

Section D:

The first sentence is missing a comma: “paternity, child support, spousal maintenance[,] division of marital property”

Section E:

At least a comma is missing after “Partnerships” in the rule title.

Section F:

Subpart (2)(b) says “letter interrogatory” where the civil rules say “letter rogatory”. Is that change intentional?

Section J:

The first sentence says “documents required to be service” instead of “required to be served”.

Rule 43. Service and Filing of Pleadings and Other Papers

Section C(1):

In the sentence on faxes, the meaning of “provided” is unclear.

Faxing may be an unreliable and difficult-to-document service method.

Section D:

The confusing grammar of the second sentence may be alleviated by inserting a comma after “The foregoing notwithstanding”.

Section D(5):

What is the point of closing the file for this brief window of time?

Section G:

Will the statewide child support forms be updated with this requirement?

Does this apply to protective orders related to DR cases as well? If so, will the statewide protective orders forms and instructions be updated with this requirement?

SECTION V. DEFAULT DECREES, CONSENT DECREES, AND DISMISSALS

Rule 44. Default Decrees

Section C:

Should the rule provide that default may be set aside in accordance with Rule 85(C) instead of with the entire Rule 85?

Rule 45. Consent Decree of Dissolution of Marriage

Why does the rule title specify “dissolution of marriage” when the rule also applies to paternity/maternity?

Section A:

The 60-day waiting period to submit the consent decree leads Respondent to default, which is not in Respondent’s best interest, especially if Respondent is a pro per.

Section C(5):

What is the Judgment Data Sheet?

Rule 46. Dismissals

Section A:

Should the rule provide, as the civil rules do, that the order may be signed by “a judge, a ... court commissioner, the clerk of court or a deputy clerk”?

It’s unclear whether the prohibition in the Involuntary Dismissal subsection, against dismissing a case when a motion for summary judgment is pending, is meant to apply also to the Voluntary Dismissal subsection.

Is the notice requirement meant to apply as well to dismissals for failure to comply with court rules or a court order?

Section B:

Is the repetition intentional of the provision from 46(A) for respondent to motion for dismissal upon petitioner’s failure to prosecute or to comply with rules or a court order?

Should the “without prejudice” language from Section A be duplicated here?

Section C:

Is the omission intentional of counterclaims and cross-claims from other claims Rule 46 applies to?

SECTION VI. TEMPORARY ORDERS

Rule 47. Temporary Orders

Sections F and G:

The three different deadlines in these rules (two, five, and three days before the hearing) seem to present an unnecessary complexity, especially to pro pers. Could the same deadline be applied to all three requirements?

What is the sanction for missing these deadlines?

Rule 48. Temporary Orders Without Notice

Section 2:

Should there be a provision for the attorney, rather than the movant, to sign the certification?

In the third sentence, “without notice” should be inserted after “motion for temporary order”.

SECTION VII. DISCLOSURE AND DISCOVERY

Rule 49. Disclosure

In the second sentence, the meaning of “agreed to by the parties” is unclear.

The 40-day deadline seems onerous.

It’s unclear whether conciliation court will stay the 40-day deadline.

It’s unclear whether motion practice is excluded from this rule.

Rule 50. Complex Case Disclosure

Parties may not have enough information within 20 days to determine if the case is complex. The 20-day deadline may cause parties to file notice just to preserve their right to do so, costing the parties and the court time and money.

In Coconino, subsequent filings will incur additional filing fees.

Rule 51. Discovery

Section B(2):

In the first sentence, insert a close parenthesis.

Section B(3)(c):

It may be unrealistic to expect that pro pers will pay even when ordered by the court.

Rule 63. Physical and Mental Examinations of Persons

Section A:

In the second sentence, does the parenthetical exception refer to the requirement for the motion or for notice or both?

Should this rule include the civil rules provision for the person being examined to have a representative present?

We recommend adding that the court may appoint a guardian ad litem for a minor child.

Rule 65. Failure to Make Disclosure or Discovery; Sanctions

Section A(2)(c):

What if the party is unrepresented? “Moving counsel” could be changed to “moving party”, to correspond with Section A(2)(b).

Section C(2):

What if the court set the disclosure deadline for more than 30 days?

SECTION VIII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

Rule 66. Alternative Dispute Resolution: Purpose, Definitions, Initiation and Duty

Sections B(2) and (3):

It will take Coconino at least eight months to come into compliance with the new rules.

Section B(4):

In the first sentence, the phrase “private settlement discussions” may be misinterpreted to include settlement conferences. The sentence could be re-written as follows:
“‘Mediation’ means a voluntary confidential process in which a neutral third party helps parties resolve disputes”.

Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services

Section B(9):

The first sentence may be misinterpreted to mean that mediation is both required and voluntary. The presumed intended meaning, that attendance but not participation is required, is unclear. It is unclear that “participate” excludes “attend”.

Rule 68. Conciliation Court Services; Counseling, Mandatory Mediation, Assessment or Evaluation and Other Services

Section B(6):

Since parties are more protected in mediation than in unmediated personal negotiations, it seems unnecessary to add these protections.

This rule seems to conflict with Rule 69(B).

What is the standard for objections?

**Rule 72. Family Law Master and
Rule 74. Parenting Coordinator**

It seems unfair to require a party to pay a professional appointed over their objection.

SECTION IX. PRETRIAL AND TRIAL PROCEDURES

Rule 76. Pretrial Procedures

Section C(1):

In the first sentence, the meaning of “there is domestic violence” is unclear.

Section C(1)(d):

If the length of trial is to be longer, it would help the court to know before the pretrial statement.

Only after discovery do parties have enough information to make a realistic request for the time needed for trial. Unrealistic requests make for an inefficient court calendar.

The pre-trial statement could be filed simultaneously with the request for trial.

Why is the pre-trial statement not included in trial procedures?

SECTION X. JUDGMENTS AND DECREES

Rule 85. Motion to Correct Mistakes; Relief from a Judgment or Decree

Section C(6):

Should the second sentence be a separate paragraph applicable to the entire Rule 85(C)?

SECTION XI. POST-DECREE/POST-JUDGMENT PROCEEDINGS

Rule 91. Post-Decree/Post-Judgment Proceedings

The practice in some counties and for non-family law cases is to submit original proposed orders to the clerk rather than the division.

Section C:

Subsequent judgments should have separate, not overlapping, judgment periods.

Section D(1)(b):

Will this form be part of the final rules?

Section D(3):

Should the applicant be required to file proof of service?

Section D(5):

The Request could be filed with the clerk with the petition to modify. If just submitted to the division, what are the service requirements?

Section D(6):

Should the rules define procedures for after a hearing is set -- for example, must the applicant give notice?

Section G(1)(a):

The word “order” is confusing and could be omitted in “A Petition for Enforcement of Custody, Parenting Time or Visitation order shall comply ...”.

Section G(1)(b):

The meaning of the phrase “specific requests for physical custody” is unclear. Does it mean “who should have physical custody”?

Section N:

The court should have the discretion to 1) rule on pleadings instead of holding a hearing and 2) hear testimony, if necessary, regarding motions.

Is a Petition for Order to Appear part of the custody modification process? If not, does that preclude testimony in those matters?

SECTION XII. CIVIL CONTEMPT AND ARREST WARRANTS

Danielson v. Evans, 201 Ariz. 401, may affect these rules: “A trial court retains ‘continuing jurisdiction to enforce its orders for [child] support and [spousal] maintenance, by means of a petition for contempt proceedings to enforce the order,’ ... Support and spousal maintenance payments, however, ‘are clearly differentiated from property settlement payments, the latter of which cannot be enforced by contempt proceedings.’”

Rule 92. Civil Contempt and Sanctions for Non-Compliance with a Court Order

Section B:

In the third sentence, change “order show cause” to “order to show cause”.

In the language to appear in the order, the meaning of “you may be held in jail up to 24 hours before a hearing is held” is unclear. “Up to” could mean “until”.

Section C:

Does the court also need to find, as in the civil rules, that the contemnor received notice of the prior order?

Section F:

A determinate period is set only in criminal contempt.

The rule refers to the “purge *amount*”. What about non-monetary conditions?

Does the six-month limit apply even if the contemnor won’t reveal a child’s location, for example?

Section G:

In the second sentence, what is the difference between determining “if the person has been able to comply” and reviewing “the person’s present ability to comply”? If the person complied, he should have been released.

Rule 94. Civil and Child Support Arrest Warrants

Section E:

Why does this section not follow civil rule 64.1(d)?

In the third sentence, the meaning of “the superior court of the same county” is unclear.