

Judge Greg Sakall
Judge, Division 23
Pima County Superior Court
110 West Congress Street
Tucson, AZ 85701

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	Supreme Court
	)	No.
PETITION TO AMEND RULE	)	
26(d)(2) OF ARIZONA RULES OF	)	
CIVIL PROCEDURE	)	

BACKGROUND

This is a proposal to make a friendly amendment to Rule 26(d)(2) of the Arizona Rules of Civil Procedure (the “Ariz. R. Civ. P.”) which governs the expedited procedure for resolving civil discovery and disclosure disputes. The proposed rule provides clarity as to when a responding party must prepare its portion of a joint statement.

Current Ariz. R. Civ. P. 26(d) was adopted as part of the July 2018 amendments focusing on discovery reform, and it provides for an expedited and efficient means of resolving discovery disputes. It requires the parties to prepare a short, joint statement of discovery or

disclosure dispute (Ariz. R. Civ. P. 26(d)(2)), and the court to resolve the matter expeditiously. Ariz. R. Civ. P. 26(d)(3).

As to the preparation of the joint statement, it was envisioned that parties and counsel would comply with the provisions of Ariz. R. Civ. P. 7.4(a) and make themselves “reasonably available to participate in preparing the document” and “promptly respond to communications from any other party concerning the document.” Ariz. R. Civ. P. 7.4(a)(1)-(2). Unfortunately, in the undersigned’s experience, that is many times not the case. As a result, discovery disputes are sometimes delayed in being presented to the court, and in others, the parties present the dispute by two briefs, rather than a joint statement. In all these cases, costs are increased.

To resolve this recurrent issue, Ariz. R. Civ. P. 26(d) should be amended as follows (changes underlined):

(d) Expedited Procedure for Resolving Discovery and Disclosure Disputes.

(1) *When Applicable.* Unless the court decides to permit full briefing, this procedure applies to all disputes between parties to the action that could properly be addressed in motions for protective order under Rule 26(c) or motions to compel discovery or disclosure under Rule 37(a). The filings in a Rule 26(d) proceeding are not motions.

(2) *Joint Statement of Discovery or Disclosure Dispute.* When the parties have a dispute that could properly be addressed under

Rule 26(c) or Rule 37(a), they must file with the court a joint statement of discovery or disclosure dispute. The joint statement must not exceed 3 pages of explanatory text, with each party entitled to submit one and one-half pages of that text. The parties must also attach a good faith consultation certificate complying with Rule 7.1(h) and may not attach exhibits. The purposes of the joint statement are to notify the court of the dispute, and to make a record of the discovery or disclosure sought. If a party presents a draft of a Joint Statement of Discovery or Disclosure Dispute, the responding parties must provide their portion of the Joint Statement as soon as possible but no later than five (5) business days after receiving the draft. For purposes of this rule, the court will presume that Joint Statements are received on the dates they are delivered via email to opposing party or counsel. Briefing on the dispute is permitted only if ordered by the court.

(3) *Expedited Hearing by the Court.* Unless the court orders otherwise, the parties may jointly contact the court by telephone to request a hearing on the joint statement of discovery dispute. The court should schedule the matter at the earliest convenient time, whether by telephone or in person.

(4) *Resolution by Minute Entry.* The court must issue a minute entry setting forth the resolution of the discovery dispute. After resolution, a party may file with the court those materials necessary to create a record of the discovery or disclosure the court permitted or denied.

(5) *Depositions.* Nothing in Rule 26(d) limits the ability of the parties to seek the intervention of the court by telephone during a deposition without the necessity of filing a written statement of discovery dispute.

Recently, this Court found it appropriate to amend Rule 76.1, Arizona Rules of Family Law Procedure, to provide for clear deadlines for when parties must exchange portions of a joint scheduling or pretrial statements. R-22-0015, In the Matter of Rule 76.1, Rules of

Family Law Procedure, 8/29/2022 Order. The underlying petition in that matter sought the amendment so that “the rules . . . be as clear as possible, provide as much direction as reasonable, and protect the due process rights of the parties.” The same rationale applies to this Petition.

For the foregoing reasons, the undersigned respectfully petitions this Court to amend Ariz. R. Civ. P. 26(d)(2) as set forth above.

RESPECTFULLY SUBMITTED this 29th day of December, 2022.

Greg Sakall

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Judge, Division 23
Superior Court of Arizona - Pima County