

ATTACHMENT¹

Arizona Rules of Family Law Procedure

[New] Rule 5.1. Simultaneous Dependency and Custody Proceedings

(A) When a pending family law proceeding and a pending dependency proceeding concern the same parties, any party may file a motion to consolidate the proceedings. The court may on its own motion consolidate the proceedings. The motion shall be filed in the juvenile division and a copy shall be provided to the assigned family law division. The assigned juvenile division shall rule on the motion to consolidate. Custody and parenting time issues will be litigated in the juvenile division unless the juvenile division defers jurisdiction to the assigned family law division.

(B) If the assigned juvenile division determines that a change of custody may result in a dismissal of an adjudicated dependency case, the assigned juvenile division may refer the dependency matter to the assigned family law division for change of custody proceedings or retain the cases in the juvenile division.

(C) If the juvenile division denies a motion to consolidate and defers jurisdiction of an adjudicated dependency matter to the assigned family law division in a change of custody proceeding, a hearing may be set pursuant to A.R.S. § 25-411(E). The referral to the assigned family law division shall include an order that the assigned family law division has jurisdiction to resolve the custody matter. If the change of custody is granted, the assigned family law division may enter an order dismissing the dependency.

(D) If the juvenile division finds that the matter is more appropriate for the family law division, the juvenile division may transfer the matter to the family law division.

(E) During any dependency/guardianship proceeding in the juvenile division, the assigned juvenile division may suspend, modify, or terminate a child support order for current support if the parent entitled to receive the child support no longer has legal or physical custody of the child, and, except in Title IV-D cases may make appropriate orders regarding any past due support or child support arrears. The assigned juvenile division may direct that the wage assignment be quashed or modified.

Rule 47. Temporary Orders

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

A. Motions for Pre-Decree or Pre-Judgment Temporary Orders. A party seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408, 25-415, 25-817 or 25-905 shall do so by filing a separate verified motion with the court setting forth the legal and jurisdictional basis for the motion and the specific relief requested. The motion shall be filed after or concurrently with the initial petition, shall incorporate the relevant allegations of a filed petition by reference and not separately repeat them, and shall include the following information and documents, where relevant:

1. -4. [No change in text.]

B. – N. [No change in text.]

Rule 67. Mediation, Arbitration, Settlement Conferences, and Other Dispute Resolution Processes Outside of Conciliation Court Services

A. [No change in text.]

B. Mediation. Any issues in dispute may be subject to mediation. Mediation may be conducted by a private mediator agreed upon by the parties, a mediator assigned by the court from a roster of mediators maintained by the court, or a mediator participating in an ADR process overseen, administered, or approved by the court.

1. Private Mediation; Roster of Mediator; Authority of Judges ProTempore Acting as Private Mediators.

a. The parties may select a private mediator by agreement. The parties or counsel, if any, shall sign and file with the court a written notice that private mediation will take place, stating the name of the mediator and the date set for the initial mediation conference. The parties may request the court to choose an independent mediator from a list of mediators supplied by them or from a roster of mediators maintained by the court. The parties shall contract directly with the private mediator and be responsible for payment of the fees for such mediation. Unless the court orders or the parties agree otherwise, the cost of mediation shall be equally shared by the parties. The mediator may not conduct any subsequent family assessment or evaluation in the same case. Any binding agreement that is reached by the parties shall comply with Rule 69. As part of any agreement reached, the parties shall acknowledge that the agreement was entered into by them voluntarily and without threat or undue influence, after full disclosure of all relevant facts and information, that it is intended to be a binding agreement, and that it is fair and equitable, and , where there are minor children common to the parties, that it is in the best interests of the children. -

b. Upon request of the parties, the court may appoint an active judge pro tempore in good standing to conduct a private mediation with the parties. Any such request shall be accompanied by an affidavit signed by the judge pro tempore swearing under oath that he or she is an active judge pro tempore in good standing appointed by the Supreme Court at the request of the Presiding Judge of the Superior Court of the County. The Order appointing the judge pro tempore to conduct such a private mediation may authorize him or her to approve binding agreements made by the parties in conformance with Rule

69, to make any findings necessary to approve the agreements of the parties pursuant to A.R.S. § 25-317, to make the jurisdictional findings pursuant to A.R.S. § 25-312 or A.R.S. § 25-313 and to sign any Decree of Dissolution presented that conforms to the agreements reached by the parties. Any Decree of Dissolution signed by a judge pro tempore pursuant to such authority shall have the same force and effect as a Decree of Dissolution signed by a judge or commissioner of the court and the Decree shall be immediately delivered to the judge appointing the judge pro tempore for filing and entry into the minutes of the court. A judge pro tempore acting as a private mediator may be paid for his or her services as a private mediator, but shall not seek remuneration nor shall be paid anything of value by the parties for his or her service as a judge pro tempore for approving such agreements or for signing and entering a Decree of Dissolution.

2. – 9. [No change in text.]

C. – E. [No change in text.]

Rule 69. Binding Agreements; Presumption of Validity

~~Agreements between the parties shall be binding if they are in writing or if the agreements are made or confirmed on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements.~~

A. An Agreement between the parties shall be valid and binding if

1. the agreement is in writing, or

2. the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements, or

3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.

B. Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.

Rule 74. Parenting Coordinator.

A. – D. [No change in text.]

E. Powers and Scope of Appointment. The court order appointing the Parenting Coordinator shall specify the scope of the appointment. The scope may include assisting with implementation of court orders, making recommendations to the court regarding implementation, clarification, modification, and

enforcement of any temporary or permanent custody or parenting time order, and making recommendations on the day-to-day issues experienced by the parties. By way of example only, these issues include disagreements around exchanges, holiday scheduling, discipline, health issues, school and extracurricular activities, and managing problematic behaviors by the parents or child(ren). The Parenting Coordinator shall not have the authority to make a recommendation affecting child support, a change of custody, or a substantial change in parenting time. In the event the Parenting Coordinator determines parenting or family issues or circumstances exist that are significantly detrimental to the welfare of the child(ren) and that a change in custody or a substantial change in parenting time is warranted, the Parenting Coordinator may submit the Parenting Coordinator's concerns in writing to the parties and the court. Counsel are not permitted to attend parenting coordinator meetings unless agreed to by the parties and the parenting coordinator, or ordered by Court.

F. – L. [No change in text.]

Rule 78. Judgments; Costs; Attorneys' Fees

A. –D. [No change in text.]

E. Offers of Judgment Not Applicable. The procedure governing offers of judgment, authorized in civil actions under Ariz. R. Civ. Proc. 68, shall not apply in any legal matter subject to these Rules.

COMMITTEE COMMENT

[No change in text.]