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6 **IN THE SUPREME COURT**

7 **STATE OF ARIZONA**

8 PETITION TO AMEND RULE 16(d)
9 OF THE ARIZONA RULES OF
10 CIVIL PROCEDURE

Supreme Court No. R-06 _____

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12 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar of
13 Arizona Board of Governors, through the undersigned, petitions the Supreme Court to amend
14 Arizona Rules of Civil Procedure 16(d), as set forth in Appendix A.

15 Proposed Rule 16(d) is designed to improve efficiency in trial management and
16 provide uniformity and eliminate portions of the Joint Pretrial Statement that, in practice, are
17 burdensome and do not assist in preparing for trial. Proposed Rule 16(d) also adds new
18 categories to the Joint Pretrial Statement regarding trial preparation that are not addressed in
19 the Current Rule 16(d), but were often addressed by the judiciary through minute entries.
20 Accordingly, Proposed Rule 16(d) is also designed to alleviate the need for judges to create
21 comprehensive minute entries addressing trial preparation and will create more uniformity in
22 regard to trial preparation.

23 **Description and Rationale for the Proposed Amendment**

24 Current Rule 16(d) requires that a Joint Pretrial Statement be prepared by all parties
25 prior to trial to assist the parties and the court in the efficient management of the trial. In
26 theory, subparts 1, 2, and 3 of Current Rule 16(d) assist the parties by allowing them to

1 narrow down the facts and issue that will be litigated at trial. In practice, however,
2 agreement regarding material facts and issues is often difficult and burdensome as each party
3 has opposing views regarding the facts and issues to be litigated. For this reason, Proposed
4 Rule 16(d) proposes the deletion of subparts 1, 2, and 3 from Current Rule 16(d). In its
5 place, Proposed Rule 16(d) provides that each party indicate the specific claims and defenses
6 that will actually be tried. This information will provide the court with an overview of the
7 case and will allow the parties to refine claims and defenses raised during the discovery
8 process. This information will allow counsel to focus only on evidence related to those
9 claims and defenses that the parties intend to litigate at trial.

10 The portion of Proposed Rule 16(d) regarding witnesses and exhibits are essentially
11 unchanged from Current Rule 16(d). The portion of Proposed Rule 16(d) regarding exhibits
12 seeks to clarify Rule 16(d) to include impeachment exhibits. In addition, a provision has
13 been added to allow the parties to stipulate exhibits into admission, subject to the approval of
14 the court. The length of the trial will be shortened by allowing the parties to stipulate to the
15 admission of exhibits prior to trial.

16 The portion of Proposed Rule 16(d) regarding depositions mirrors the sections
17 regarding witnesses and exhibits. In many instances, depositions take the place of witness
18 testimony; thus, they should be treated similar. Proposed Rule 16(d) also takes into account
19 a new form of deposition testimony, deposition summaries.

20 Proposed Rule 16(d) includes several additional items for the Joint Pretrial Statement.
21 These items include stipulations of material facts and law; whether an interpreter or technical
22 equipment is needed; whether any party will be invoking Rule 615 of the Arizona Rules of
23 Evidence regarding exclusion of witnesses; and the number of jurors and alternates agreed
24 upon by the parties. While these issues may not arise in every case, these additions are
25 meant to prompt the parties to address these issues if applicable.

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1 Proposed Rule 16(b) adds a provision requiring the parties to advise the court about
2 settlement efforts. If the judge believes there have not been sufficient discussions regarding
3 settlement, the judge may order one last attempt to resolve the matter prior to trial by
4 mandating a settlement conference.

5 Proposed Rule 16(d) regarding jury instructions, verdict forms, and voir dire
6 memorializes the common practice among attorneys. Under Proposed Rule 16(d), parties
7 who wish to submit jury notebooks, or request findings of fact and conclusions of law, or file
8 trial memorandum with the court must now prepare these items and submit them to the court
9 five days prior to the final pretrial conference. Inclusion of these items for discussion at the
10 final pretrial conference will assist the court and parties in being more efficient and more
11 focused at the time of trial.

12 It is clear that not all cases require the comprehensive preparation mandated by the
13 proposed Rule. For this reason, Proposed Rule 16(d) includes a provision allowing the court
14 to modify the provisions of the rule.

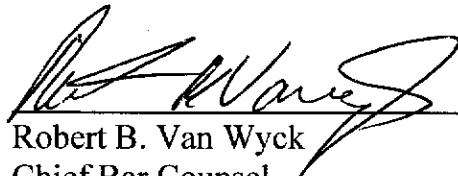
15 Proposed Rule 16(d) requires that a Joint Pretrial Statement be filed in every case and
16 that the parties prepare these statements well in advance of the deadline for submission to the
17 court. The deadlines were imposed in order to allow the opposing parties sufficient time to
18 raise objections or issues at the final pretrial conference. Clarification has been added for
19 cross claimants and counter claimants.

20 **Relief Requested**

21 The State Bar of Arizona respectfully requests that the Court amend Current Rule
22 16(d) of the Arizona Rules of Civil Procedure in accord with the proposed amendments set
23 forth in Appendix A.
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RESPECTFULLY SUBMITTED this 27th day of July, 2006.



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APPENDIX A

PROPOSED AMENDMENT TO ARIZONA RULES OF CIVIL PROCEDURE

RULE 16(d)

____ Upon the initiative of counsel for the plaintiff, counsel 1. Counsel or the party who will try the case and who are authorized to make binding stipulations shall confer and shall prepare a written joint pretrial statement, signed by each counsel, to be filed by the plaintiff within the time set by the court in the particular case, or by the applicable Local Rules of Practice, or if no time is set, then not less than five judicial days prior to the date of trial. Such pretrial statement or party, that shall be filed five days before the date of the final pretrial conference, or if no conference is scheduled, five days before trial. Plaintiffs shall submit their portion of the joint pretrial statement to all parties no later than twenty days before the final pretrial conference. All other parties shall submit their portion of the joint pretrial statement to all parties no later than fifteen days before the final pretrial conference.

2. The Joint Pretrial Statement shall contain the following:

(1) The uncontested facts deemed

(a). Each party asserting a claim for relief or affirmative defense shall list the claims and defenses that it intends to assert at trial;

(b) Stipulations of material;

~~(2) Such contested issues of fact and law as counsel can agree are material or applicable;~~

~~(3) A separate statement by each party of other issues of fact or law which that party believes to be material; **facts and law;**~~

~~(4) (c) A list of the witnesses intended to be used by each party during the trial. **Each party shall list any objections to a witness and the basis for that objection.** No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;~~

~~(5) A list of the exhibits which each party intends to use at trial, specifying exhibits which the parties agree are admissible at trial, or if not in agreement, a list of the objections and the specific grounds for each objection that a party will make if the exhibit is offered at trial. Specific objections or grounds not listed in the pretrial statement may be deemed waived at the discretion of the trial judge;~~

~~(6) A statement by each party indicating any depositions intended to be offered by that party at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered. If any~~

~~deposition or portion thereof is so offered and such deposition was not transcribed stenographically, a stenographic transcript of the pertinent portions of the deposition testimony shall be prepared and submitted by the person so offering the deposition.~~

~~The parties shall certify that all exhibits listed have been exchanged or made available to all other parties for inspection and copying. No exhibits shall be used during~~ **(d) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at** the trial other than those listed, except for good cause shown. **The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence; such stipulations are subject to court approval. Each party shall bring their exhibits to the final pretrial conference and be prepared to deliver their exhibits to the clerk for marking;**

(e) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony

should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony and the basis for any objections. Except for good cause shown, no deposition testimony shall be used at trial other than that has been designated or counter designated or for impeachment purposes;

(f) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the Judge who will decide the contents of the statement to be read to the jury;

(g) Technical equipment needed or interpreters requested;

(h) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(i) Whether any party will be invoking Rule 615 of the Arizona Rules of Evidence regarding exclusion of witnesses from the courtroom;

(j) A brief description of settlement efforts.

3. At the time of the filing of the joint pretrial statement, the parties shall file (1) an agreed upon set of jury instructions, verdict form, and voir dire questions and (2) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon.

4. Each party intending to submit a jury notebook to the jurors shall submit a copy of the notebook to opposing counsel five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

~~———— If counsel have failed to file a joint pretrial statement in accordance with this subsection, the court shall, upon the request of either party, or may, upon its own motion, fix a time for a meeting in its presence, at which time the pretrial statement shall be prepared.~~

5. Each party who will be submitting a trial memorandum shall file such memorandum five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

6. Any final pretrial conference scheduled by the court shall be held as close to the time of trial as reasonable under the circumstances. ~~The trial judge shall review the pretrial statement and ascertain whether counsel have complied with the requirements of this Rule. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence.~~ The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

7. The provisions of this rule may be modified by order of the court.