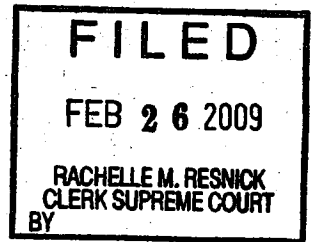


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
PIMA COUNTY



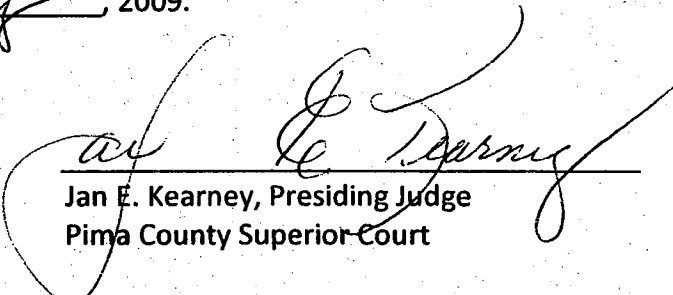
R-09-0014

ORDER AMENDING RULE 8
LOCAL RULES OF PRACTICE
PIMA COUNTY SUPERIOR COURT

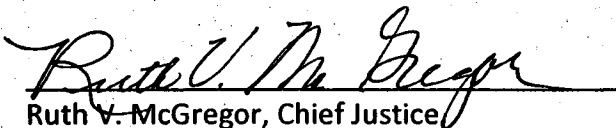
A majority of the judges of Pima County Superior Court having approved, pursuant to Rule 83, Arizona Rules of Civil Procedure, the proposed amendments to the Pima County local court rules,

IT IS ORDERED amending Rule 8, Local Rules of Practice for the Pima County Superior Court, in accordance with the attachment hereto, effective January 1, 2010.

DATED this 7 day of January, 2009.


Jan E. Kearney, Presiding Judge
Pima County Superior Court

APPROVED this 26th day of February, 2009.


Ruth V. McGregor, Chief Justice
Arizona Supreme Court

Proposed Local Rule 8

Pima County Superior Court

8.1 GENERAL ADMINISTRATION

(A) Family law cases are subject to the Arizona Rules of Family Law Procedure in addition to Pima County Local Rule 8. Pima County Local Rule 8 often makes reference to court approved forms. Those forms approved for use by the Superior Court in Pima County may be located on the Court's website www.sc.pima.gov, or may be located in the Self Service Center of the Law Library at the Superior Court, or at the Pima County Bar Association, and at the Arizona Supreme Court's website, www.supreme.state.az

(B) **Assignment of Presiding Judge and Judges of the Family Law Bench.** The Family Law Bench shall consist of one or more judicial officers assigned by the Presiding Judge. The Presiding Judge shall designate a Presiding Judge of the Family Law Bench and a sufficient number of judicial officers to properly carry out the responsibilities of the bench.

The Presiding Judge of the Family Law Bench shall, in addition to trial duties, exercise supervisory powers over the Family Law Bench and the Conciliation Court, through the Director of Conciliation Court, as required by statute, and by the Presiding Judge of the Superior Court.

(C) **Scope and Responsibilities of Family Law Bench.** All family law matters brought pursuant to A.R.S. Title 25 and the issuance of Orders of Protection shall be assigned to a judicial officer of the Family Law Bench, unless otherwise assigned by the Presiding Judge of the Family Law Bench, or the Presiding Judge of the Court.

(D) **Family Law Calendar.** At the time a case is filed with the Clerk of the Court, it shall be assigned to a Family Law Bench judicial officer. The judicial officer shall calendar all matters concerning that case. At such time as a judicial officer's assignment is changed, the case shall be reassigned to a subsequent Family Law Bench judicial officer, unless the assigned division retains the case.

(E) **Regulation of Family Law Bench.** A Family Law Bench judicial officer may regulate the conduct of a case in any manner that is not inconsistent with applicable law and rules.

8.2 GENERAL RULES RELATING TO PLEADING AND PRACTICE

(A) **Case Designation.** The petitioner shall designate, in the caption of the original petition filed with the Court, the nature of the action or proceeding, such as Annulment; Dissolution; Legal Separation; Child Custody; Custody or Visitation by Nonparent; Grandparent or Great-grandparent Visitation; Dissolution of Covenant Marriage; Legal Separation in Covenant Marriage; Order of Protection; Paternity or Maternity; Establishment, Enforcement, Registration or Modification of Custody or Parenting Time; Establishment, Enforcement, Registration, or Modification of Support; or Notice of Filing Foreign Judgment.

Proposed Local Rule 8

Pima County Superior Court

(B) Affidavit Regarding Minor Children. In every action for Annulment, Dissolution, Legal Separation, Child Custody, Custody or Visitation by Nonparent, or Modification of Custody, each party filing a Petition or Response shall file an original and one copy of an Affidavit Regarding Minor Children on a form approved by the Court. The Clerk of the Court shall deliver a copy of all Affidavits Regarding Minor Children to the Director of the Conciliation Court each business day.

(C) Prior Orders. In all petitions for contempt, or for relief regarding a prior order of the Court, the petition shall set forth the prior order, or the pertinent portion of the prior order, and the date the order was entered. In the event the prior order is so voluminous as to make it impractical to include it in the petition verbatim and the order is contained in the official court file of the case, the order may be incorporated into the petition by reference.

(D) Disclosure Statements. Disclosure required by Rules 49 and 50, Arizona Rules of Family Law Procedure shall include a completed Inventory of Property and Financial Affidavit on a form approved by the Court, and signed by the parties. Disclosure shall be provided to the opposing party but shall not be filed with the Court, except as specifically required by the Arizona Rules of Family Law Procedure.

(E) Filing of Documents. All documents in family law cases shall be filed with the Clerk of the Court, unless otherwise directed in these Rules, and copies shall be provided to the opposing party, or if represented, to their attorney. The parties shall not file with the Clerk of the Court financial documents and other documents containing confidential information. A copy of any filed documents shall also be provided to the assigned division if so directed in these Rules. A copy of any motion that requests a judicial officer to rule without hearing shall be provided to the assigned division and the other party. No issue shall be deemed submitted for decision by the Court unless the assigned division receives a copy of the written request and any responsive pleadings.

(F) Request for Court Reporter. A party requiring an official court reporter for a division which utilizes digital recording as the primary record, must file a written request with the Clerk of the Court and deliver or fax a copy of the request to the assigned division and the managing court reporter's office twenty four hours prior to the court proceeding.

8.3 SETTING CASES FOR TRIAL

(A) Motion to Set and Certificate of Readiness. To set a case for trial, a Motion to Set and Certificate of Readiness, on a form approved by the Court, shall be filed. A copy shall be provided to the opposing party, the assigned division, and the Case Management Services department. The Motion to Set and Certificate of Readiness shall state:

- (1) that a response to the subject petition has been filed,
- (2) the time requested for trial,

Proposed Local Rule 8

Pima County Superior Court

- (3) that pre-trial procedures have been completed or that both parties shall have had a reasonable opportunity to complete pre-trial procedures 10 days prior to a trial scheduled 60 days after submission of the Motion to Set and Certificate of Readiness,
- (4) the names, addresses and telephone numbers of the individual parties or, if represented by counsel, their attorneys who will be responsible for conduct of the trial,
- (5) whether the case is entitled to preference for trial because child custody is an issue,
- (6) whether the parties have attended or are scheduled to attend the Domestic Relations Education on Children's Issues course pursuant to A.R.S. §25-352, or that the requirement has been waived,
- (7) whether the parties have attended or are scheduled to attend mediation pursuant to Pima County Local Rule 8.12, or that the requirement has been waived.

(B) Controverting Certificates. A party who opposes the scheduling of a trial requested in a Motion to Set and Certificate of Readiness may file a Controverting Certificate, with a copy to the opposing party, the assigned division, and the Case Management Services department, within 10 days after service of the Motion to Set and Certificate of Readiness. The Controverting Certificate shall state any objections to the Motion to Set and Certificate of Readiness. The Court shall rule on the Controverting Certificate without hearing. Setting the case for trial shall constitute ruling on the Controverting Certificate.

(C) Trial Date. When a Motion to Set and Certificate of Readiness has been filed and any Controverting Certificate has been ruled upon, the assigned division shall schedule the case for trial and shall promptly notify the parties. Cases shall be set for trial within 60 to 120 days after a Motion to Set and Certificate of Readiness is ruled upon, except in extraordinary circumstances. A case set for trial shall be considered to be on the active calendar.

(D) Exclusion of Custody Modification Trials. The provisions of Pima County Local Rules 8.3(A) through (C) shall not apply to trials regarding modification of child custody scheduled pursuant to Rule 8.5(G).

(E) Postponements. No postponement of a trial shall be granted except for good cause. A stipulation for postponement shall be regarded as a joint motion to postpone and shall state the reasons for the requested postponement. A copy of a motion or stipulation requesting postponement and a proposed form of order shall be delivered to the assigned division. The trial is not postponed until there has been an order of the Court.

8.4 SETTLEMENT CONFERENCES AND ALTERNATIVE DISPUTE RESOLUTION

(A) Mandatory Domestic Settlement Conference. In all cases set for trial, the parties and attorneys shall participate in a domestic settlement conference prior to the trial. The parties

Proposed Local Rule 8

Pima County Superior Court

must personally appear at the settlement conference unless the assigned division waives the requirement of personal appearance. Personal appearance may not be made by telephone unless permission to appear by telephone is granted by the assigned division pursuant to a motion or stipulation submitted at least 30 days prior to the date of the settlement conference.

The domestic settlement conference shall be confidential. Subject to Rule 408, Arizona Rules of Evidence, all communications, both oral and written, made by a party in the settlement conference shall be confidential and not divulged to third parties. Agreements as to facts and/or stipulations made during the settlement conference shall be made of record and shall be binding on the parties. The settlement conference judicial officer shall determine disputes regarding the accuracy of the record of the domestic settlement conference.

Participation in a mandatory settlement conference shall fulfill the requirements of Rule 66, Arizona Rules of Family Law Procedure regarding alternative dispute resolution. The requirement of participation in a mandatory domestic settlement conference shall not preclude mediation, arbitration, settlement conferences, or other dispute resolution processes pursuant to Rule 67, Arizona Rules of Family Law Procedure, but the mandatory domestic settlement conference shall not be a proceeding subject to Rule 67, Arizona Rules of Family Law Procedure.

(B) Early Settlement Conference. At any time after disclosure statements have been exchanged any party may request that the Court schedule a settlement conference prior to the mandatory domestic settlement conference described above, to facilitate early resolution of a case. Participation in an early domestic settlement conference shall not preclude mediation, arbitration, settlement conferences, or other dispute resolution processes pursuant to Rule 67, Arizona Rules of Family Law Procedure, but the early domestic settlement conference shall not be a proceeding subject to Rule 67, Arizona Rules of Family Law Procedure. Participating in an early settlement conference does not fulfill the requirement of participating in a mandatory domestic settlement conference.

(C) Settlement in Alternate Dispute Resolution. Parties who agree to utilize an alternative dispute resolution method may stipulate that agreements made by them with the assistance of an arbitrator, parenting coordinator, family law master, private mediator, open negotiator, or during a private settlement conference, or decisions made by an arbitrator, parenting coordinator, family law master, or open negotiator shall be binding upon the parties, subject to the approval of the Court. The parties shall agree on the method by which their agreements shall be memorialized. The parties may waive the right for their attorneys to file written objections to mediated agreements within 30 days of the agreement being approved by the parties.

8.5 AFFIDAVITS REQUIRED; PLEADING AND PRACTICE

(A) Financial Affidavits; Production of Documents.

Proposed Local Rule 8

Pima County Superior Court

(1) Forms of Financial Affidavits. There shall be two forms of financial affidavits: a) a child support financial affidavit and, b) a spousal maintenance financial affidavit as permissible alternatives to the Affidavit of Financial Information in the Appendix to Rule 97, Arizona Rules of Family Law Procedure. Wherever the term financial affidavit is used in this rule, it shall refer to the relevant court-approved financial affidavit. In any proceeding where the establishment or modification of child support or a request for an award of attorney fees and/or expenses is in issue, but not spousal maintenance, a child support financial affidavit shall be filed. In all other proceedings where the establishment or modification of spousal maintenance alone, or in combination with child support or a request for an award of attorney fees and/or expenses is in issue, a spousal maintenance financial affidavit shall be filed. No filing or appearance fee shall be charged for the filing of the opposing party's financial affidavit, unless otherwise provided by law. In all cases a party may choose to use the Affidavit of Financial Information in the Appendix to Rule 97, Arizona Rules of Family Law Procedure.

(2) Duty to Document Change in Financial Circumstances in the Financial Affidavit. In any proceeding for establishment or modification of child support or spousal maintenance, a request for an award of attorney fees and/or expenses, or a proceeding for failure to pay any of the foregoing, a party may not present testimony regarding any change in his or her financial circumstances between the date of the most recent financial affidavit and the date of the hearing or trial, unless an amended financial affidavit setting forth the changes has been filed or good cause is shown.

(3) Documents to Be Provided to the Other Party. The documents listed below shall not be filed with the Clerk of the Court, or attached to any papers filed with the Clerk of the Court, but must be provided to the other party. In any proceeding for establishment or modification of child support, spousal maintenance or attorney's fees and expenses, within the time provided by this Rule, each party shall provide to the other party, copies of the following documents:

- (a) that party's most recently filed federal and state income tax returns;
- (b) that party's four most recent consecutive wage statements from all employment;
- (c) that party's most recent W-2, 1099, and K-1 forms;
- (d) for establishment or modification of child support proceedings, employer provided statement of cost of health and dental insurance coverage for the parties' minor children.

~~The Order to Appear shall specifically direct both parties to comply with this rule. The Order to Appear shall not require the production of any additional documents, but this does not preclude the applicant from requesting additional documents through discovery procedures.~~

Proposed Local Rule 8

Pima County Superior Court

(B) Time. Whenever this rule requires a party to provide documents or the relevant financial affidavit, a copy shall be provided to the other party no later than 4 court days prior to the date set for hearing or 2 court days after service of the Order to Appear, whichever is later.

(C) Order to Appear for Temporary Orders. When a request for an Order to Appear is made for temporary spousal maintenance, child support, or a request for an award of attorney fees and/or expenses, the applicant shall file the original petition and the required financial affidavit with the Clerk of the Court. A copy of the petition and required financial affidavit shall be provided to the assigned division at the time of the request for issuance of the Order to Appear. A copy of each shall also be served upon the opposing party, along with a blank copy of the required financial affidavit and a copy of Pima County Local Rule 8.5. The opposing party shall file the required financial affidavit, a copy of which shall be provided to the applicant's attorney, or, if unrepresented, to the applicant within the time provided by this rule.

(D) Petition for Modification of Spousal Maintenance or Child Support.

(1) Petition for Modification of Spousal Maintenance. A petition for modification of a prior order for spousal maintenance shall set forth verbatim in the body of the petition the order sought to be modified, or shall comply with Pima County Local Rule 8.2(C). The applicant shall file the original of the petition and two required spousal maintenance financial affidavits. The first financial affidavit shall demonstrate the current financial circumstances of the party seeking the modification. The second financial affidavit shall demonstrate the financial circumstances of the party seeking the modification as of the date of the order sought to be modified. If a financial affidavit reflecting a party's financial circumstances at that time was previously filed with the Court a copy shall be attached to the petition for modification. A copy of the petition and the financial affidavits shall be provided to the assigned division at the time of the request for issuance of the Order to Appear. A copy of each financial affidavit shall be served upon the opposing party, along with blank copies of the required financial affidavits and a copy of Pima County Local Rule 8.5. The opposing party shall file the required financial affidavits, and provide a copy to the applicant's attorney, or if unrepresented, the applicant, within the time provided by this rule.

(2) Petition for Modification of Child Support. A petition for modification of child support shall set forth the amount of child support currently in effect or shall set forth verbatim in the body of the petition the order sought to be modified, or shall comply with Pima County Local Rule 8.2(c). The applicant shall file the petition to modify and a child support financial affidavit, which reflects the current circumstances of the party seeking a modification. A copy of the petition and the financial affidavit shall be provided to the assigned division at the time of the request for issuance of the Order to Appear. A copy of each shall be served upon the opposing party, along with

Proposed Local Rule 8

Pima County Superior Court

a blank copy of the required financial affidavit and a copy of Pima County Local Rule 8.5. The opposing party shall file the required financial affidavit, and provide a copy to the applicant's attorney, or if unrepresented, the applicant, within the time provided by this rule. This provision does not apply to modifications filed pursuant to the Simplified Procedure set forth in the Arizona Child Support Guidelines. An agency authorized by law to request a modification of an existing Order on behalf of the State of Arizona shall not be required to strictly comply with the provisions of this local rule requiring a child support financial affidavit if the information is not reasonably available to the agency prior to filing the petition.

(3) Stipulation to Modify Child Support. Should the parties reach an agreement and submit a stipulation to the court to modify child support they shall submit a proposed form of Child Support Order, Order of Assignment and a worksheet containing detailed information supporting compliance with or a deviation from the Child Support Guidelines.

(E) Failure to Pay Child Support, Spousal Maintenance, or Attorney Fees and Expenses. In an action for failure to pay child support, spousal maintenance, or attorney fees and expenses, the opposing party shall file with the Court the required financial affidavit and provide a copy to the applicant's attorney, or if unrepresented, the applicant, within the time provided by Pima County Local Rule 8.5. The documents listed below shall not be filed with the Clerk of the Court or attached to any papers filed with the Clerk of the Court but must be provided to the other party. The opposing party shall also provide the applicant's attorney, of if unrepresented, the applicant, copies of the following documents:

- (1) that party's most recently filed federal and state income tax returns;
- (2) that party's four most recent consecutive wage statements from all employment;
- (3) that party's most recent W-2, 1099, and K-1 forms.

These documents shall not be filed with the Clerk of the Court.

The Order to Appear shall specifically direct the respondent to comply with Pima County Local Rule 8.5. The Order to Appear shall not require the production of any additional documents, but this does not preclude the applicant from requesting additional documents through discovery procedures.

(F) Failure to Comply with Pima County Local Rule 8.5. If either party fails to comply with any part of Pima County Local Rule 8.5, upon the complying party's request or the court's own motion and in the absence of good cause, the court may:

- (1) vacate or continue the hearing;
- (2) enter an interim award of relief in favor of a complying party and against a non-complying party based on the complying party's financial affidavit;

Proposed Local Rule 8

Pima County Superior Court

- (3) award a complying party his or her attorney fees and expenses incurred in preparing for and attending the hearing;
- (4) enter other appropriate relief.

For purposes of making an interim award the court may, on its own motion, examine either party if it deems such examination necessary. The non-complying party may be precluded from introducing any evidence and/or cross-examination for purposes of making an interim award.

(G) Petitions to Modify Child Custody.

- (1) A party seeking and a party responding to a Petition for Modification of Child Custody shall file with the Clerk of the Court an Affidavit Regarding Minor Children required by A.R.S. §25-1039.
- (2) Five days after expiration of the time permitted for the filing of the response and/or the controverting affidavits, either party or attorney shall provide the approved form for a Request for Order Granting or Denying Custody Hearing, and a separate Order Granting or Denying Request for Custody Hearing to the Presiding Judge of the Family Law Bench.
- (3) The Presiding Judge of the Family Law Bench shall rule on the Request for Order Granting or Denying Custody Hearing or refer the matter to the assigned division for a ruling.
- (4) Copies of the Petition, Response, or Controverting Affidavits shall not be provided to the Presiding Judge of the Family Law Bench or the assigned division.

A trial for modification of a child custody order or decree shall not be set unless there is compliance with A.R.S. §25-411 and Rule 91(d), Arizona Rules of Family Law Procedure.

(H) Hearings. Matters set for hearing shall proceed by oral argument only, without testimony or other evidence, unless notice has been given that testimony or other evidence will be presented.

8.6 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

Proposed Local Rule 8

Pima County Superior Court

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) The assigned juvenile division shall dismiss any action brought in the juvenile division that the court finds is more appropriate for the Family Law Bench. The assigned juvenile division shall refer the matter to the assigned family law division for further proceedings.

(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 may make appropriate orders regarding any past due support or child support arrears, except in Title IV-D cases. The assigned juvenile division shall direct that the wage assignment be quashed or modified.

8.7 PRE-TRIAL STATEMENT

(A) **Preparation, Signing, and Filing of Pre-trial Statements.** In every family law case set for trial, including any bifurcated portion of such trial, a pre-trial statement shall be filed. Counsel who will try the case and who are authorized to make binding stipulations on behalf of the parties shall confer and prepare the pre-trial statement, signed by each party or counsel. Unrepresented parties who will try the case shall confer and prepare a pre-trial statement signed by each party.

Pre-trial statements required by Rule 76(c), Arizona Rules of Family Law Procedure shall be filed no later than 30 days prior to the date set for trial, or on the date ordered in the family law trial notice. The original shall be filed with the Clerk of the Court and a copy shall be provided to the Case Management Services department and the assigned trial division. Failure to comply with Pima County Local Rule 8.6(A) may result in the imposition of interim relief and/or sanctions as set forth in Pima County Local Rules 8.5(F) and 8.7, or any other sanctions provided by Rule 76, Arizona Rules of Family Law Procedure.

Proposed Local Rule 8

Pima County Superior Court

(B) Contents of Statements. The pre-trial statement in family law cases shall comply with Rule 76(c), Arizona Rules of Family Law Procedure, and shall be in a form substantially similar to the court approved form.

(C) Accompanying documents. The parties, or if represented, their attorneys shall each file with the joint or separate pre-trial statement the following:

(1) In a pre-decree action for dissolution, legal separation or annulment, a detailed itemized Inventory of Property and Debt in a form substantially similar to the court approved form or Rule 97, Arizona Rules of Family Law Procedure; and

(2) In any matter set for trial, if child support, spousal maintenance or attorney fees have been identified as an issue that will be tried, the required financial affidavit pursuant to Pima County Local Rule 8.5, in a form substantially similar to the court approved form or Rule 97, Arizona Rules of Family Law Procedure; and

Copies of pay stubs, tax returns and other documents required by Pima County Local Rule 8.5(A)(3) and the Arizona Rules of Family Law Procedure shall be exchanged with the opposing party but shall not be filed with the Court, and shall be brought to the trial or hearing for use as evidence.

(D) Restrictions on Exhibits and Witnesses. No exhibits or witnesses may be offered or presented during the trial other than those listed on the pre-trial statement, and exchanged, unless permitted by the court.

(E) Sanctions. If there has been a failure by either or both counsel, or the parties if not represented by counsel, to prepare the pre-trial statement, the court may impose any of the sanctions or penalties provided by the Arizona Rules of Family Law Procedure or any statute or authority of the court. At the request of a party the Court may continue the trial, enter an interim award for relief to the requesting party, and award the requesting party attorney fees and expenses incurred in preparing for and attending the domestic settlement conference or trial. For purposes of entering an interim award, the Court may, on its own motion, examine a party as may be necessary. A non-compliant party may be precluded from introducing evidence and from cross-examination regarding the interim award.

8.8 SANCTIONS

Any party or attorney appearing at a trial or hearing in a family law case who has not complied with Pima County Local Rule 8 shall be subject to sanctions set forth in Rule 71, Arizona Rules of Family Law Procedure as if it were a violation of Rule 71, Arizona Rules of Family Law Procedure.

Proposed Local Rule 8

Pima County Superior Court

8.9 RESPONDING PARTY'S APPEARANCE FEE

A decree of dissolution of marriage or legal separation, or custody order awarding joint legal or joint physical custody, may not be entered unless the responding party's appearance fee has been paid. If the decree or order is to be entered by default and the responding party has appeared in the action only by payment of an appearance fee to allow an award of joint legal or joint physical custody, notice to the responding party pursuant to Rule 44(b)(2), Arizona Rules of Family Law Procedure, shall not be required.

8.10 ENTRY OF DECREE OR JUDGMENT BY DEFAULT: INFORMING DEFAULTED PARTY

A party obtaining a decree or judgment shall certify on the decree or judgment that a copy of the decree or judgment will be mailed within 24 hours to the last known address of a party in default or who failed to appear at trial. Failure to comply with this rule shall not affect the validity of the decree or judgment entered or the time to appeal, or relieve a party from any obligations set forth in the decree or judgment.

8.11 PARENT EDUCATION COURSE

(A) Both parties shall attend the Domestic Relations Education on Children's Issues course as required by A.R.S. §25-352

(B) The original Notice of Program Completion - Parent Education Course shall be filed with the Clerk of the Court. Each party shall promptly provide a copy of the Notice of Program Completion to the opposing party or attorney.

(C) A party who takes a parent education course outside of Pima County or the State of Arizona in order to comply with A.R.S. Section 25-351 et seq., shall file the original documentation of completion with the Clerk of the Court and provide a copy to the opposing party or attorney.

(D) Unless otherwise ordered by the Court all parties shall attend a parent education course prior to participation in mediation.

8.12 CONCILIATION COURT SERVICES: MEDIATION OF CUSTODY AND PARENTING TIME DISPUTES

(A) **Mediation Requirement.** All issues of custody and/or parenting time with minor children are subject to mediation as set forth in this rule pursuant to A.R.S. §25-381.23. A party may request a waiver of this provision by filing a written request with the Court, and after a hearing, upon a finding of good cause the court may waive the requirement for

Proposed Local Rule 8

Pima County Superior Court

mediation. The parties shall attend the Domestic Relations Education on Children's Issues course prescribed by A.R.S. §25-352 prior to the initial participation in mediation unless otherwise ordered by the Court. This rule does not apply to actions to enforce custody or parenting time orders, and does not apply if one of the parties does not reside in Pima County, unless both parties agree to participate in mediation in Pima County. The Conciliation Court shall conduct mediation unless the parties stipulate to private mediation with a mediator agreed upon pursuant to the provisions of sub-section (H) of this rule.

(B) Commencement of Mediation.

(1) By the Court.

(a) Temporary Orders. Mediation is not required prior to filing a petition to establish temporary custody and/or parenting time unless the parties stipulate to attend, or the Court orders otherwise. Upon the entry of temporary orders, unless entered by a stipulation of the parties, the Court shall enter an order that the parties attend mediation.

(b) Trial Date Requested. If a Motion to Set or a Controverting Certificate indicates that custody and/or parenting time is an issue and the parties have not previously attended mediation the Court shall enter an order that the parties attend mediation prior to trial.

(c) Post-Decree. The parties shall attend mediation if the Court has entered an order granting a hearing on a request to modify custody or if there is a hearing scheduled to modify parenting time, unless otherwise ordered by the Court. If required by Pima County Local Rule 8.12(A), a Request for Mediation shall be submitted to the Court when a post-decree petition to modify parenting time is filed. Except in an emergency the Court may not conduct a hearing on a post-decree petition to modify parenting time until required mediation has been completed.

(2) At the Request of a Party.

(a) When a Request for a Hearing Has Been Filed. If a party files a pre-trial or post-trial request for hearing that raises an issue of custody and/or parenting time, a party, or a legal representative of a child, may file a written request for mediation at any time. The original request for mediation shall be filed with the Clerk of the Court and a copy provided to the Conciliation Court.

(b) When No Request for a Hearing Has Been Filed. A party may request mediation at any time under any of the following circumstances, and by following the procedure described in paragraph (c) below:

Proposed Local Rule 8

Pima County Superior Court

1. The parties previously agreed in writing to use mediation, or there is an order requiring the parties to use mediation to resolve any custody or parenting time disputes prior to requesting a court hearing.
2. An order establishing paternity has been entered and there is no custody or parenting time order.
3. More than one year has passed since the entry of the last custody or parenting time order, and there has been a significant change in the circumstances of the parties or children, and there is no agreement for mediation.

(c) Procedure.

1. The original Request for Mediation shall be filed with the Clerk of the Court and a copy of the Request shall be provided to the Conciliation Court.
2. A copy of the written Request for Mediation shall be served on the other party pursuant to Rule 41, Arizona Rules of Family Law Procedure.
3. The party served with the Request for Mediation may file a written response to the Request for Mediation within 20 days of the date of service. A copy of the written response shall be provided to the other party and the assigned division.
4. A party requesting mediation shall provide to the assigned division 5 days after the expiration of the response period, a Request for Order Granting or Denying a Request for Mediation, and a separate Order Granting or Denying Request for Mediation.
5. The Court may grant or deny the Request for Mediation within its discretion. If the Request for Mediation is granted the Court will order the parties to attend mediation at the Conciliation Court.

(d) By Agreement of the Parties. The parties may agree to attend mediation through the Conciliation Court by completing and signing a Voluntary Agreement to Mediate Child Custody and/or Parenting Time on a form approved by the Court. The Conciliation Court will set a time and date for mediation upon receipt of a properly completed stipulation.

(C) Mediation Conference. Each party shall attend all appointments scheduled by the Conciliation Court. Attorneys for the parties may confer with the mediator prior to the initial

Proposed Local Rule 8

Pima County Superior Court

mediation conference but shall be excluded from the mediation. At the mediator's discretion, the mediator may privately interview the child or children and all persons having any relation to the controversy, including either of the parties' attorneys.

If a party fails to appear at a mediation conference, the mediator shall report to the Court the failure to appear, and the Court may impose such sanctions as may be appropriate.

(D) Mediation Agreement. Any agreement reached through mediation shall be signed by the parties. If neither party is represented by an attorney, the agreement will be forwarded to the Court for approval. If either party is represented by an attorney, any agreement reached through mediation shall be signed by the parties and submitted to their attorneys for review. An attorney shall file a notice of objection within 30 days after the date of the signing of the agreement and provide a copy of the notice of objection to the Conciliation Court. The notice of objection shall state nothing more than a party objects to the agreement, without elaboration. If a notice of objection is filed, the parties shall not return to mediation to resolve their dispute unless both parties and their attorneys stipulate to return to mediation. If no objection is filed, the Conciliation Court shall submit the agreement to the Court for approval. Agreements reached through mediation may not be enforced until an Order has been entered by the Court approving the agreement. If the agreement is not approved, or if the Court modifies the agreement, and the parties do not accept the modification, then the agreement shall be nullified, and will not be admissible in evidence.

(E) Confidentiality of Mediation Process. Mediation proceedings shall be held in private. All communications, verbal or written, by any person connected with the proceedings shall not be disclosed in any Court proceeding even upon waiver by the parties. The only exception to this confidentiality provision is the reporting requirement of A.R.S. §13-3620.

(F) Conclusion of Mediation. The mediator shall notify the Court in writing when an agreement has been reached or the mediator concludes that further mediation is not warranted. Upon the issuance of this notice, mediation is concluded.

(G) Subsequent Custody or Parenting Time Evaluation. The Conciliation Court mediator or private mediator who conducts mediation pursuant to Pima County Local Rule 8.12 shall not subsequently serve as custody or parenting time evaluator for the same parties.

(H) Private Mediation. The parties may agree to mediate custody or parenting time disputes through a private mediator selected and paid for by the parties as an alternative to mediation through the Conciliation Court only by complying with the following:

The agreement to proceed with private mediation must be in writing, signed by all parties, filed with the Court, and a copy provided to the Conciliation Court. The name, address and telephone number of the private mediator and the date of the first mediation session must be contained in the agreement. The

Proposed Local Rule 8

Pima County Superior Court

parties must also acknowledge in the written agreement that the private mediator has received a copy of Pima County Local Rule 8.12.

All the provisions of Pima County Local Rule 8.12 apply to private mediation, and any references to the Conciliation Court shall be deemed to include private mediators.

8.13 CONCILIATION COURT SERVICES: PETITIONS FOR CONCILIATION

(A) Filing of Pleadings. All petitions and other pleadings filed pursuant to A.R.S. §25-381.09 shall be filed with the Clerk of the Court and served upon the opposing party. Conciliation proceedings shall be assigned file numbers with the letter "X" as a prefix. Conciliation petitions may also be submitted at the Conciliation Court. The Conciliation Court shall review all petitions for compliance with the statute before filing by the Clerk of the Court.

(B) Statements of Pending Proceedings. Petitions for Conciliation shall state, in addition to the requirements of A.R.S. §25-381.11 whether or not there is a pending legal proceeding between the parties.

(C) Minute Entry Concerning Pending Action. If an action for annulment, dissolution of marriage, or legal separation is pending, upon the filing of a conciliation petition, the Conciliation Court Judge shall transfer the case to the Conciliation Court.

(D) Hearings; Notices, Mailings and Response. After the filing of a conciliation petition, or after the transfer of a pending family law case by order of the court, as provided in A.R.S. §25-381.19 a judicial officer shall direct the Conciliation Court to schedule a time and place for a conciliation hearing. The Conciliation Court shall mail notice of the date and time of the hearing to each of the parties, and shall also provide a copy of the Conciliation Petition to the respondent, 5 days prior to the conciliation hearing. Hearings shall be conducted before the Director of Conciliation or a conciliation court staff member unless otherwise ordered by a judicial officer. A conciliation hearing may be recessed to a later time or rescheduled before the Conciliation Court Judge. Unless the parties agree otherwise, the conciliation proceedings shall be terminated 60 days after the filing of the petition.

Failure to attend the conciliation hearing without good cause may be deemed a contempt of court.

(E) Confidentiality. All communications, both oral and written, shall be confidential and shall not be disclosed without the consent of the party making such communication, except as otherwise required by law.

Proposed Local Rule 8

Pima County Superior Court

8.14 CONCILIATION COURT SERVICES: ASSESSMENTS AND EVALUATIONS

(A) **Referral by the Court.** Custody and/or parenting time issues may be referred to the Conciliation Court to screen and determine if it is appropriate for an assessment or evaluation. The Conciliation Court shall review and determine whether the matter is appropriate for an assessment or evaluation according to the criteria adopted by the Conciliation Court. If appropriate, an assessment or evaluation may be conducted, in accordance with Rule 68(C), Arizona Rules of Family Law Procedure. The parties shall appear at all conferences scheduled and shall furnish all information requested by the evaluator.

(B) **Referral by Stipulation.** The parties may stipulate to an assessment or evaluation of custody and/or parenting time issues by the Conciliation Court. The Conciliation Court shall review a case to determine if it is appropriate for an assessment or evaluation according to criteria adopted by the Conciliation Court. The Conciliation Court may consider the finances of the parties and the issues involved in the matter in determining whether an evaluation or assessment will occur. The parties shall complete the Domestic Relations Education on Children's Issues course and mediation prior to an evaluation being commenced.

(C) **Reports to the Court.** At the completion of an assessment or evaluation, a report with recommendations will be submitted to the Court, with copies to the attorneys, or the parties if unrepresented. The report shall be filed with the Court and an order shall be entered sealing the report, to be opened or viewed only by Court order. The Court shall consider the report and recommendations in determining custody and/or parenting time.

Should the parties reach an agreement regarding custody and/or parenting time during the evaluation, the evaluator shall submit a written report to the Court. The report shall summarize the parents' participation, and shall include the agreement reached by the parents, the recommendations of the evaluator, if any, and a statement of the evaluator's opinion whether the agreement is in the best interests of the minor children.

(D) **Depositions of Conciliation Court Evaluators.** Prior to seeking the issuance of a subpoena for a deposition of a Conciliation Court evaluator the party proposing to take such deposition must first obtain the approval of the assigned division. Pursuant to Rule 68(C)(5), Arizona Rules of Family Law Procedure the assigned division shall set reasonable limits on the deposition. Evaluators from the Conciliation Court may appear in court proceedings only when served with a subpoena that is timely and properly served.

8.15 PARENTING COORDINATOR: PRIVATE APPOINTMENTS AND CONCILIATION COURT APPOINTMENTS

The court may appoint a parenting coordinator pursuant to Rule 74, Arizona Rules of Family Law Procedure. The appointed parenting coordinator shall not be subject to subpoena, nor be called as a witness in the case, except as permitted by the court.