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 Chair, Committee on Rules of Procedure in Domestic Relations Cases

**IN THE SUPREME COURT
 STATE OF ARIZONA**

In the Matter of:)	
)	
Arizona Rules of)	
Family Law Procedure)	Supreme Court No. _____
)	
)	PETITION FOR ADOPTION OF ARIZONA
)	RULES OF FAMILY LAW PROCEDURE;
)	PETITION TO EXTEND RULE 53(k),
)	ARIZONA RULES OF CIVIL PROCEDURE,
)	AND PIMA COUNTY LOCAL RULE 8.11
_____)	

PETITION FOR ADOPTION OF ARIZONA RULES OF FAMILY LAW PROCEDURE; PETITION TO EXTEND RULE 53(k), ARIZONA RULES OF CIVIL PROCEDURE, AND PIMA COUNTY LOCAL RULE 8.11

Pursuant to Rule 28, Rules of the Supreme Court, the Committee on Rules of Procedure in Domestic Relations Cases, by and through its chair, the Honorable Mark W. Armstrong, Presiding Judge of the Arizona Tax Court, and former Presiding Judge of the Family Court Department of the Maricopa County Superior Court, petitions the Court to adopt statewide *Arizona Rules of Family Law*

Procedure (ARFLP) as reflected in the accompanying Appendix A, proposed rules. The Committee also petitions the Court to extend in effect Rule 53(k), *Arizona Rules of Civil Procedure*, and Pima County Local Rule 8.11, both of which sunset June 30, 2005, until the effective date of the *Arizona Rules of Family Law Procedure*.

I. INTRODUCTION

In 1998, the Legislative/Rules Work Group of the Supreme Court's Committee to Study Family Issues in the Superior Court recommended to the Committee that statewide rules of family law procedure be developed to provide uniform, specially tailored rules for family law cases.¹ The workgroup formally reported as follows:

The Work Group recommends the following for immediate implementation:

◆ Develop statewide rules of procedure for family court, distinct from but embodying relevant portions of the present Arizona Rules of Civil Procedure, Rules of Procedure for the Juvenile Court and Arizona Rules of Evidence.

Analysis suggests that while some changes to existing statutes may be required, the family court model recommended by the

Committee may operate within the existing statutory scheme for jurisdiction and operation of the superior court. However, 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. This is destructive to families. Also, the civil procedural rules largely are designed around the premise that, absent an appeal, a case will terminate after judgment is rendered. In contrast, family cases usually involve financial, property or child-related issues that maintain interaction of the parties. The court routinely remains involved in dispute resolution...

◆ Appoint a blue ribbon committee to develop the family court rules and identify specific statutory changes that may be required to implement the family court.

Development of distinct rules for family court extends beyond the charge of the Committee and will entail significant time and effort.

¹ This recommendation was included, in somewhat less detail, in the December 1998 Final Report and

This task is best suited to a specially appointed body of diverse composition representing, among others, various segments of the legal, court, and mental health communities. The project also should identify changes and/or additions to state statutes that may be necessary for the family court to function. (As an example, an amendment to A.R.S. § 8-202(A) may be necessary to address the jurisdictional authority to decide certain juvenile cases.) The Work Group also recommends review of the current statutes governing the court of conciliation (Title 25, Chapter 3, Article 7 of the Arizona Revised Statutes). However, to the extent possible, the administrative authority of the Supreme Court and of presiding judges in each county should be invoked as the agent of change. (Emphasis added.)

In July 2003, the Supreme Court established the Committee on Rules of Procedure in Domestic Relations Cases. The Committee is comprised of 16 members who are judges, attorneys, and court personnel from various Arizona counties. Judge Mark W. Armstrong chairs the DR Rules Committee, and Konnie Young Neal is staff to the Committee. The Committee has reviewed current statewide and local rules of procedure, evidence, and alternative dispute resolution

applicable to domestic relations cases and has proposed substitute or additional rules as needed for family law. The Committee, which has met monthly since August 2003, has also reviewed rules of procedure from other states in its endeavor to identify areas in which current rules impede the fair and efficient disposition of domestic relations cases.

The Committee first established goals and the following mission statement to guide its efforts:

The mission of the Committee on Rules of Procedure in Domestic Relations Cases is 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.

The Committee next developed an outline of necessary family law rules and determined which rules from *Arizona Rules of Civil Procedure* would apply. Workgroups were formed to draft rules for the following three sections of the proposed family law rules: 1) Commencement of Action/ General Rules of Pleadings; 2) Scope of Rules/ Applicability of Other Rules, and 3) Simplified (Uncontested) Proceedings. Subsequently, eight additional workgroups were formed to address all aspects of family law procedure. The Committee has also

had several presentations on various aspects of family law and procedure and has agreed to incorporate limited scope representation in the family law rules.

The family law bench in Arizona overwhelmingly supports adoption of statewide rules for its Family (Domestic Relations) Law Courts. This approach was recently listed by Hon. Arline Rotman (Ret.), AFCC Human Resources Committee Chair, as one of the top five reforms she would like to see in family law. Some of the reasons advanced by her and Arizona judges include:

1. The need for family court-specific rules to more appropriately meet the needs of families and children.
2. The need for more uniformity statewide.
3. The need to stem the proliferation of local family law rules.
4. The need for statewide rules with timeframes or time limits for disposition of certain issues or types of cases.
5. The need to take family disputes out of traditional litigation rules and have problem-solving rules (with a minor litigation component).
6. The need for revised discovery and disclosure requirements unique to families who share discoverable information.
7. The need to relax the rules of evidence for family law cases.
8. The way a family law case is and should be processed is markedly different from civil litigation.
9. The Rules of Civil Procedure are often ignored in family court because they are ill-fitting; this breeds disrespect for legal rules and common sense. Rules of Family Law Procedure would more likely be followed and enforced.

10. The current rules should be simplified.
11. Settlement and mandatory mediation need a different focus in family law.
12. Notice pleadings work well in civil (and many areas of family law) but unnecessarily delay child support collection in post-decree child support enforcement actions.

II. SUMMARY OF THE PROPOSED RULES

Section I. GENERAL ADMINISTRATION

Rule 1. Scope of Rules

This rule defines the scope of the rules.

Rule 2. Applicability of Other Rules

This rule addresses the applicability of the *Arizona Rules of Civil Procedure (ARCP)* and the *Arizona Rules of Evidence*. The rules of evidence are relaxed in family law cases unless a party timely invokes the formal Rules of Evidence, except that even if the formal rules are invoked, the requirements for admission and consideration of certain documentary evidence are relaxed. Under the relaxed rules, the court will generally follow the rules applicable to administrative hearings - relevant evidence is admissible unless its probative value is outweighed by other, specified considerations.

Rule 3. Definitions

This rule defines certain words and phrases contained in the rules. It is not intended to be exhaustive.

Rule 4. Time

This rule governs the computation of time under these rules and is based on Rule 6, *ARCP*.

Rule 5. Consolidation

This rule provides procedures for consolidation of cases with common parties, children or issues and is based on Rules 42(a) and 65(a), *ARCP*.

Rule 6. Change of Judge

This rule merely adopts and incorporates by reference Rule 42(f), *ARCP*.

Rule 7. Protected and Unpublished Addresses

This rule provides procedures for a party to protect the party's address if there is an order of protection or the party reasonably believes that physical or emotional harm would result if the address is not protected. It also provides a procedure to serve a party with a protected address. Finally, it requires all parties to keep the Clerk of the Court apprised of their current address.

Rule 8. Telephonic Appearances and Testimony

This rule provides procedures for a party to appear, and for a witness to testify, by telephone at a court hearing.

Rule 9. Duties of Counsel

This rule sets forth duties of counsel and procedures for withdrawal and substitution of counsel. It also provides procedures for limited scope representation in family law cases, including a requirement for a Notice of Limited Scope Representation. The limited scope representation portion of the rule is experimental and expires two years after the effective date of these rules.

This rule is based in part on Rule 5.1, *ARCP*.

Rule 10. Representation of Children

This rule provides for representation of children or children's best interests in family law cases. The rule is based on the ABA Standards of Practice for Lawyers Representing Children in Custody Cases, adopted August 2003. The rule replaces the term "Guardian *ad litem*" with "Best Interests Attorney."

Rule 11. Presence of Children

This rule provides that children may be excluded from Family Court proceedings under certain circumstances.

Rule 12. Court Interviews of Children

This rule sets forth procedures for interviews of children by the court. The rule supplements A.R.S. § 25-405.

Rule 13. Public Access to Proceedings

This rule permits the court to exclude the public from proceedings to promote amicable settlement of cases and to protect a child's best interests in family law cases. The Committee expects this rule to be revised during the public comment period to ensure compliance with the First Amendment.

Rule 14. Unsworn Declarations Under Penalty of Perjury

This rule is based on Rule 80(i), *ARCP*, and permits unsworn declarations except for an acceptance or waiver of service, a stipulation to substantially change custody or parenting time, an affidavit to obtain default judgment without hearing, or a consent decree.

Rule 15. Affirmation in Lieu of Oath

This rule allows an affirmation in place of an oath, and is based on Rule 43(b), *ARCP*.

Rule 16. Interpreters

This rule authorizes the court to appoint interpreters and set their reasonable compensation, and is based on Rule 43(c), *ARCP*.

Rule 17. Limitation on Examination of Witness; Exception

This rule is based on Rule 43(d), *ARCP*.

Rule 18. Preservation of Court Reporters' Notes of Court Proceedings

This rule is based on Rule 43(k), *ARCP*, but adds a reference to electronic recordings.

Rule 19. Lost Records; Method of Supplying, Substitution of Copies; Hearing if Correction Denied

This rule merely adopts Rule 80(h), *ARCP*, in its entirety.

Rule 20. Electronic Filing

This rule provides for electronic filing in family law cases in accordance with Rule 124, *Rules of the Supreme Court*.

Rule 21. Local Rules by Superior Court

This rule provides a process for the adoption of local rules that supplement these rules, and is based on Rule 83, *ARCP*.

Rule 22. Title and Effective Date

This rule titles these rules the *Arizona Rules of Family Law Procedure* and provides for an effective date of January 1, 2006.

Section II. PLEADINGS AND MOTIONS

Rule 23. Commencement of Action

This rule provides that a family law action is begun by filing a petition with the clerk of the court, and is based on Rule 3, *ARCP*.

Rule 24. Pleadings Allowed

This rule sets forth the types of pleadings allowed to be filed under these rules.

Generally, actions are initiated by the filing of a petition.

Rule 25. Family Law Cover Sheet

This rule provides that a cover sheet may be required to initiate a family law case.

Rule 26. Additional Pleadings

This rule provides for additional filings such as the preliminary injunction and summons, order to appear, and notices, forms and orders required by the court.

Rule 27. Service on the Opposing Party or Additional Parties

This rule sets forth the pleadings and documents that are required to be served on other parties.

Rule 28. Mandatory Responsive Filings

This rule requires responsive pleadings in certain cases.

Rule 29. General Rules of Pleading

This rule sets forth rules for the content of pleadings and the effect of a response, and is based on Rule 8, *ARCP*.

Rule 30. Form of Pleading

This rule sets forth rules for the form of pleadings, including adoption by reference and exhibits, and is based on Rule 10, *ARCP*.

Rule 31. Signing of Pleadings

This rule provides for the signing of pleadings, and sanctions for failure to sign or for interposing a pleading or motion without adequate basis, for an improper purpose, or in bad faith. This rule is based on Rule 11, *ARCP*.

Rule 32. Defenses and Objections; When and How Presented; By Pleading or Motion; Motion for Judgment on the Pleadings

This rule sets forth procedures for presenting defenses and objections to pleadings, including motions to dismiss, to strike, or for judgment on the pleadings. This rule is based on Rule 12, *ARCP*.

Rule 33. Counterclaims; Third Party Practice

This rule sets forth procedures for counterclaims and third party practice in family law cases. The rules are tailored to family law practice and are based on Rules 13 and 14, *ARCP*. Note that these rules have eliminated cross-claims from family law practice.

Rule 34. Amended and Supplemental Pleadings

This rule provides for amended and supplemental pleadings, as well as the relation back of certain amendments, and is based on Rule 15, *ARCP*.

Rule 35. Family Law Motion Practice

This rule sets forth procedures, including time periods, for motions in family law cases. It also addresses oral argument on motions. Finally, it also addresses

motions for reconsideration in the same manner as the current rules of civil procedure. This rule is based on Rule 7.1, *ARCP*.

Section III. PARTIES

Rule 36. Real Party in Interest

This rule requires that every family law action shall be prosecuted in the name of the real party in interest and is based on Rule 17, *ARCP*.

Rule 37. Substitution of Parties

This rule provides for substitution of parties in appropriate cases and is based on Rule 25, *ARCP*.

Rule 38. Process on Behalf of and Against Persons Not Parties

This rule provides that an order in favor of a person not a party may be enforced by the same process as if a party.

Rule 39. Proof of Authority by Attorney for Respondent Not Appearing in Family Law Actions

This rule provides that in family law actions, an attorney appearing for a respondent who has not been personally served shall file an affidavit signed by the respondent establishing the attorney's authority to act for the respondent.

Section IV. SERVICE OF PROCESS

Rule 40. Process

This rule provides for process in family law cases. It is based on Rule 4, *ARCP*, except that it allows Department of Economic Security investigators to serve process in Title IV-D cases.

Rule 41. Service of Process within Arizona

This rule provides for service of process within Arizona and is based on Rule 4.1, *ARCP*.

Rule 42. Service of Process Outside of State

This rule provides for service of process outside of Arizona and is based on Rule 4.2, *ARCP*. Paragraph C allows for service through carriers in addition to the US Postal Service, such as Federal Express, DHL and United Parcel Service.

Rule 43. Service and Filing of Pleadings and Other Papers

This rule provides for the service and filing of pleadings and other papers and is based on Rule 5, *ARCP*.

Section V. DEFAULT DECREES, CONSENT DECREES, AND DISMISSALS

Rule 44. Default Decrees

This rule provides procedures for the default process in family law cases. It provides options for obtaining judgment by default by motion without personal appearance and by hearing. It is tailored for family law but is based on Rule 55, *ARCP*.

Rule 45. Consent Decree of Dissolution of Marriage

This rule provides a simplified means of obtaining a decree of dissolution of marriage when the parties agree on all matters to be included in the decree. If the parties agree on all issues and sign the decree before a notary public, they need not appear personally in court. This rule is based on the consent decree process currently used in Maricopa County.

Rule 46. Dismissals

This rule provides procedures for voluntary and involuntary dismissals, including a provision that the court may dismiss a case upon 60 days notice if a case has languished for four months after filing of the petition. The rule allows the court to extend this period for good cause shown. This provision is based on Rule 38.1, *ARCP*.

Section VI. TEMPORARY ORDERS

Rule 47. Temporary Orders

This rule is entirely unique to family law, which specifically authorizes temporary orders on a variety of family law issues, including custody, parenting

time, child support, spousal maintenance, and attorneys' fees. It provides procedures for seeking such orders, which may be issued in both pre-decree and post-decree cases. The rule requires the court to set a conference or hearing within 60 days of a request. The rule also provides for simplified and summary procedures for obtaining child support. Finally, the rule provides a procedure to request expedited relief.

Rule 48. Temporary Orders Without Notice

This rule sets forth a procedure for requesting temporary orders without notice to the other party. It is based on Rule 65(d), *ARCP*. Temporary orders without notice will replace emergency orders and temporary restraining orders (TROs) that are currently issued in some counties.

Section VII. DISCLOSURE AND DISCOVERY

Rule 49. Disclosure

This rule requires a resolution statement and disclosure of certain information necessary for the resolution of a family law case, within 40 days after the filing of a response to an initial petition. The rule is specifically tailored for family law but is based on Rule 26.1, *ARCP*.

Rule 50. Complex Case Disclosure

This rule provides that a party may invoke Rule 26.1, *ARCP*, by filing a notice with the court.

Rule 51. Discovery

This rule generally governs discovery in family law cases and sets forth methods, scope and limits on discovery. It also covers the timing of discovery, supplementation of responses, sanctions and motions. It is based on Rule 26, *ARCP*. The following specific discovery rules were borrowed virtually wholesale from the *ARCP* although some were tailored for family law practice. All civil discovery tools have been preserved.

Rule 52. Subpoena

This rule governs the form and issuance of a subpoena, as well as duties under and sanctions for violating a subpoena. It is based on Rule 45, *ARCP*.

Rule 53. Protective Orders

This rule sets forth procedures for obtaining a protective order from certain discovery. It is based on Rule 26(c), *ARCP*.

Rule 54. Depositions before Action or Pending Appeal

This rule provides procedures for taking depositions before an action is commenced or pending appeal, and is based on Rule 27, *ARCP*.

Rule 55. Persons Before Whom Depositions May Be Taken

This rule prescribes the persons before whom depositions may be taken, both in the United States and foreign countries, and is based on Rule 28, *ARCP*.

Rule 56. Stipulations Regarding Discovery Procedure

This rule provides that the parties may stipulate to discovery procedures, including deviations from these rules, unless the court orders otherwise. It is based on Rule 29, *ARCP*.

Rule 57. Depositions upon Oral Examinations

This rule provides detailed procedures for the taking of oral depositions and is based on Rule 30, *ARCP*.

Rule 58. Depositions upon Written Questions

This rule provides procedures for the taking of written depositions and is based on Rule 31, *ARCP*.

Rule 59. Use of Depositions in Court Proceedings

This rule sets forth the manner in which depositions may be used in court as well as procedures for objections, form of presentation and the effect of errors and irregularities in depositions. It is based on Rule 32, *ARCP*.

Rule 60. Interrogatories to Parties

This rule provides procedures for using interrogatories, the scope of their use in court, and an option to produce business, medical, therapeutic, psychological, psychiatric, employment, and income tax or education records. It is based on Rule 33, *ARCP*.

Rule 61. Uniform and Non-uniform Interrogatories; Limitations; Procedure

This rule prescribes procedures for uniform and non-uniform interrogatories and is based on Rule 33.1, *ARCP*. The uniform interrogatories are set forth in Rule 97, Form 7, and are specifically tailored to family law.

Rule 62. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

This rule provides procedures for requesting production of documents and entry upon land to conduct an inspection. It is based on Rule 34, *ARCP*.

Rule 63. Physical and Mental Examination of Persons

This rule provides procedures for requesting physical, mental or vocational evaluations of a party or other person, and is based on Rule 35, *ARCP*.

Rule 64. Request for Admission

This rule provides procedures for requesting admissions of fact from another party, and is based on Rule 36, *ARCP*. It further provides that matters admitted are conclusively established unless the court allows withdrawal or amendment for good cause.

Rule 65. Failure to Make Disclosure or Discovery; Sanctions

This rule provides for motions to compel discovery and sanctions for violation of disclosure and discovery rules and orders. It is based on Rule 37, *ARCP*. Like the civil rules, it requires counsel to personally consult in good faith before filing a motion to compel.

Section VIII. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION (ADR)

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

This rule is the first of a comprehensive set of rules strongly encouraging and governing ADR in family law cases. The rule sets forth the types of ADR processes currently used in family law cases, and requires parties to consider ADR and report to the court. The rule is based on Rule 16(g), *ARCP*.

Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes

This rule prescribes specific procedures for mediation, settlement conferences and arbitration. The rule includes provisions to protect victims of domestic violence.

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

This rule provides procedures for filing a petition for conciliation pursuant to Arizona law, and for other conciliation services such as conciliation counseling, mediation, assessment and evaluation. The rule requires mediation or other ADR process in family law cases that involve a controversy over child custody

or parenting time, unless deemed inappropriate by the court or conciliation services for good cause, such as domestic violence or substance abuse.

Rule 69. Binding Agreements

This rule provides that agreements between the parties are binding if made in writing or on the record in court. It is based on Rule 80(d), *ARCP*.

Rule 70. Settlement

This rule requires prompt notice to the court of settlement, and provides that a matter may be dismissed automatically 45 days after notice of settlement unless the appropriate settlement documents are sooner filed. This rule is based on Rule 5.1(c), *ARCP*.

Rule 71. Sanctions and Attorneys' Fees

This rule provides for sanctions for failure to comply with the rules. It also provides that the court may consider reports from a settlement conference judge or commissioner in considering the reasonableness of the parties' positions for purposes of deciding the issue of attorneys' fees. This rule is based on Rule 16(f), *ARCP*.

Rule 72. Family Law Master

This rule provides for court appointment of family law masters. Family law masters are essentially special masters for family law cases. This rule is based on Rule 53, *ARCP*.

Rule 73. Family Law Conference Officer

This rule is unique to family law and provides for court appointment of conference officers to assist the court with the resolution of family law issues and cases. The rule is based on Rule 53(k), *ARCP*, but includes far more detailed procedures for appointment and use of family law conference officers. As in the case of family law masters, family law conference officers make recommendations to the court that are subject to timely objections. Rule 53(k), *ARCP*, will expire upon the effective date of these proposed rules.

Rule 74. Parenting Coordinator

This rule also is unique to family law and provides for court appointment of parenting coordinators to assist the court and families with implementation of court orders regarding custody and parenting time. Currently, parenting coordinators are variously termed special masters and family court advisors in different counties. The term “parenting coordinator” was chosen for these rules because of the national trend toward use of that term. Similarly, the Association of Family and Conciliation Courts (AFCC) is developing standards for parenting coordinators. Generally, parenting coordinators make recommendations to the court subject to timely objections. However, paragraph G of the rule provides that a parenting coordinator may make binding decisions to resolve a short-term, emergent situation or dispute between the parties. This

rule is based on Coconino County Local Rule 26, Maricopa County Local Rule 6.12, and Pima County Local Rule 8.11, all of which will either expire or be superseded upon the effective date of these proposed rules.

Rule 75. Plan for Expedited Services

This rule provides that any county that has a plan for expedited process shall set forth the plan in local rule.

Section IX. PRETRIAL AND TRIAL PROCEDURES

Rule 76. Pretrial Procedures

This rule sets forth pretrial procedures including provisions for resolution management conferences (RCM), pretrial orders, pretrial statements and sanctions for disobeying a pretrial order. The rule requires that an RCM be set within 60 days after a request therefore except for good cause shown. The rule is based on Rules 7.1 and 16, *ARCP*, although it is specifically tailored for family law practice.

Rule 77. Trial Procedures

This rule provides that a family law trial may be set on the court's motion, at a RCM, or pursuant to a motion to set. The rule provides procedures and standards for trial continuances and scheduling conflicts. The rule is based in part on Rule 16(h), *ARCP*.

Section X. JUDGMENTS AND DECREES

Rule 78. Judgments; Costs; Attorneys' Fees

This rule sets forth procedures for judgments, including requests for attorneys' fees and costs, and is based on Rule 54, *ARCP*.

Rule 79. Summary Judgment

This rule sets forth the summary judgment procedure and based on Rule 56, *ARCP*. It includes the same procedures and time frames contained in the civil rule.

Rule 80. Declaratory Judgments

This rule provides for declaratory judgments and is based on Rule 57, *ARCP*.

Rule 81. Entry of Judgment

This rule sets forth procedures for entry of judgment, including preparation, enforcement, objections to form, and minute entries. It is based on Rule 58, *ARCP*.

Rule 82. Findings by the Court; Judgment on Partial Findings

This rule provides procedures for requesting findings of fact and conclusions of law. It also sets forth procedures for amendment of judgments, judgment on partial findings, and submission of agreed statement of facts. The rule is based on Rule 52, *ARCP*.

Rule 83. Motion for New Trial

This rule sets forth procedures and requirements to request a new trial. The rule is based on Rule 59, *ARCP*, and includes the same time period for filing, although it is tailored to family law practice.

Rule 84. Motion to Alter or Amend a Judgment or Decree

This rule sets forth the procedure and time period for filing a motion to alter or amend a judgment or decree, and is based on Rule 59(1), *ARCP*.

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

This rule sets forth procedures and time periods for filing motions to correct mistakes and for relief from judgment or decree. It is based on Rule 60, *ARCP*.

Rule 86. Harmless Error

This rule sets forth the standard for harmless error in family law proceedings, and is based on Rule 61, *ARCP*.

Rule 87. Stay of Proceedings

This rule sets forth the procedures for seeking a stay of proceedings, including a provision for automatic stay of money judgments against the state and political subdivisions during appeal. It is based on Rule 62, *ARCP*.

Rule 88. Disability of a Judge

This rule sets forth procedures for completing a trial or hearing after the judge presiding is disabled. It is based on Rule 63, *ARCP*.

Rule 89. Judgment for Specific Acts; Vesting Title

This rule sets forth procedures for carrying out judgments for specific acts, such as transferring or conveying property, when the party required to act fails or refuses to do. It is based on Rule 70, *ARCP*.

Rule 90. Process on Behalf of and Against Persons Not Parties

This rule provides that when an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party, and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party. The rule is based on Rule 71, *ARCP*.

Section XI. POST-JUDGMENT PROCEEDINGS

Rule 91. Post-Decree/Post-Judgment Proceedings

This rule is unique to family law practice and sets forth specific procedures and time periods for post-judgment and post-decree proceedings, including modification and enforcement of prior orders. Matters that will require an evidentiary hearing shall be brought before the court using a “petition for order to appear” (often currently referred to as a “petition for order to show cause”). The rule emphasizes the need to comply with A.R.S. § 25-411 in custody modification cases. The rule also prescribes disclosure requirements and sanctions for failure to comply with the rule.

Section XII. Civil Contempt and Arrest Warrants

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

This rule sets forth procedures for civil contempt and purging of civil contempt in family law cases. It requires regular review hearings for incarcerated contemnors at least every 35 days. It also requires in cases of incarceration, in addition to a purge clause, a determinate period of incarceration not to exceed six months. In other words, if a contemnor is incarcerated not to exceed six months, the contemnor may be released earlier by complying with the purge clause.

Rule 93. Seizure of Person or Property

This rule provides for seizure of person or property and is based on Rule 64, *ARCP*.

Rule 94. Civil and Child Support Arrest Warrants

This rule defines civil and child support arrest warrants, and provides procedures for their issuance. The rule is based in on Rule 64.1, *ARCP*, and A.R.S. §§ 25-681 to 25-685.

Section XIII. OTHER FAMILY LAW SERVICES AND RESOURCES; DOMESTIC VIOLENCE BENCHBOOKS

Rule 95. Other Family Law Services and Resources

This rule lists other family law services and resources that may be available to the court in appropriate family law cases. The rule is not intended to require any county to provide any particular service or resource.

Rule 96. Domestic Violence Benchbooks

This rule requires the courts to follow and abide by all requirements set forth in the Domestic Violence Benchbooks issued by the Supreme Court of Arizona. (Available at the Committee on the Impact of Domestic Violence and the Courts website: <http://www.supreme.state.az.us/cidvc/>).

Section XIV. FAMILY LAW FORMS

Rule 97. Family Law Forms

This rule provides an index of forms referred to in these rules, and is based on Rule 84, *ARCP*. The forms will be available at certain county self-service centers and at the Supreme Court of Arizona's website: <http://www.supreme.state.az.us/nav2/selfserv.htm>.

III. CONCLUSION

Petitioner respectfully requests that the Supreme Court consider this petition and proposed rules at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment for three months and that the court adopt the proposed rules as they currently appear or as modified in

light of comments received from the public, with an effective date of January 1, 2006.

Adoption of a 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.

Finally, Petitioner respectfully requests the Court to extend in effect Rule 53(k), *Arizona Rules of Civil Procedure*, and Pima County Local Rule 8.11, both of which sunset June 30, 2005, until the effective date of the *Arizona Rules of Family Law Procedure*. The *Arizona Rules of Family Law Procedure* will subsume and replace these rules upon the effective date of the proposed rules. Until then, however, these rules are necessary to provide procedures for family court conference officers currently being used in Maricopa County, and for special masters currently being employed in Pima County.

DATED this 20th day of April, 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 Charles E. Jones
Vice Chief Justice Ruth V. McGregor
Justice Rebecca White Berch
Justice Michael D. Ryan
Justice Andrew D. Hurwitz
David K. Byers, Administrative Director
Patience Huntwork, Chief Staff Attorney