

**COMMITTEE ON RULES OF PROCEDURE
IN DOMESTIC RELATIONS CASES**

Thursday, January 6, 2005 1:00 pm – 4:00 pm

Arizona Courts Building

1501 W. Washington, Conference Room 345A

Teleconference #: (602) 542-9012

Web Site: <http://www.supreme.state.az.us/drrc/>

Members Present:

Honorable Mark Armstrong
Annette Burns, Esq.
Honorable Norm Davis
Annette Everlove, Esq.
Elaine Fridlund-Horne, Esq.
Bridget Humphrey, Esq.
Honorable Michael K. Jeanes
Phil Knox, Esq.
Honorable Dale Nielson
Robert Schwartz, Esq.
Debra Tanner, Esq.
Honorable Nanette Warner
Dr. Brian Yee

Members Not Present:

Honorable John Nelson
Richard Scholz, Esq
Janet Metcalf, Esq.

Staff Present:

Konnie Neal
Annette Mariani

Quorum:

Yes

1. Call to Order: Honorable Mark Armstrong

After welcoming Committee members, Judge Armstrong expressed his appreciation to the Committee for all their hard work this past year. He also expressed his appreciation to the AOC staff for their partnership and support not only throughout the year, but with the putting together of this working retreat. He stated that he was satisfied with the work the Committee has done and stated that, as a result, a substantially complete product has been presented. All members were given the following bulleted items, in addition to the most recent updated sections for the binders together with an updated table of contents sheet:

- Agenda
- Membership List
- Dates of Future Meetings
- 2004/2005 Meeting and Presentation Dates
- Updated Rule 54B – Involuntary Dismissal: Effect Thereof
- Draft Minutes of December 1, 2004 Meeting

Judge Armstrong stated that an additional matter that will be discussed involves changes to Rule 54(B). Another matter, which will be deferred until tomorrow, is a proposal from the ADR Committee regarding cosmetic changes and changes to the Domestic Violence provisions that were agreed upon. Lisa Melton will be invited to speak to this at a time agreed upon by the Committee at tomorrow’s meeting, unless the workgroup can reach a consensus on the DV subsection before then.

2. Rule 54(B)--Involuntary Dismissal: Effect Thereof - Debra Tanner

Debra Tanner stated that the reason for the changes were due to the high percentage of paternity cases which take the longest. In cases where paternity has already been established and, for instance another child is introduced for paternity, the proposed wording would help with the whole case not being thrown out. The proposed change would be to add “*without entry of a judgment or decree*” after “(4) months” in the first sentence of Rule 54B 1. In the last sentence after “however” the proposed change is to add “*while there is pending before the court a motion for summary judgment, a motion for judgment on the pleadings, or a motion related to genetic testing in a paternity manner.*” Debra stated that the reason for this change is to avoid having to continuously file all the motions to continue in cases on the inactive calendar or worry about dismissal in the middle of paternity cases. Debra asked if this was an issue on non-IV-D cases.

Judge Norm Davis stated that he had some concerns. He stated that whenever there are tie qualifiers to time period dismissals, it increases complexity. A good computer system would be needed to be certain that all parameters are being met. The summary judgment process in IV-D cases delays the case and is unnecessary. Due to a large volume of cases that have high degree of reliability, the motions that come in are routinely granted due to strong evidence. The process that is in place now, is that a motion for summary judgment takes about 30 days to get resolved and then the case gets set for hearing two months out. By changing the procedure—where any motion for summary judgment and request for establishment hearing be set for an establishment hearing/oral argument on the motion for summary judgment—everything could be entered at the same time, thus compressing time periods. If the change is made a lot of the following is done away with:

- The time period would be shortened;
- The entering of child support would be accelerated;

- We would avoid the need to file motion on the side of the attorney general, and
- We would eliminate the need for the court to process the motion.

Judge Armstrong stated that this illustrates one of the hazards of having multiple iterations of a product. These changes were made to an earlier version; this has since been simplified. It was stated that this language can be an invitation for abuse by individuals who have had cases sitting around and do not care to have them dismissed. This addition may not be necessary. Judge Davis asked if clarification is necessary as to whether the case or the petition is dismissed. Discussion ensued. It was raised whether the word “trial” is too restrictive in the second line, and there was a suggestion to add “*other proceedings*” after trial. Judge Armstrong asked Judge Davis if he was willing to draft another rule to cover the pre-post trial.

TASK: Judge Davis will revise this dismissal rule and submit his revised draft to Konnie.

3. Approval of Minutes

A quorum was present for the approval of minutes

Motion: Minutes Approved.

Seconded

Vote: Minutes Approved.

4. ADR Rule – Lisa Melton

Judge Armstrong stated that a time will be set for Lisa Melton to discuss the ADR Rule. He stated that what the workgroup is proposing is a reconsideration of what has already been approved by the Committee. A time for tomorrow at 10:00 am was set.

5. Format for Review of Rules

Judge Armstrong presented two options to the Committee on proceeding with the review of the rules. There are 14 sections and 105 rules. The options presented were:

- Taking the time to go through all the rules. If any minor changes such as grammatical, or spelling changes are noted, these can be brought up for immediate correction. If there is anything more significant, which may require reports, this would be done as a group; and/or
- Assign a section to a committee member who was not on the workgroup that drafted the section, in order to give new eyes to the information.

Judge Armstrong asked the Committee for a vote. The first option was favored. Committee members began individual review and revision of master *ARFLP*.

6. Next Meeting – Judge Armstrong

The next Committee meeting will be a continuance of today and will be held tomorrow, January 7, 2005, at the Arizona Courts Building, 1501 W. Washington, Conference Room 345, Phoenix, Arizona beginning at 8:30 am. The conference call number is: 602.542.9015.

7. Adjournment

Judge Armstrong thanked the Committee for their hard work and commitment, and adjourned the meeting at 5:00 pm.