

Clerk's Office Prepares for New Rules of Family Law Procedure

Clerk's Corner

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On January 1, 2006, Arizona will become one of the few states in the nation to have comprehensive rules of procedure designed specifically for the needs of family court cases. While we enjoy the reputation of having a progressive court system, implementing new rules statewide will require different levels of effort for each of the state's 15 Superior Court Clerks.

In Maricopa County, we are working to define what areas are impacted by the new rules, and how we will prepare for the January 1 implementation date. We believe it is important to let the local bar know what changes our office will have to make. Communication will help us to work together and enable the new rules to function efficiently in the courts.

The following descriptions summarize areas of the new rules that will change how we do business in the Clerk's Office. Many changes may influence the way you practice, or help to explain differences from current practice.

Rule 43(G): Sensitive data. Before filing, sensitive data must be omitted or otherwise redacted from any filing, unless specifically requested by the court. Sensitive data requested by the court must be on a sensitive data form, which the clerk will maintain as a confidential record. In further pleadings, any reference to sensitive data will be made by item number, and not the actual data, to keep sensitive data out of the public record. This rule does not apply to orders, decrees, or UIFSA petitions. Orders of Assignment shall contain sensitive data, but are closed to the general public. In Maricopa County, the Clerk's Office maintains electronic images of documents, and this rule will allow the paper version of the sensitive data form to be destroyed. This is a significant change, attorneys and unrepresented parties must closely monitor their documents prior to filing to ensure sensitive data is not inadvertently entered into the public record. It should be noted that the Clerk's Office does not have the resources to inspect every page of every filing to ensure compliance. The Clerk's Office does not intend to reject documents

based on this rule, as the rule allows parties to request that a document containing sensitive data be sealed or removed from the file. A sensitive data form will be included with all Self-Service Center packets distributed by the Trial Courts.

Rule 9(B): Limited-scope representation. The new rules make it easier for litigants to employ counsel for limited issues. For example, a party may choose to initiate their case, but employ counsel for child support determination only. For each incident of appearing on behalf of a party, counsel must follow the standard procedures to file an appearance and file a notice of withdrawal, with or without consent, at the end of the agreed-upon representation. Substitution of counsel requirements still ap-

plies to limited-scope representation. The Clerk's Office anticipates attorneys will appear and withdraw more often than current practice. In Maricopa County, this means Judicial Assistants will more frequently update counsel records in the court system. The Clerk's Offices will handle more appearance fees and paperwork. In some counties, the clerks will handle all aspects of changes of counsel. For example, in the course of a dissolution proceeding, a litigant may proceed through numerous proceedings pro se, but employ three separate attorneys for three separate legal issues over the course of several months. This arrangement will be available to the 30,000 new family court cases filed annually in Maricopa County, in addition to the existing family court cases. The new rules of procedure define this provision as experimental, and this rule expires three years after implementation, unless extended.

Rule 7: Protected addresses. The Clerk's Office anticipates more requests for protected addresses, based on the filing party's reasonable belief that physical or emotional harm may result to the parent or child if the address is not protected. Additional protected addresses will increase the volume of mail the clerk sends and the time required to prepare notices. Parties with protected addresses must be served by first-class mail by the Clerk's Office, which maintains the address as a confidential record. An Administrative Order can establish service costs to be reimbursed to the clerk.

Rules 14 and 91(T): Sworn verification vs. unsworn declaration. Current rule 80(f) defines the use of the unsworn declaration. Parties and attorneys will need to determine

which document is appropriate for their situation to ensure the filing is on the intended trajectory.

Rule 43(C): Service with clerk if party address is unknown. This rule is similar to current Rule 5(C). When service is required and the party's address is unknown, this rule allows service be made by leaving the documents with the clerk. Under the current rule, the clerk takes no further action regarding documents served in this manner, and documents are placed in the file. Our office is clarifying if the new rules intended a change to this process.

Rule 43(D)(5): Public access. If established by the presiding judge (Administrative Order), or local rule, this rule will apply to pleadings filed pursuant to Rule 24 (family court pleadings) and to petitions for an Order of Protection or Injunction Against Harassment. All related documents will be unavailable to the general public for 45 days from the filing of the petition, or until the affidavit of service is filed, whichever occurs first. Exceptions include parties to the case, their attorneys, judicial officers and court staff, who need access to the documents. The Clerk's Office and Court Administration will implement technological safeguards to ensure information is unavailable to the general public until per-

missible by rule. Locally and in other counties, procedures are being developed to allow appropriate access to the paper file during the 45 day timeframe.

Rule 68(A)(1): Petition for Conciliation. The new rules require that Petitions for Conciliation be filed with the Clerk's Office. However, a petition for conciliation to preserve the marriage, before an initial complaint has been filed, will have no casefile in which to place the petition. In Maricopa County, local rule 6.11 allows these petitions be filed directly with the conciliation court. It should be noted that other counties may not have a conciliation court.

Rule 91(D)(2): Petition to Modify Child Custody. The filing party must file a Notice of Filing Petition for Modification of Change of Custody. After the filing, the clerk will issue the Petition, which the party will be required to serve. This is a new requirement of the Clerk's Office. Our office will file and retain the original notice and conform a copy for service, which we anticipate will increase processing time to accommodate the issuance.

The new Arizona Rules of Family Law Procedure impact all agencies, practitioners, and participants in family court systems throughout Arizona. We hope this brief overview of several actions being taken by the Clerk's Office will help communicate these changes. Although there is significant work to prepare us for the new rules, our office remains committed toward providing quality customer service to all our customers. ■