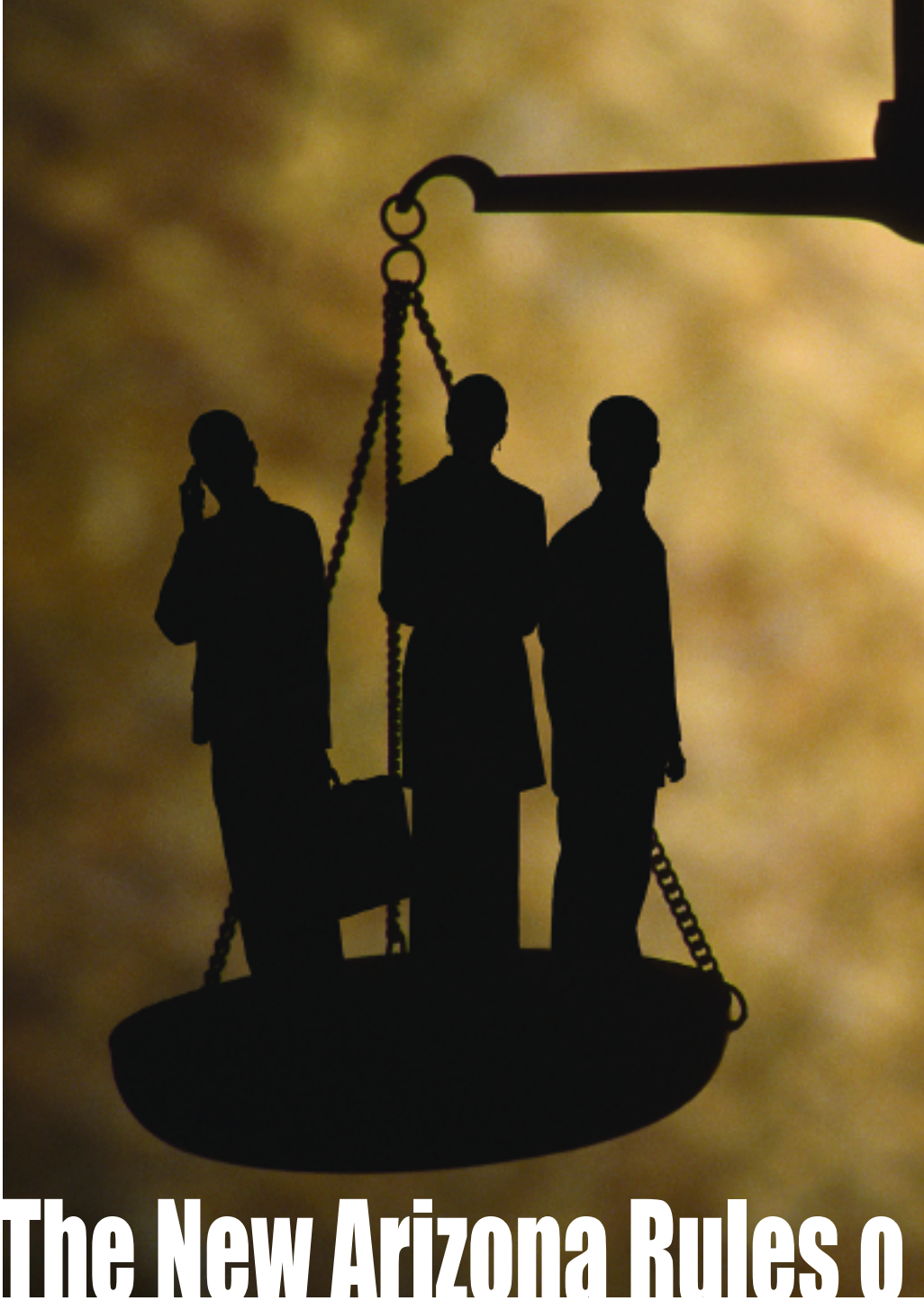
BY HON. MARK W. ARMSTRONG



The New Arizona Rules o

Arizona has one of the highest divorce rates in the country, significantly above the national average. In 2004, there were 24,403 divorces in the state. In 2003, more than 41 percent of Arizona's children were born out-of-wedlock, a new historical record. The picture is not much brighter nationally. The U.S. divorce rate of nearly 50 percent is one of the highest among industrialized countries. England's divorce rate hovers around 40 percent. Australia's is about 33 percent. Italy and many eastern European countries have much lower rates.

Family law cases account for over 40 percent of Superior Court filings in Arizona—about 73,000 cases annually statewide. It is estimated that between 70 percent and 80 percent of family law litigants are self-represented. Family law cases include divorce as well as legal separation, annulment, paternity, child support, child custody and protective orders. More families and children are directly touched by our family courts than by any other department or division of the Superior Court, which has exclusive jurisdiction over family law cases.

Yet, until very recently, Arizona has not had rules of procedure exclusively for family law cases. Fortunately, that changed on October 19, 2005, when Arizona Chief Justice Ruth McGregor signed the order approving the new Arizona Rules of Family Law Procedure, with an effective date of January 1, 2006. For many reasons, this was a momentous occasion in Arizona's judicial history.

Adoption of this comprehensive set of procedural rules was imperative to this state's family courts in light of pervasive confusion and conflict over applicability of the rules of civil procedure in family law cases. The new rules are intended to provide uniformity, stem the proliferation of diverse local rules, and assist the family courts in the efficient administration of justice.

Significantly, the new rules strongly emphasize alternative dispute resolution (ADR) and therapeutic jurisprudence.[1] Therapeutic jurisprudence is aimed, in part, at reducing conflict between the parties. Many mental health and court professionals believe that persistent parental conflict is the foremost indicator of divorce outcomes for children. Such conflict has been associated with a higher risk of self-destructive behavior, depression, delinquency and diminished academic performance in children.[2]

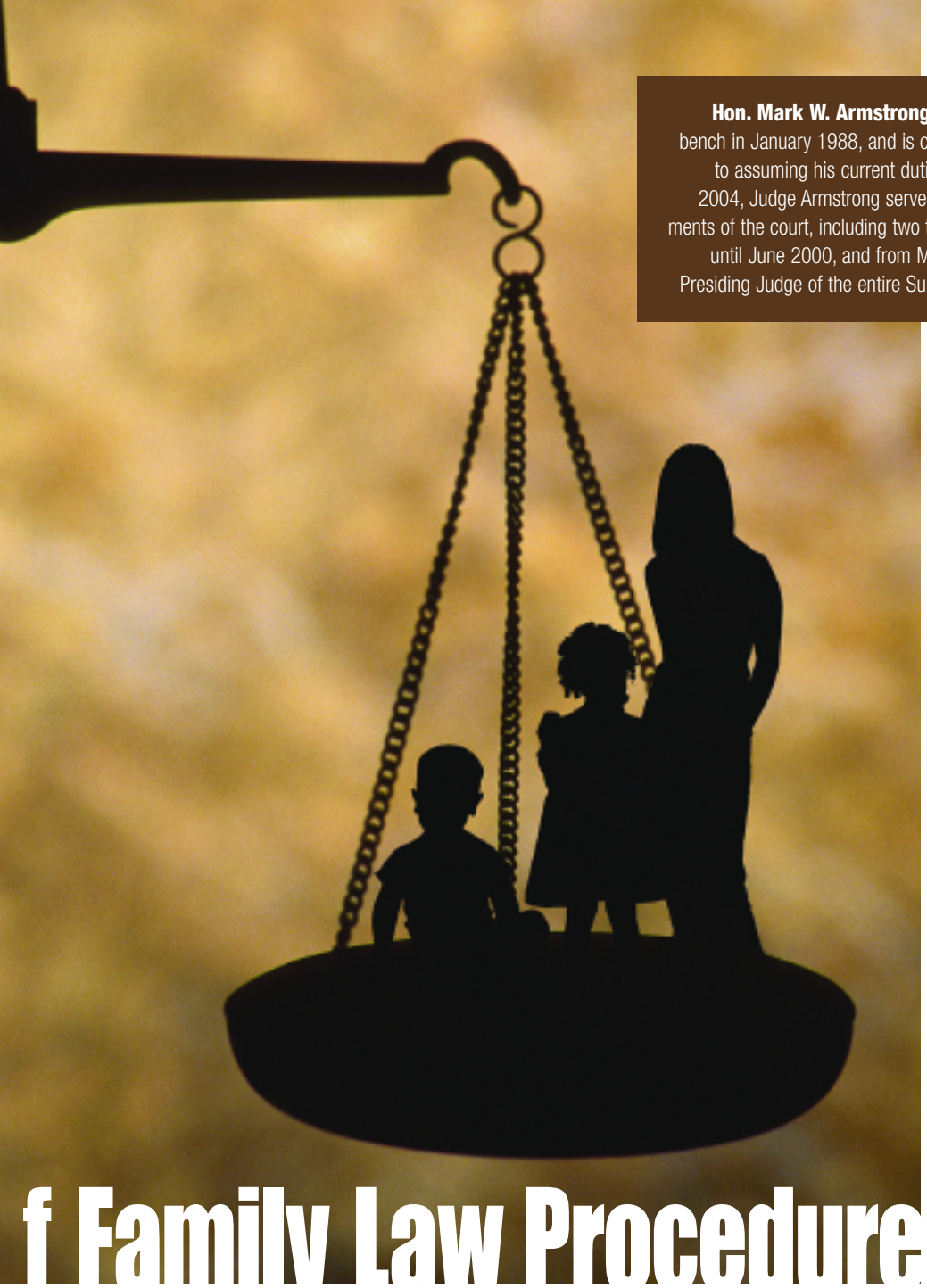
Generally, the most effective means to reduce conflict is by ADR, such as mediation, arbitration, settlement and resolution management conferences. ADR provides the parties with the tools to resolve their disputes sooner and gives them a greater sense of involvement in the process, which often renders the resolution more durable and longer lasting. We must always be aware, of course, that there are certain cases in which ADR may not be appropriate, such as in cases of domestic violence, child abuse or neglect, or in cases involving substance abuse or serious mental illness.

Background

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.[3] The work group formally reported as follows:

The Work Group recommends the following for immediate implementation:

- **Develop statewide rules of procedure**



f Family Law Procedure

Hon. Mark W. Armstrong was appointed to the Maricopa County Superior Court bench in January 1988, and is currently Presiding Judge of the Arizona Tax Court. Prior to assuming his current duties as Presiding Judge of the Arizona Tax Court in June 2004, Judge Armstrong served in the civil, criminal, juvenile and family court departments of the court, including two terms as Presiding Family Court Judge from May 1998 until June 2000, and from May 2002 until June 2004. He also served as Associate Presiding Judge of the entire Superior Court from June 2000 through December 2002.

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. … [T]he 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…

Although no formal action resulted from this recommendation at the time, the idea continued to generate interest. The family law bench in Arizona has overwhelmingly supported creation of statewide rules for its family law and domestic relations courts. This approach was recently listed by Hon. Arline Rotman (Ret.), Association of Family and Conciliation Courts (AFCC) Resource Development Committee Chair, as one of the top five national 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. 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.
2. The need for more uniformity statewide.
3. The need to simplify the current rules and make them more understandable to self-represented litigants.
4. The need to stem the proliferation of local family law rules.
5. The need for statewide rules with time limits for disposition of certain issues or types of cases.
6. The need to take family disputes out of traditional litigation rules and have problem-solving rules instead.
7. The need for revised discovery and disclosure requirements unique to families who share discoverable information.
8. The need to relax the rules of evidence for family law cases.

The Supreme Court Committee

Two and a half years ago, the Supreme Court accepted my recommendation and created a committee[4] to draft this state's first set of statewide, uniform and comprehensive rules for family law cases. At the beginning, the Court identified two overarching purposes of the new rules: (1) to provide a stand-alone set of statewide, uniform and comprehensive rules for family law, and (2) to enhance the status of family law and family courts, often seen as

stepchildren of the court system. The Court also identified three overriding emphases for the new rules: early intervention, timely disposition and increased use of problem-solving approaches.

At its inaugural meeting, the new Committee agreed to a mission statement that guided its work—to establish a comprehensive, statewide set of rules of procedure for 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 carefully reviewed the Arizona Rules of Civil Procedure and the local domestic relations rules for the 12 Arizona counties that have them. The Committee also reviewed and considered family law rules in several other states that have already adopted specialized rules, including Delaware, Florida, Hawaii, Rhode Island and Texas. Committee members and several non-committee members from various Arizona counties divided into 11 work groups to draft the 14 sections of the rules, which appear in the following summary. The Committee and work group members, and especially the work group chairs, deserve great credit for the draftsmanship of the rules.

The Committee held monthly public meetings for more than two years and has constantly posted its latest version of the rules on the Supreme Court's public Web site. 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. The Committee accepted and considered many informal and formal comments from individuals and groups such as the Executive Council of the Family Law Section of the State Bar of Arizona, the American Academy of Matrimonial Lawyers, the Attorney General's Office, Southern Arizona Legal Aid, Coconino Superior Court, Judge Steven Sheldon and attorney Debra Weecks. All public comments, formal and informal, were vetted through both a Comment Review Subcommittee as well as the Committee as a whole.

The Supreme Court's Committee on Superior Court approved the proposed rules in concept in February 2005. They were approved by the Arizona Judicial Council (AJC) on March 30, 2005, and were placed on the Court's rule-making agenda on June 2, 2005. The Court circulated the proposed rules for a three-month period of public comment beginning in June 2005. The rules, including changes made in response to public comments, were approved by the Justices at their September 22, 2005, rule-making conference. The Chief Justice signed the formal order approving the rules on October 19, 2005.

The rules are part of the Supreme Court's Strategic Agenda for Arizona's Courts 2005–2010. They are unique to family law cases, supplant the rules of civil procedure and apply in all family law or domestic relations proceedings.

Effective Date

The new rules are effective for all family law cases filed on or after January 1, 2006.

They are also effective for all family law cases pending on January 1, 2006, except for Rule 2(B), which relaxes the formal rules of evidence, provided that the parties to a family law case pending as of January 1, 2006, may stipulate to the applicability of Rule 2(B).

Furthermore, with respect to family law cases pending as of January 1, 2006, if disclosure was previously made pursuant to Rule 26.1, A.R.C.P., further disclosure is not required under Rule 49 or Rule 50 of the new rules, except for the duty to seasonably supplement the earlier disclosure.

Conclusion

Some of the most significant changes brought about by the new rules include:

- Comprehensive new rules that strongly encourage problem-solving approaches to resolve family law cases, including the use of mediators, family law masters and parenting coordinators.
- New rules of procedure for temporary orders and post-divorce proceedings, which have never before existed on a statewide level.
- New requirements for the timely disposition of temporary orders at a time when families often are in crisis.
- New requirements to ensure the timely disposition of all family law matters.
- A new rule providing for representation of children whose voices are often unheard in family law cases.
- A new rule providing for "limited scope representation" that allows an attorney to represent a client for a limited purpose or time period. This rule should greatly enhance access to legal representation in family law cases, particularly for persons of limited means.
- New rules for disclosure and discovery that are tailored to family law and should be easier to understand.
- Relaxation of the formal rules of evidence to enhance both truth seeking and efficiency.
- Provisions for protecting addresses and other safety measures in cases of domestic violence.
- Provision for service of process by certified mail and other delivery methods that are less expensive than personal service by a certified process server.
- Provision for a "consent decree" that allows agreeing parties to resolve their family law case without a hearing.
- Provision for required and commonly used forms that will also be available on the Supreme Court's Web site.

Ultimately, of course, I recognize that the rules are neither perfect nor are they a panacea for all the ills of our family courts. But I believe they do meet the Court's goals as well as the Committee's mission statement and will result in substantial improvement in the way our courts serve the public in family law cases.

The Court has provided by separate administrative order that the rules will be formally reviewed in two years. So, though it may be too late for public comment on the current rules, all comments or suggestions are welcomed and will be considered in the two-year review. The Court will undertake this review because of the sheer scope of this project. The Court and the Committee appreciated that some mistakes may have been made and wanted to have a formal mechanism in place to address them within a reasonable period of time.

This is an exciting time for family law in Arizona. I believe the status of family law has been enhanced, and I hope you will be able to support the new rules and assist in improving them in the years to come.

—endnotes on p. 41

Summary of the New 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 in 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 were 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. Telephone 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 three years after the effective date of the rules unless otherwise extended. This rule is based in part on Rule 5.1, *ARCP*.

Rule 10. Representation of Children; Minors and Incompetent Persons

This rule provides for representation of children or children's best interests in family law cases. This portion of 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."

This rule also provides for the appointment of court advisors based on standards found in the National Conference of Commissioners on Uniform State Laws 2005 draft of the Representation of Children in Abuse and Neglect and Custody Proceedings Act.

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, to protect a child's best interests, or to protect the parties from harm, after using a balancing test designed to meet First Amendment concerns.

Rule 14. Sworn Written Verification; 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. Reserved

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 requirements 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 requirements 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.* The 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 Personally Served

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.* It permits service of process by certified mail and other delivery methods provided a return receipt or signature confirmation is signed by the person required to be served. This is a change from the civil rule and makes the rule consistent with the requirements for out-of-state service. The comment to this rule and to Rule 42 makes clear that these rules do not follow the holding in *Master Financial, Inc, v. Woodburn, 208* Ariz. 70, 90 P.3d 1236 (App. 2004) applicable to Rule 4.1, *ARCP,* regarding service by publication.

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; Sensitive Data Form

This rule provides for the service and filing of pleadings and other papers and is based on Rule 5, *ARCP.* Paragraph G of the rule also provides for the filing of a sensitive data form to protect social security numbers and financial account numbers that are otherwise required to be provided to the family court. A form is provided for this purpose.

Section V. Default Decree, Consent Decree and Dismissal

Rule 44. Default Decree

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, Order or Judgment Without Hearing

This rule provides a simplified means of obtaining a decree of dissolution of marriage or other judgment when the parties agree on all matters to be included in the decree or judgment. 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 30 days after 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 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 Regarding Discovery Requests

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, Mental and Vocational Evaluations 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 rule, 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 ADR in family law cases. The rule sets forth the types of ADR processes 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. 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) has developed guidelines for parenting coordinators that should prove useful. 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 therefor except for good cause shown. The rule is based on Rules 7.1 and 16, *ARCP*, although it is specifically tailored to 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,* but is tailored to family law practice.

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 rules 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(l), *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 so. 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-Decree/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.

RULES ON THE WEB

The new rules, together with Committee and work group membership, and other information about the evolution of the rules, may be found on the Committee's Web site at www.supreme.state.az.us/drrc. Any questions or comments regarding the Arizona Rules of Family Law Procedure may be forwarded to Administrative Office of the Courts (AOC) Court Specialist Konnie Young Neal, who ably staffed the Committee, at kneal@supreme.sp.state.az.us.

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.

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

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. Reserved

As originally drafted, this rule required the courts to follow the procedural requirements of the Domestic Violence Benchbooks issued by the Supreme Court of Arizona (available at the Committee on the Impact of Domestic Violence and the Courts Web site: www.supreme.state.az.us/cidvc/). Rather than adopting this approach, the Court asked the two affected committees to form a new Domestic Violence Rules Committee to consider rules of procedure for domestic violence cases.

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.*

endnotes

1. The term therapeutic jurisprudence does not actually appear in the rules, but certain aspects of the concept guided several members of the Committee. For a more in depth discussion of the concept, *see* "Therapeutic Justice: Defining a Controversial Yet Transformative Concept," which is Chapter 37 of THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE (American Bar Association, 2002).
2. *See* John H. Grych, *Interparental Conflict as a Risk Factor for Child Maladjustment: Implications for the Development of Prevention Programs,* FAMILY COURT REV. (Association of Family and Conciliation Courts, January 2005), and sources cited therein.
3. This recommendation was also included, in somewhat less detail, in the December 1998 Final Report and Recommendations of the Committee.
4. The Committee on Rules of Procedure in Domestic Relations Cases was established in July 2003, by Supreme Court Administrative Order 2003-63, and is comprised of 16 members who are judges, attorneys, mental health professionals and court personnel from around the state.