



in place to entertain public comments as the rules are implemented and to conduct a review of the rules two years after the effective date thereof.

Adoption of this comprehensive set of procedural rules is imperative to this state's family law courts in light of pervasive confusion and conflict over applicability of the rules of civil procedure in family law cases. Further, the proposed rules will provide uniformity, stem the proliferation of diverse local rules, and greatly assist the courts in the efficient administration of justice.

### **RESPONSE TO PUBLIC COMMENTS**

The Committee has held public meetings for over two years, and has constantly posted its latest version of the rules on the Supreme Court's public website. The Committee also has done substantial outreach to ensure that interested persons were kept abreast of developments as the rules evolved, and to consider informal comments about the rules. Most of the Committee's outreach efforts are reflected in accompanying Appendix B, DR Rules Committee 2003/2004 Meeting and Presentation Dates. The Committee considered and accepted many informal comments from individuals and groups such as the Executive Council of the Family Law Section of the State Bar of Arizona, the Attorney General's Office and Southern Arizona Legal Aid. Therefore, it is no surprise that a project of this scope has attracted only four formal comments, which I will address in turn. All public comments, formal and informal, were vetted through both a comment review subcommittee and the Committee as a whole.

***Comment of Judge Steven D. Sheldon***

Judge Sheldon commented on Rule 47 only, recommending that a temporary orders pretrial hearing be set within 30 days after a request therefore. After considering variations in local practice, while recognizing that these matters need to be heard quickly since families are often in crisis when temporary orders are requested, the Committee changed this rule to require that if an evidentiary hearing is not set within 60 days, a pretrial conference or resolution management conference shall be set within 30 days of the request.

***Comment of Barry Brody, a member of the American Academy of Matrimonial Lawyers***

This comment, with a cover sheet from Steven H. Everts, is an e-mail message from Mr. Brody to Steven Everts and Jim Stroud, with commentary “mostly in a generalized and rambling format.” No specific recommendations for change of language were made. Certain of Mr. Brody’s comments have already been addressed based on informal comments received during the public comment period. The Committee responds to Mr. Brody’s comments, in the order raised, as follows:

1. Rule 2(B)(3) has been amended upon the suggestion of the State Bar of Arizona Family Law Section to limit this exception to “records of regularly conducted activity.” Otherwise, the Committee disagrees with this comment.
2. Rule 8 – The Committee disagrees with this comment.
3. Rule 10(B) has been substantially rewritten to provide more detailed standards. Otherwise, the Committee disagrees with this comment.
4. Rule 40(F) – The Committee agrees with this comment and has changed “shall” to “may.”

5. Rule 43(C) – The Committee thoroughly discussed this comment and disagrees with it.
6. Rule 43(G) has been substantially rewritten to comply with revised Rule 123, Rules of the Supreme Court. Otherwise, the Committee disagrees with this comment.
7. Rule 47 has been revised to require either an evidentiary hearing within 60 days after a request for temporary orders, or a pretrial conference within 30 days. Otherwise, the Committee disagrees with this comment.
8. Rule 49 - The Committee disagrees with this comment.
9. Rule 63 - The Committee agrees with this comment and has amended the rule accordingly.
10. Rule 67 – The Committee agrees with this comment and has amended the rule accordingly.
11. Rule 91 – This rule has been substantially rewritten and simplified based on informal comments received during the public comment period. The complained of provision has been removed.
12. Rule 97 - The Committee disagrees with this comment.

***Comment of Debra A. Weeks***

Ms. Weeks made 61 comments that are addressed in the same order below:

1. The Committee agrees with this comment and will do so.
2. The Committee has reviewed the new emancipation law, which places emancipation decisions in the juvenile court. Ms. Weeks is correct that Title 8 was purposefully

- not addressed since we already have statewide rules of procedure for the juvenile court.
3. The Committee disagrees with this comment since there may be injunctions against harassment that are related to family law matters. Also, Rule 1 makes clear that injunctions against harassment are covered only when so ordered by the presiding judge of the county.
  4. The Committee agrees with this comment and intends that local rules be revisited and eliminated to the extent possible after promulgation of these rules.
  5. This rule has been revised to address the timing issue set forth in this comment. Otherwise, the Committee disagrees with this comment.
  6. The Committee agrees with this comment and has made the proposed change.
  7. The Committee disagrees with this comment.
  8. The Committee agrees with this comment and has made the proposed change.
  9. The Committee appreciates this comment and recommends that it be considered as part of the two-year review.
  10. The Committee disagrees with this comment.
  11. The Committee agrees with this comment and has changed the rule to address it.
  12. Rule 10 has been substantially rewritten to provide more detailed standards. Otherwise, the Committee disagrees with this comment.
  13. The Committee agrees with this comment but believes existing law already requires this suggestion.

14. The Committee appreciates this comment but would note that the cover sheet is discretionary with the court and would have to comply with Rule 43(G) of these rules and Rule 123, Rules of the Supreme Court.
15. The Committee disagrees with this comment.
16. The Committee disagrees with this comment.
17. Rule 30 covers electronic filing, and faxing is permitted in certain other specific rules (Rules 74 and 97). The Committee agrees with the proposed addition to paragraph D(4), and has added the proposed language.
18. The Committee disagrees with this comment.
19. The Committee believes this proposal is unnecessary.
20. The Committee agrees with this comment and has changed “the” to “any.”
21. The Committee appreciates this comment but does not believe the proposed change is necessary. Rule 97 provides a reference to the Self Service Center and Supreme Court’s website.
22. The Committee agrees with this comment and has changed the language accordingly.
23. The Committee agrees with this comment and has changed the language accordingly.
24. The Committee agrees with this comment and has changed the language accordingly.
25. The Committee agrees with this comment and has changed the language accordingly.
26. The Committee has addressed this comment by adding the following prefatory language: “Except as otherwise specifically provided for in these rules,”.
27. Default on Demand is a local procedure in Maricopa County. Pima County has a similar Walk-in Default procedure. Rule 44 is not inconsistent with these local

- programs. However, the Committee does not believe it would be appropriate to codify these local procedures in statewide rules.
28. The Committee believes this proposal is unnecessary.
  29. The Committee encourages the use of orders of assignment and the Clearinghouse for the protection of all parties. Therefore, the Committee does not want to expressly state that this is an optional procedure since it is, in fact, the presumptive procedure. The Committee agrees with the second suggestion and has added the proposed language.
  30. The Committee appreciates this comment but does not believe the proposed change is necessary. Rule 97 provides a reference to the Self Service Center and Supreme Court's website. Further, this rule specifically requires the use of specified forms. Finally, the Committee believes that the proposed language for paragraph C is unnecessary in light of paragraph E.
  31. This comment has been addressed in response to Judge Sheldon's comment, *supra*.
  32. The Committee disagrees with this comment despite the example cited.
  33. The 40-day requirement in Rule 49 is based on Rule 16.1, *Arizona Rules of Civil Procedure*, and allows for an exception if the parties agree. The Committee believes the proposed changes in this comment are unnecessary.
  34. The Committee believes this proposal unduly complicates the rule and may lead to increased litigation.
  35. The Committee believes this proposal is unnecessary in light of the full context of this paragraph.

36. The Committee does not necessarily disagree with this comment but does not recommend any changes since Rules 49 and 50 were written to strike a delicate balance acceptable to the wider bar.
37. The Committee agrees with this comment in part and has added most of the proposed language to Rule 49.
38. The Committee has addressed this comment in 37, above.
39. The Committee agrees with this comment and has made the proposed change.
40. The term “consultant” was borrowed from the comparable civil rule and generally refers to an expert consulted by an attorney who will not be listed or called as a witness. The Committee does not believe that further clarification is necessary.
41. The Committee agrees with the proposal to require disclosure of subpoenaed documents and the proposed addition at the end of paragraph 52(C)(3)(b), and has amended the rule accordingly.
42. The Committee agrees with this comment and has made the proposed change.
43. The Committee agrees with the proposed changes to Rule 57(A), 57(B)(2) and 57(G), but believes the other proposed changes are unnecessary.
44. The Committee agrees with this comment and has changed “prison” to “confinement.” The Committee also has deleted paragraph C in response to this comment.
45. The Committee believes this proposal is unnecessary since mediation is neither mandatory nor exclusive.
46. The Committee disagrees with this proposal since one size does not fit all.

47. The Committee believes this proposal is unnecessary and that Conciliation staff should be treated as all other witnesses.
48. The Committee believes this proposed change is unnecessary since the Court's authority is implicit.
49. The Committee appreciates this comment but believes this proposal would be more appropriately addressed in informative pamphlets. Further, the committee comments and Form 10 already provide much of the requested information.
50. The Committee does not agree that Rule 76 should be treated as Rule 47(D), since requests for temporary orders are usually more time sensitive.
51. The Committee agrees with most of this comment and has made most of the suggested changes.
52. The Committee disagrees with this comment.
53. The Committee appreciates this comment but believes proposal would infringe upon the Rules of Civil Appellate Procedure that are not within the purview of this Committee.
54. The Committee believes this proposal is unnecessary. This Rule is borrowed almost verbatim from Rule 71, *Arizona Rules of Civil Procedure*. The suggested language is implicit.
55. The Committee believes this proposed change is unnecessary. It is assumed throughout the rules that the court will follow the law.
56. The court appreciates this comment and will recommend that it be considered further in the two-year review.

57. The two affidavits referred to in this comment have consolidated into one for simplicity and ease of use. Otherwise, the Committee believes the proposed changes are unnecessary.

58. The Committee believes the proposed changes are unnecessary.

59. The Committee agrees with this comment in part and has changed all references to “bank” to “financial institution.” The Committee believes the other proposal is unnecessary.

60. The Committee agrees with this comment in part. A form for Consent Decree without Children will be made available at Self Service Centers. The Committee has adopted most of the proposed changes regarding spousal maintenance, exchanging financial information, and QDROs. The Committee believes the remaining proposed changes are unnecessary.

61. The Committee has addressed this comment in response to prior comments.

### ***Comment of Coconino County Superior Court***

Coconino County Superior Court submitted informal comments to the Committee on August 18, 2005. The Comment Review Subcommittee and the Committee as a whole have thoroughly considered all such comments and adopted the vast majority. The comments that were not approved have now apparently been filed as a formal public comment (assuming their filing has been accepted by the Court after the public comment deadline has expired). The Committee will address them in turn:

1. General Comments – The Committee intends to further simplify the rules in the two-year review. The Committee also intends to prepare and distribute correlation tables for the rules and forms, which should be of assistance to both litigants and the courts.

2. Rule 10 was changed to recognize the prospect of appointment of court advisors, including guardians *ad litem* and CASAs. Also, greater detail was added regarding the qualifications and duties of all children's representatives.
3. Rule 45 – The Committee disagrees with this comment. The 60-day period coincides with the statutory 60-day waiting period.
4. Rule 46 – The Committee believes the rule is clear. No proposed language was provided in the comment.
5. Rule 49 - The Committee believes the rule is clear. Again, no proposed language was provided in the comment.
6. Rule 63 – The Committee believes the rule is clear. Rule 10 governs representation of children.
7. Rule 76 - The Committee believes the rule is clear. Again, no proposed language was provided in the comment.
8. Rule 91 – The Committee disagrees with this comment.

**OTHER SIGNIFICANT CHANGES TO THE RULES SINCE THE INITIAL PETITION  
IN RESPONSE TO INFORMAL PUBLIC COMMENTS**

1. Rule 3 – Certain definitions were deleted since they constituted expressions of substantive law.
2. Rule 13 was amended to provide Constitutional standards for closing proceedings.
3. Rule 69(B) was deleted based on substantial opposition by the bar.
4. Rule 71(B) was deleted based on substantial opposition by the bar.
5. Rule 77(C)(3) was deleted since it was confusing.

6. Rule 92(F) was deleted since it was confusing and the intended protection was adequately provided by paragraph G.
7. Rule 96 was amended by adding the procedural sections of the Domestic Violence Benchbook to the rules, rather than simply incorporating them by reference. This change was done at the instance of AOC legal counsel. The Committee would note that the Domestic Violence Benchbook Workgroup of the Court's Committee on the Impact of Domestic Violence and the Courts (CIDVC) proposes the following language in lieu of including certain sections of the benchbook: "The courts shall follow and abide by the Domestic Violence Benchbook as adopted and authorized by Supreme Court Administrative Order 96-37, dated August 6, 1996." The Committee has no objection to either approach.
8. Rule 97 was amended by adding the forms themselves to the rules.

### **CONCLUSION**

The Committee respectfully asks the Court to adopt this final version of the *Arizona Rules of Family Law Procedure (ARFLP)* with an effective date of January 1, 2006, in accordance with the form of order set forth in accompanying Appendix C, or such other order as the Court deems appropriate. The Committee further requests that the Court, by separate administrative order, maintain at least a portion of the Committee in place to entertain public comments as the rules are implemented and to conduct a review of the rules two years after the effective date thereof.

Respectfully submitted this \_\_\_\_\_ day of September, 2005.

---

Mark W. Armstrong  
Presiding Arizona Tax Court Judge  
Maricopa County Superior Court

Original and 6 copies filed with  
The Clerk of the Arizona  
Supreme Court.

Copy mailed or hand-delivered this \_\_\_\_\_ day of  
\_\_\_\_\_, 2005, to:

Chief Justice Ruth V. McGregor  
Vice Chief Justice Rebecca White Berch  
Justice Michael D. Ryan  
Justice Andrew D. Hurwitz  
Justice W. Scott Bales  
David K. Byers, Administrative Director  
Patience Huntwork, Chief Staff Attorney