

Judge Steven D. Sheldon  
Maricopa County Superior Court  
201 W. Jefferson Ave.  
Phoenix, AZ 85003  
602-506-3944  
Az.StateBar # 003853

IN THE ARIZONA SUPREME COURT

In the matter of:

PETITION FOR )  
ADOPTION OF ARIZONA )  
RULES OF FAMILY LAW PROCEDURE )  
 ) R- 05-0008  
 )  
 ) COMMENT ON PETITION  
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\_\_\_\_\_ )

I agree wholeheartedly with the Work Group observation that “. . .the nature of family cases and the overriding goal to eliminate wherever possible the adversarial nature of court processes suggests a separate set of rules and procedures for operation of the family court should be developed. Current rules generally applicable to civil cases assume a conflict-driven system that adopts litigation rather than problem solving as the dispute resolution model.” (Petition, p.3) The recommendations and proposals put forward by the Chair of the Committee on Rules of Procedure in Domestic Relations Cases go far in successfully achieving the goal of efficiently resolving family law cases within an appropriate procedural framework. I think the Committee also correctly recognized in its Mission Statement that it is important 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. . . .”(id, p. 5). However, because proposed Rule 47 can better achieve these goals through a more timely response to requests for temporary orders, I am presenting the following comment with respect to that particular Rule.

\_\_\_\_\_  
DATED this \_\_\_\_ day of August, 2005.

A copy of this comment has been mailed or delivered this \_\_\_\_\_ day of \_\_\_\_\_, 2005, to:

Judge Mark Armstrong,  
Maricopa County Superior Court

**RULE COMMENTED ON, IN WHOLE OR IN PART:**

**Rule 47. Temporary Orders**

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**D. Hearing.** Upon receipt of a Motion for Temporary Orders and documents required by paragraph C of this rule, the court shall issue an Order To Appear to consider the motion at either a Resolution Management Conference or an evidentiary hearing. In either event, the court shall hold the conference or hearing within 60 days of receiving the request for hearing.

**Rule 76. Pretrial Procedures**

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**e. Resolution Management Conference (RMC); Preparation, and Matters to Be Discussed.**

1. Upon written request of any party the court shall, or upon its own motion the court may schedule one or more resolution management conferences, that shall be held within 60 days of receipt of written request by the court, unless extended for good cause shown.

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- 3.

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c. Enter temporary orders as agreed upon by the parties. On agreement of the parties, the court may also enter temporary orders based upon the discussions, avowals and arguments presented by the parties without an evidentiary hearing on the contested issues;

- d. Order evaluations, assessments, appraisals, testing, appointments or other special procedures needed to properly manage the case and resolve the disputed issues;
- e. Schedule a trial date or evidentiary hearing, and any other necessary hearings or conferences. . . .

**SUMMARY OF COMMENT:**

- **Rule 47 should require trial court action within 30 days**
- **Rule 47 should include a trial management tool for judges similar to Rule 16 (a)(2), Rules of Civil Procedure, to provide for and facilitate streamlined intervention in cases in need of immediate court action**

**COMMENT:**

**RULE 47**

My experience as a judge on the Maricopa County Superior Court trial bench for almost 16 years and on the Family Court bench for over 4 years, leads me to the conclusion that the time limit presently set forth in proposed Rule 47-- which requires the court to set either a Resolution Management Conference or evidentiary hearing within 60 days of a request for Temporary Orders-- is simply too long. I am concerned that Rule 47 adopts a time limit that neither carries out the goal of “problem solving” nor does it establish a procedure for “timely resolution of family disputes.”

When a Request/Motion for Temporary Orders is filed, oftentimes simultaneously with the filing of the Dissolution Petition, the Court’s focus should be on whether this is a family in trouble that needs immediate court intervention. Quickly set, short hearings to evaluate whether there are immediate, critical needs are the most expedient, efficient way to get cases moving along and resolved. If you can perhaps persuade the parties to agree on support payments, visitation, payment of debts, etc. at a quickly set, short hearing, at which you set a trial date, and put discovery orders and necessary services in place, it is the best way to get cases moving and not clog up a trial calendar. When difficult and important questions about child custody, visitation/parenting time, domestic violence, drug testing, and payment of debt and support could have a seriously detrimental outcome for one of the parties, the Court needs to act rapidly and interact personally with those litigants to determine the gravity and seriousness of the problems. The trial judge

will be able to evaluate, during a discussion with the parties, the need for additional services, immediate orders to preserve property, protect victims of domestic violence and make an evaluative judgment about the length and timing of any evidentiary hearing if one is needed to resolve the request for Temporary Orders.

Trial Courts should be required to act within 30 days of a request for Temporary Orders. To paraphrase Rule 48 (Temporary Orders without Notice), the current proposed Rule 47 (D)<sup>1</sup> should be amended to require that the Court “shall . . . set [a Pre-trial Conference or Resolution Management Conference] on the motion for temporary orders within . . . [30] days from the . . . [filing of the Motion] unless extended by the court for good cause shown.” While it may be argued that subsection “(K)” of Rule 47 will adequately deal with those situations in which the litigants believe they should be permitted to come to the Court more quickly than 60 days after filing the motion, the Rule, unfortunately, sets the base-line—60 days. Judges with busy calendars and the pressure of resolving cases will not likely be inclined to grant such requests—and by the time they consider and rule on a request to accelerate, valuable time will be lost that may be of critical importance to some families. Thus, the burden should be placed on the trial court to justify hearing it later than 30 days, rather than placing the burden on a party to justify having a hearing on a request for Temporary Orders set sooner than a Resolution Management Conference. I am very concerned that proposed Rule 47 sends the message that setting a hearing on a request for Temporary Orders is no more important than setting a routine, Rule 76 “Resolution Management Conference.” Both Rule 47 and 76 currently incorporate a time limit of 60 days from the date of the filing to set a hearing.

Noticeable by its absence from the overall scheme of the proposed “new rules” is a procedural mechanism similar to Rule 16 (a), Rules of Civil Procedure. In fact, it is clear from the index that the ONLY pretrial procedure is Rule 76. A Rule similar to Rule 16 would allow the trial judge to set a brief hearing, on very short notice, to address the need for quick action when a Request for Temporary Orders is filed. At a Rule 16(a)-type, Pre-trial Conference, set for a very short period of time, the trial judge could accomplish the very same goals set out in Rule 76 (A)(3)(c,d,e). Requests for Temporary Orders require affirmative Court intervention and attention immediately to maintain the status quo pending resolution of the case. We will simply miss the boat if we do not allow for a trial management procedure or

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<sup>1</sup> See attached “Alternative Rule 47 (D)” following this comment.

hearing/conference process less encompassing than an attempt to resolve all ills with one medication—i.e. the Resolution Management Conference.

A trial management tool modeled after Rule 16(a) should be a part of the "New Rules" in Rule 47 and would, in the context of requests for Temporary Orders, permit swift intervention, in a short hearing by the trial court. I cannot emphasize too strongly the need to permit the court, as in Rule 16 (a)(2), to establish "early and continuing control so that the case will not be protracted because of lack of management." A provision allowing the trial court this kind of management tool is critically important to allow the "scalpel" approach rather than the sledgehammer approach of Rule 76 in every case brought before the court in a request for Temporary Orders. Permitting only one option to a trial court practically invites wholesale ignoring of the Rule's requirements to deal quickly and fairly with families with critically important, immediate needs. While the Resolution Management Conference may be a helpful tool during the pre-trial management process, to adopt it as the exclusive procedural device for trial courts to manage cases invites delay, unnecessary expense and limits the trial judge's ability to economically and efficiently manage a case. Rule 16, Rules of Civil Procedure, sets an efficient paradigm that should not just be tossed out without some consideration.

Rule 47 (D) should not only be amended to require a trial court response within 30 days but should also include a provision similar to that currently set out in Rule 16 (a) to encourage trial courts to quickly and efficiently address urgent needs of families that require swift intervention.

Respectfully submitted this \_\_\_\_\_ day of August 2005.

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Judge Steven D. Sheldon, Maricopa County Superior Court

## Alternative Rule 47

### Rule 47. Temporary Orders

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**D. Hearing.** Upon receipt of a Motion for Temporary Orders and documents required by paragraph C of this rule, the court shall issue an Order To Appear to consider the motion at a **Pretrial Conference**, Resolution Management

Conference or an evidentiary hearing. **The court shall hold the conference or hearing within 30 days of receiving the request for hearing. The Court may, in its discretion, direct the parties and/or the attorneys for the parties to participate in a conference or evidentiary hearing for such purposes as:**

- 1. expediting the resolution of temporary property, debt, custody and parenting time issues;**
- 2. implementing orders for the payment of child support and spousal maintenance;**
- 3. implement a discovery schedule, discourage wasteful pretrial activities, and expedite disposition of the case through the establishment of early and continuing control over the case;**
- 4. determine the necessity of collateral services such as counseling, supervised visitation, mental health evaluations, or referral to mediation or alternative dispute resolution programs.**

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