

APPENDIX A

Justice Court Rules of Civil Procedure
Table of Contents

Part I: General provisions.

Rule 101: Application and interpretation.
Rule 102: Duties of a party.
Rule 103: Court conduct.

Part II: The parties to a lawsuit.

Rule 104: Naming the parties.
Rule 105: Substitution of parties during a lawsuit.
Rule 106: Third-party practice; intervention; interpleader.

Part III: Presenting claims and defenses; preparing court documents; signatures.

Rule 107: Definition of "*pleading*"; interpretation of pleadings.
Rule 108: Preparing a document for filing with the court.
Rule 109: Signatures on documents filed with the court.

Part IV: Starting a lawsuit: the complaint, the summons, and service of the lawsuit.

Rule 110: Starting a lawsuit; content of a complaint.
Rule 111: Lawsuits involving multiple parties or multiple claims.
Rule 112: Case number and filing date; issuance of a summons by the court clerk; content of a summons; notice to defendant; replacement summons.
Rule 113: Serving a summons and complaint.

Part V: Responding to a lawsuit.

Rule 114: Deadline for filing a written response with the court after service of a complaint, or after service of a third-party complaint, cross-claim or counterclaim.
Rule 115: How to calculate time.
Rule 116: Filing a response to a complaint.
Rule 117: Counterclaims and cross-claims.
Rule 118: Third-party complaint.
Rule 119: Amended and supplemental pleadings.
Rule 120: Providing documents to other parties ("*serving documents*") after the summons and complaint.

Part VI: Disclosure Statements and Discovery.

Rule 121: Duty to provide a disclosure statement.
Rule 122: General provisions regarding discovery.

Rule 123: Depositions.
Rule 124: Interrogatories to parties.

- Rule 125: Request for production of documents, electronically stored information, and things; request for entry upon land for inspection and other purposes.
Rule 126: Requests for admissions.
Rule 127: Discovery violations.

Part VII: Motions.

- Rule 128: Motions.
Rule 129: Motion for summary judgment.

Part VIII: Optional mediation conference and pretrial conference.

- Rule 130: Optional mediation conference.
Rule 131: Pretrial conference; settlement conference.

Part IX: Trial.

- Rule 132: Matters concerning trial.
Rule 133: Setting a lawsuit for trial; trial by jury or to the court; change of precinct or judge; disability of a judge during trial; verdict or decision.
Rule 134: Procedure for jury trials.
Rule 135: Findings in a trial to the court.
Rule 136: Consolidated and separate trials.
Rule 137: Witnesses and interpreters.
Rule 138: New trial.

Part X: Judgment.

- Rule 139: Judgment.
Rule 140: Entry of default judgment.
Rule 141: Correcting or setting aside a judgment or an order.
Rule 142: Stay of proceedings to enforce a judgment.
Rule 143: Harmless error.

Part XI: Dismissal of lawsuits.

- Rule 144: Dismissal of lawsuits.

Part XII: Special Proceedings.

- Rule 145: Civil arrest warrant.
Rule 146: Deposits with the court; proceedings against sureties.
Rule 147: Enforcement of a judgment or order.

Part XIII: Forms.

- Rule 148: Forms.

Appendix to the JCRCP:

- Notice to the Defendant
Table 1: Rules of the Ariz. R. Civ. P. incorporated by reference in the JCRCP.
Table 2: Cross-reference of the JCRCP to the Ariz. R. of Civ. P.

Part I: General provisions.

Rule 101: Application and interpretation.

Formatted: Font: 12 pt

- a. *Title of these rules.* These rules are called the Justice Court Rules of Civil Procedure ("JCRCP").
- b. *Application of these rules.* These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts.
- c. *Interpretation of these rules.* These rules should be interpreted so that civil lawsuits are resolved speedily, inexpensively, and justly.
- d. *Relationship of these rules to the Arizona Rules of Civil Procedure.* These rules replace the Arizona Rules of Civil Procedure, with the exception of certain Arizona Rules of Civil Procedure that are specifically referred to in these rules. Arizona Rules of Civil Procedure that have been incorporated by reference are listed in Table 1. govern procedures in the Justice Courts of Arizona, except where these rules explicitly reference specific portions of the Arizona Rules of Civil Procedure. Such references are listed in Table 1.

Rule 102: Duties of a party.

Formatted: Font: 12 pt

- a. *Meaning of "party".* Everyone who makes a claim in a lawsuit or anyone against whom a claim is made who is required to file a written response to a claim is a "party".
- b. *Duties of a party.* A party has duties to the court and to the other parties in a lawsuit:
 - (1) *To provide copies of filed documents.* A party has a duty to provide to other parties a copy of every document the party files with the court (Rule 120).
 - (2) *To provide a disclosure statement and to respond to discovery requests.* A party has a duty to provide a disclosure statement to the other parties in the lawsuit (Rule 121). A party also has a duty to respond to discovery requests made by another party (Rules 122 through 126).
 - (3) *To appear in court.* A party has a duty to attend all scheduled court proceedings either personally or through their attorney. (Rules 130, 131, and 132). A party who is represented by an attorney may appear in court through the attorney, unless otherwise ordered by the court.
 - (4) *To provide a current address and telephone number and email address if available.* Until the lawsuit is concluded, a party is required to advise the court in writing of any change in the party's mailing address, email address, or telephone number.

(5) *To give notice of settlement.* A party is required to ~~notify~~ tell the court if a lawsuit that is set for trial has settled before the trial date, and whether the settlement will be by entry of a judgment or by dismissal of the lawsuit.

c. *Duties of parties representing themselves.* Parties who represent themselves have a duty to read these rules and to know the rules that apply to their lawsuit.

d. *Duties of attorneys.* An attorney who appears in a civil lawsuit in justice court, or who requests permission to withdraw or to substitute as counsel, must meet the requirements of Rule 5.1 of the Arizona Rules of Civil Procedure concerning appearances, withdrawal, and substitution.

Rule 103: Court conduct.

Formatted: Font: 12 pt

a. *Conduct in court.* Parties and witnesses who appear in court must conduct themselves in an orderly, courteous, and dignified manner. Arguments and remarks during a court hearing, other than questions to a witness, must generally be addressed to the ~~court~~ Judge, not to the other parties or their attorneys.

b. *Exclusion of minors.* The court may exclude from the courtroom children whose presence is not necessary as parties or witnesses.

c. *Agreements between parties.* Parties or attorneys will ~~not be bound by any agreements they make concerning their lawsuit unless - only if the agreement is in writing and has been signed by the parties or their attorneys, or unless the agreement has been made orally in court upon the record if a record is made, or is entered in the written records of the court.~~

Comment [BK1]: This was very confusing and may not be capable of simplification.

d. *Lost or destroyed records.* If the court's record of a lawsuit or any portion of a lawsuit has been lost or destroyed, a substitute record may be supplied as provided by Rule 80(h) of the Arizona Rules of Civil Procedure.

Part II: The parties to a lawsuit.

Rule 104: Naming the parties.

Formatted: Font: 12 pt

a. *"Plaintiff" defined; multiple plaintiffs.* A plaintiff is the party who makes a claim by filing a lawsuit. There can be more than one plaintiff in a lawsuit if each plaintiff's claims involve common issues and the same transaction(s) or event(s). Each plaintiff must be a "real party in interest," that is, someone who claims to have been damaged or whose rights are in dispute. A mistake in naming the real party in interest may be corrected as provided in Rule 17(a) of the Arizona Rules of Civil Procedure.

b. *"Defendant" defined; multiple defendants.* A defendant is the party who is sued in a lawsuit. More than one defendant may be named in a single lawsuit if the claim (or claims)

involves the same transaction(s) or event(s), and if the lawsuit will involve an issue that applies to all defendants.

Comment [BK2]: This definition is not consistent with the definition in the Arizona Rules of Civil Procedure. The rationale for the difference is unclear, and the proposed language is very confusing.

c. Other situations. Lawsuits by or against any of the following are governed by Rule 17 of the Arizona Rules of Civil Procedure: partnerships, executors, administrators, guardians, trustees, a personal representative, a bailee, a city, town, or county, or a surety, assignor, endorser, minor (child), an incompetent person, or a person authorized by a statute to sue for the benefit of another person.

d. "Necessary" and "indispensable" parties. If a person who is not a party to the lawsuit is "necessary" for a fair hearing of the lawsuit as determined by Rule 19(a) of the Arizona Rules of Civil Procedure, then upon motion of any party the necessary person will be made a party, served with the lawsuit, and required to participate in the lawsuit. If a person described in Rule 19(a) of the Arizona Rules of Civil Procedure cannot be made a party for any reason, then the court will use the factors in Rule 19(b) of the Arizona Rules of Civil Procedure to determine if the absent party is "indispensable."

e. Definition of a "person." A "person" under these rules includes a business or an organization as well as an individual.

Rule 105: Substitution of parties during a lawsuit.

Formatted: Font: 12 pt

Parties may be substituted in a lawsuit in the following situations, and as provided by Rule 25 of the Arizona Rules of Civil Procedure:

- a. Death of a party during a lawsuit* as provided in Rule 25(a).
- b. Death of a defendant after a personal injury lawsuit has been filed* as provided in Rule 25(b).
- c. Incompetency during a lawsuit* as provided in Rule 25(c).
- d. Transfer of interest during a lawsuit* as provided in Rule 25(d).
- e. Public officers* as provided in Rule 25(e).

Rule 106: Third-party practice; intervention; interpleader.

Formatted: Font: 12 pt

a. Third-party practice. If a defendant contends—says that another person who was not named as a party by the plaintiff is completely or partially responsible for the plaintiff's damages, the defendant may file a third-party complaint against that person as provided by Rule 118.

b. Intervention. When a person has an interest in the subject matter of a lawsuit between other parties and that interest might be affected by a decision in the lawsuit, or a person has a claim or defense in common with a claim or defense in a lawsuit between other people, the person may be

able to join the lawsuit as a plaintiff or as a defendant. Joining a lawsuit in this way is called "*intervention*," as provided by Rule 24 of the Arizona Rules of Civil Procedure.

c. **Interpleader.** When a person might be exposed to double or multiple liabilities because of claims made against that person, the person may file a lawsuit against those who have the claims, and the court will determine each party's rights and liabilities. This type of action is called an "*interpleader*," as provided by Rule 22 of the Arizona Rules of Civil Procedure:

Comment [BK3]: This was also very confusing and there may be no way to make it understandable for a lay person.

Part III: Presenting claims and defenses; preparing court documents; signatures.

Rule 107: Definition of "*pleading*"; interpretation of pleadings.

Formatted: Font: 12 pt

a. **"Pleading" defined.** A "*pleading*" is a document a party files with the court that states a claim or a defense or responds to a claim or defense in a lawsuit. Claims, responses, and defenses must be stated in one of the following pleadings:

- (1) A complaint;
- (2) An answer to the complaint;
- (3) A counterclaim;
- (4) An answer to a counterclaim;
- (5) A cross-claim;
- (6) An answer to a cross-claim;
- (7) A third-party complaint;
- (8) An answer to a third-party complaint.

Additional information about these pleadings is contained in Rules 110, 111, 116, 117, 118, and 119.

b. **Simple and concise statements.** Statements in pleadings must be simple and concise.

c. **Interpretation of pleadings.** The court will interpret pleadings to do justice.

Rule 108: Preparing a document for filing with the court.

Formatted: Font: 12 pt

a. **Document; caption.** The first page of every document that is filed with the court, including a pleading as defined in Rule 107(a), must include a caption that contains the name and address of the court where the document is being filed, the names of the parties and the address of the party who is filing the document, and the name of the document. Every document filed with the court after the complaint must also include the case number assigned by the court. See Rule 112(a) concerning the case number.

b. **Format.** A party must file a document with the court on paper, except that a party may file a document electronically if the court has electronic filing available. These rules apply to both

electronic and paper filings. Electronic filings must be in a format allowed by the court. Paper filings must be on only one side of white 8.5 x 11 inch paper, with one inch margins on the top, bottom, and sides of the page. Documents filed on forms provided by the court do not need to meet these requirements. The court may issue documents such as notices or orders in either paper or electronic formats.

c. Attachments to documents ("exhibits"). Exhibits may be attached to a document that is filed with the court. An exhibit is considered a part of the document to which it is physically or electronically attached, and an exhibit does not require a separate caption.

d. Sensitive data. A document or exhibit that is filed with the court must not include a person's social security number or a financial account number, except as allowed by Rule 5(f) of the Arizona Rules of Civil Procedure; and the court may take any action specified in Rule 5(f) for a violation of this requirement.

e. Filing documents. The original of every document must be filed with the court, but attachments to documents that are filed with the court may be copies. Documents are deemed filed with the court when they are delivered to and accepted by the court.

Rule 109: Signatures on documents filed with the court.

Formatted: Font: 12 pt

a. Signature. Every document that is filed with the court, except for exhibits, must be dated and signed by the party's attorney or by the party if the party has no attorney. An electronic document can be signed with an electronic signature. When two or more parties file a document, at least one of the parties who file the document must sign it, unless the parties filing the document are unrepresented and then all must sign. Any document filed without being signed and dated may be stricken by the court.

b. Effect of a signature. ~~A signature of an attorney or a party on any document confirms that the person who is signing has read the document; that, to the person's best knowledge, the statements in the document are truthful; and that the document is filed in good faith, and not to harass another party or to delay the lawsuit. If the court finds that a document has been filed in violation of this rule, the court may impose on the signer a monetary penalty or any other penalty permitted under Rule 121(e).~~ The signature of an attorney or a party constitutes a certificate by the signer that the signer has read the pleading, motion or other paper; that to the best of the signer's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

c. "Verification" of a pleading. If a "verification" on a pleading is required by A.R.S. § 22-216 or by any other law, the pleading must contain the following verification above the signature and date lines:

"I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief."

A verified pleading must be verified by the party who files it or by an individual on behalf of a party if the individual is acquainted with the facts.

d. Affidavits; declarations under penalty of perjury. An affidavit is a statement that is sworn to before an authorized official such as a notary. When a party or person is required by these rules or by law to submit an affidavit, the party or person, instead of swearing before an official, may provide a signed statement under oath, which is shown by adding the following words at the end of the statement:

"I declare under penalty of perjury that the foregoing is true and correct. Signed on the ____ day of ____, 20__."

The individual must place their signature directly below those words.

Part IV: Starting a lawsuit: the complaint, the summons, and service of the lawsuit.

Rule 110: Starting a lawsuit; content of a complaint.

Formatted: Font: 12 pt

a. Starting ("commencing") a lawsuit. A lawsuit is started ("commenced") by filing a complaint with the court.

b. Contents of a complaint. A complaint must include:

- (1) The proper name of every plaintiff and of every defendant. If a defendant's name is unknown, a complaint may identify the defendant by a fictitious name, and the complaint may be amended when the defendant's true name becomes known. This paragraph also applies to defendants in a third-party complaint.
- (2) In lawsuits to recover on an assigned debt, the identity of the original owner of the debt, the date of the default and the amount due as of the date of the default.
- (3) A statement that the court has legal authority over the subject matter of the claim(s) and over the defendant(s) ("*jurisdiction*"); and a statement explaining why the justice court precinct where the lawsuit is filed is the proper location ("*venue*").
- (4) A short and clear statement of the factual basis of each claim and that shows that the party has a right to relief from the court.
- (5) A demand that the court award money or another type of remedy allowed by law. If the requested remedy is an amount of money, and the amount can be calculated with certainty, the complaint must state the amount. If the amount of money cannot be calculated with certainty, a specific amount does not need to be stated, but the complaint

must generally describe the damages and it must state that the amount requested does not exceed the jurisdictional limit of the justice court.

c. Contents of a counterclaim, cross-claim or third-party complaint. Claims that are made in a counterclaim, cross-claim or third-party complaint must include the same contents that a complaint must include as described in paragraph (b).

Rule 111: Lawsuits involving multiple parties or multiple claims.

Formatted: Font: 12 pt

a. Multiple claims. A plaintiff may state in a single complaint as many claims as the plaintiff has against a defendant, even if the claims are not related. Claims involving multiple transactions or occurrences must be stated separately so that each claim is clearly presented. Each claim must have its own basis for jurisdiction in the court in which it is brought, and any claim is subject to dismissal if there is no basis for jurisdiction. The sum total of all claims asserted must not exceed the jurisdictional amount for the court.

b. Separate trials concerning claims or parties. The court may make orders in the interest of justice, including severance of claims or for separate trials of claims for the reasons stated in Rule 20(b), Arizona Rules of Civil Procedure., ~~which will prevent a party from being embarrassed, delayed, prejudiced, or put to unreasonable expense, because the party has been joined in a lawsuit.~~

c. Judgment given on specific claims. If there are multiple plaintiffs, one plaintiff need not be interested in each of the claims made by the other plaintiffs; and if there are multiple defendants, each defendant need not be interested in defending against all of the claims that are made in the lawsuit. Judgment may be given for one or more of the plaintiffs according to their individual rights, and against one or more of the defendants according to their individual liabilities.

Rule 112: Case number and filing date; issuance of a summons by the court clerk; content of a summons; notice to defendant; replacement summons.

Formatted: Font: 12 pt

a. Case number and filing date. The clerk will provide a case number for a complaint when it is filed with the court, and will stamp on the complaint the date that it was filed with the court.

b. Issuance of the summons. A summons is a document that is issued by the court when a complaint is filed that requires a defendant to respond to the complaint. A summons must be substantially the same as the form that is available under Rule 148(a). The clerk will issue one summons for each defendant named in the complaint, including a defendant identified by a fictitious name under Rule 110(b), and will provide the summons to the plaintiff for the plaintiff to serve on each defendant. The plaintiff must arrange for a copy of the summons and complaint to be served on each defendant as provided by Rule 113.

c. Content of the summons. The summons commands each defendant to file with the court a written response to the complaint within the time period stated in the summons. The summons must notify each defendant that if a response to the complaint is not filed within the time period

stated in the summons, the plaintiff may ask the court to enter a default judgment against the defendant, as provided in Rule 140.

d. Notice to defendant. Before serving the summons and complaint, the plaintiff must attach to each summons a “notice to defendant” substantially in the form included by Rule 148(b). The court may not grant a default judgment against a defendant unless the affidavit of service or other proof of service establishes that the notice to defendant was served upon the defendant with the summons and complaint. This requirement does not apply to service by publication.

e. Replacement summons. The court will issue a replacement summons if needed and upon request.

Rule 113: Serving a summons and complaint.

Formatted: Font: 12 pt

a. Personal service on individuals in the State of Arizona. Except as stated in other paragraphs of this rule, the summons and complaint must be personally served on each individual defendant who is found in the State of Arizona by a constable or by a private process server who is registered as provided in Rule 4(e) of the Arizona Rules of Civil Procedure. Personal service under this paragraph means those methods of service described in Rule 4.1(d) of the Arizona Rules of Civil Procedure. Promptly after service upon a defendant, the constable or process server must prepare an affidavit as proof that the defendant was served, and the proof of service must be filed with the court. An affidavit of attempted service should be filed with the court only as an exhibit to a motion.

b. Service on a corporation, partnership, limited liability company, or association within the State of Arizona. Service of a summons and complaint within the State of Arizona upon a corporation, a partnership, a limited liability company, or an association must be made by personally serving an officer, a partner, or a managing or general agent, or by serving any other agent authorized by law to receive service on behalf of the organization. The constable or process server must prepare an affidavit as proof that a corporation, a partnership, a limited liability company, or an association was served, and the proof of service must be filed with the court.

c. Special situations for service of the summons and complaint on a defendant in the State of Arizona. Service of the summons and complaint within the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.1 of the Arizona Rules of Civil Procedure:

- (1) upon a minor (a child under the age of 18): see Rule 4.1(e)
- (2) upon a minor with a guardian or conservator: see Rule 4.1(f)
- (3) upon an incompetent individual: see Rule 4.1(g)
- (4) upon the State of Arizona: see Rule 4.1(h)
- (5) upon a county, municipal corporation, or other governmental subdivision: see Rule 4.1(i)
- (6) upon other governmental entities: see Rule 4.1(j)

- (7) upon a domestic corporation if an authorized officer or agent is not found within Arizona: see Rule 4.1(l)
- (8) by alternative or substituted service: see Rule 4.1(m)
- (9) by service by publication: see Rule 4.1(n)

Proof of service upon any of the above defendants or using one of the above methods must be promptly prepared by the constable or private process server who completed service, and the proof of service must be filed with the court, except that proof of service by publication must be filed as provided by Rule 4.1(n).

d. Service on an individual outside the State of Arizona. Except as provided in paragraph (e), an out-of-state individual may be personally served with a summons and complaint by someone who is authorized to serve process under the laws of the state where service is made on the individual. The person who completed service must promptly prepare an affidavit as proof that a defendant was served, and the proof of service must be filed with the court. If the defendant lives outside the State of Arizona, service may in the alternative be made by certified mail, with a return receipt showing restricted delivery to the defendant. The return receipt with defendant's signature must be filed with the court with an affidavit of service as provided by Rule 4.2(c) of the Arizona Rules of Civil Procedure. Service by certified mail is complete on the date that defendant signed the receipt, as shown on the return receipt, and if there is no date of defendant's signature on the return receipt, or if the date is not legible, then service is complete on the date the affidavit of service and the return receipt are filed with the court.

e. Special situations for service of the summons and complaint on a defendant outside the State of Arizona. Service of the summons and complaint outside the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.2 of the Arizona Rules of Civil Procedure:

- (1) under the Nonresident Motorist Act: see Rule 4.2(e)
- (2) service by publication: see Rule 4.2(f)
- (3) upon a corporation, partnership, or unincorporated association located outside Arizona but within the United States: see Rule 4.2(h)
- (4) upon individuals in a foreign country: see Rule 4.2(i)
- (5) upon a minor or incompetent individual in a foreign country: see Rule 4.2(j)
- (6) upon a corporation or association in a foreign country: see Rule 4.2(k)
- (7) upon a foreign state or political subdivision of a foreign state: see Rule 4.2(l)

Proof of service upon any of the above defendants or using one of the above methods must be prepared by the person who completed service, and the proof of service must be filed with the court, except that proof of service under the Nonresident Motorist Act must be made as provided by Rule 4.2(e), and proof of service by publication must be filed as provided by Rule 4.2(f).

f. Amendment of summons or proof of service. A summons or a proof of service may only be amended as provided in Rule 4(h) of the Arizona Rules of Civil Procedure.

g. Acceptance of service to save costs of service. Service may be completed without the need for incurring the expense of a process server by signing a documents stating that service is accepted (an "Acceptance of Service.") ~~A defendant may sign a written "a~~Acceptance of sService" of a summons and complaint ~~shall not effective unless it is in writing and signed by the defendant or, if the defendant is not an individual, the defendant's authorized agent, and the signature that on the document is witnessed by a notary public., and t~~The Aacceptance of s Service must then be returned to the plaintiff and filed with the court. The date of service is the date that the signed and notarized acceptance is filed with the court.

h. Jurisdiction. A justice court may exercise personal jurisdiction over the parties who have been properly served to the full extent permitted by the constitutions and laws of the State of Arizona and of the United States.

i. Dismissal because of lack of service; service on some but not all defendants. After at least twenty (20) days notice to plaintiff, the court may dismiss a complaint as to any defendant who has not been served with the summons and complaint within one hundred twenty (120) days after the filing date of the complaint. Before the dismissal date, if the plaintiff shows good reasons why a defendant has not been served, the court may extend the time for service. When some but not all of the defendants in a lawsuit have been timely served, the court may dismiss from the lawsuit the defendants who have not been served, and allow the plaintiff to proceed against the defendants who have been served.

Part V: Responding to a lawsuit.

Rule 114: Deadline for filing a written response with the court after service of a complaint, or after service of a third-party complaint, cross-claim or counterclaim.

Formatted: Font: 12 pt

a. Time to respond after service of a summons and complaint or after service of a summons and a third-party complaint. Except as otherwise stated in these rules, a defendant who is served with a summons and complaint or who is served with a summons and a third-party complaint within the State of Arizona must file a written answer or response with the court within twenty (20) days of the date of service. A defendant who is served with a summons and complaint or a summons and a third-party complaint outside the State of Arizona must file a written answer or response with the court within thirty (30) days of the date of service.

b. Time to respond after service of a counterclaim or cross-claim. A party who is served with a counterclaim or a cross-claim must file a written answer or response with the court within twenty (20) days of service.

c. Calculations of time. Time is calculated as provided in Rule 115.

d. Failure to respond; default. A party who has been properly served with a complaint, a third-party complaint, a counterclaim, or a cross-claim and who fails to file a written answer or response within the time allowed may be defaulted as provided in Rule 140.

Rule 115: How to calculate time.

Formatted: Font: 12 pt

a. Basic rules.

(1) *Day of the act or default.* In calculating any period of time specified or allowed by these rules, by any local rules, by order of a court, or by any applicable statute, the day of the act or default from which the designated period of time begins to run is not included.

(2) *If the time period is less than eleven (11) days.* When the period of time specified or allowed is less than eleven (11) days before including any additional time allowed under paragraph (b) of this rule, then intermediate Saturdays, Sundays and legal holidays are not included in the calculation of time. When the period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays are included in the calculation.

(3) *Last day.* The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day, which is not a Saturday, Sunday, or legal holiday.

b. Additional time for mailing or e-mailing. Except as provided in Rule 114(a), if a party is required to do something within a specified period of time after service of a document, and the document is served by first class postal mail, or by e-mail, then five (5) calendar days are added

after the specified period would otherwise expire under Rule 115(a). The term “*mail*” used in this rule includes every type of professional delivery service except same day hand-delivery. This paragraph does not apply to the distribution of a notice of entry of judgment as provided by Rule 139(f).

Rule 116: Filing a response to a complaint.

Formatted: Font: 12 pt

a. Defendant’s response to a complaint or a third-party complaint. A response to a complaint or a response to a third-party complaint is made by filing one of the following four documents with the court:

~~(1)~~ (1) *An answer.* An answer must include short and clear statements that either admit or deny each specific allegations in a complaint, or state that the defendant does not have enough knowledge to admit or deny them. An answer should must also state a party’s factual defenses to the complaint, and any legal defenses or affirmative defenses, and may state any factual defenses. An affirmative defense is a defense based on certain legal principles. Examples of affirmative defenses are accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of limitations, and waiver.

Formatted: Indent: Left: 0.5", Add space between paragraphs of the same style, No bullets or numbering

~~(2)~~ (2) *A motion to dismiss the complaint.* A motion to dismiss on the following grounds may be made under this rule before an answer is filed:

Formatted: Indent: Left: 0.5", No bullets or numbering

~~(i)~~ A motion to dismiss for lack of jurisdiction (jurisdiction is the authority of the court over the subject matter of the lawsuit or over a defendant);

~~(ii)~~ A motion to dismiss for improper venue (venue is the location of the court in which the lawsuit was filed);

~~f.(iii)~~ A motion to dismiss for improper service of the summons and complaint;

~~(iii)(iv)~~ A motion to dismiss because the complaint does not state a valid claim, even if the facts alleged in the complaint are assumed to be true.

Formatted: Indent: Left: 1", Hanging: 0.5", Don't add space between paragraphs of the same style, Numbered + Level: 1 + Numbering Style: i, ii, iii, ... + Start at: 1 + Alignment: Left + Aligned at: 1" + Indent at: 1.25"

~~(3)~~ (3) *A motion for a more definite statement.* This motion must allege that the complaint is unclear. A motion for a more definite statement must point out the defects that make the complaint unclear, and the types of details that should have been provided.

Formatted: Indent: Left: 0.5", No bullets or numbering

~~(4)~~ (4) *A motion to strike the complaint.* This motion must allege that the complaint contains immaterial, impertinent, or scandalous allegations, and that it should be stricken partially or entirely.

Formatted: Indent: Left: 0.5", No bullets or numbering

b. Proceedings after a motion made under this rule.

(1) If the court grants a motion to dismiss, and if no permission to amend the complaint is granted by the court, the court will enter judgment as provided in Rule 139.

(2) If the court grants a motion for a more definite statement or a motion to strike the complaint, the plaintiff has twenty (20) days after the motion is granted to file an amended complaint, and the defendant has twenty (20) days after service of the amended complaint to file an response ~~answer~~ to the amended pleading.

(3) If the court denies a motion under this rule, the defendant must file an answer to the complaint within twenty (20) days after the motion has been denied.

c. **Waiver of defenses.** Except for a lack of jurisdiction over the subject matter, a defense that might have been presented by a motion under paragraphs (a)(2)(i) or (iii), (3), or (4) of this rule is waived if it is not made before an answer is filed.

d. **Misidentified defenses and counterclaims.** If a party mischaracterizes a defense as a counterclaim, or if a party mischaracterizes a counterclaim as a defense, the court in the interest of justice may treat it as if it was properly named.

Rule 117: Counterclaims and cross-claims.

a. **Required counterclaim.** A defendant must file a counterclaim for any claim that the defendant has against the plaintiff, if the defendant's claim arises out of same transaction, occurrence, or event that is described in the plaintiff's complaint.

b. **Permitted counterclaim.** A defendant may file a counterclaim for any claim that the defendant has against the plaintiff but that does not arise out of the transaction, occurrence, or event that is described in the plaintiff's complaint.

c. **Filing counterclaim with the answer; failure to file counterclaim.** A defendant must file a counterclaim at the time the defendant files an answer under Rule 116. If a defendant fails to file a counterclaim with an answer, the defendant may file a motion under Rule 119(a) requesting that the court allow defendant to file an amended answer with a counterclaim.

d. **Cross-claim.** In a case where there are two or more defendants, a defendant may state as a cross-claim any claim that the defendant has against another defendant arising out of the same transaction, occurrence, or event that is described in the plaintiff's complaint. The cross-claim must be stated at the time the defendant files an answer or other response to the complaint, unless the court allows an amendment under Rule 119(a).

e. **Filing a response to a counterclaim or cross-claim.** A party who is served with a counterclaim or a cross-claim must file a written response with the court pursuant to the provisions of Rule 116. A response must be filed within twenty (20) days after service of the counterclaim or cross-claim, as provided in Rule 114(b), or as ordered by the court.

f. Counterclaim or cross-claim exceeding the jurisdiction of the justice court. If a claim filed pursuant to this rule exceeds the jurisdiction of the justice court, the court shall ~~lawsuit shall be transferred the lawsuit as provided by law.~~ transfer the lawsuit as provided by law. ~~The party filing the counterclaim or cross-claim exceeding the jurisdiction of the justice court is not required to take any further action until the matter is transferred to superior court.~~

Rule 118: Third-party complaint.

a. Reason for a third-party complaint. If a defendant contends that another person who is not named as a party in the lawsuit is fully or partly responsible for plaintiff's damages, the defendant may file a third-party complaint against that person.

b. Service of a third-party complaint. The defendant must request the clerk to issue a summons for the third-party complaint as provided in Rule 112. The defendant must serve the third-party defendant with a summons and the third-party complaint in the same manner as an initial summons and complaint, and as provided in Rule 113. The third-party defendant must file a response to the third-party complaint as provided in Rule 116.

Rule 119: Amended and supplemental pleadings.

a. Amendments to pleadings. A party may amend a pleading one time before a response has been served. If no response is required, a party may amend a pleading within twenty (20) days after the pleading was filed. Thereafter, and upon a party's motion, the court may permit the filing of an amended pleading at any stage of the proceeding and on terms that are just. Leave to amend must be freely given when justice requires.

b. Amendments to conform to the evidence. When a party raises issues at trial that were not stated in the pleadings, the court may rule that the pleadings are conformed to the evidence and decide the matter based on the facts presented at trial. If a party objects to the introduction of evidence at trial on the ground that the evidence is not relevant to the pleadings, and the objecting party would be prejudiced by going forward, the court may grant a continuance to enable the objecting party to conduct discovery concerning the evidence, or the court may decline to admit the evidence.

c. Relation back of amendments. If a party seeks to amend a pleading to add claims that are otherwise barred by a statute of limitations, the amended pleading may be deemed to have been timely filed if the criteria of Rule 15(c) of the Arizona Rules of Civil Procedure are met.

d. Supplemental pleadings. Upon motion, the court may permit the filing of a supplemental pleading that asserts claims or defenses that have arisen since the date of the original pleading. If the court decides that the filing of a supplemental pleading is appropriate, it may also order the opposing party to file a response to the supplemental pleading, and set a time for the opposing party to file a response.

Rule 120: Providing documents to other parties ("serving documents") after the summons and complaint.

a. Application of this rule. There are two types of service under these rules. Service of a summons and complaint, or service of a summons and a third-party complaint, must be completed as required by Rule 113. The other type of service concerns documents filed with the court after service of the summons and complaint or a third-party complaint; this type of service requires that documents be provided to the other parties as stated in this Rule 120.

b. General rule. A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit ("served") before or promptly after the document is filed, by one of the following methods:

- (1) Hand-delivery to the other party;
- (2) Hand-delivery to the other party's place of business and leaving the document with an individual in charge, or if no one is in charge, by leaving the document in a conspicuous place at the other party's business;
- (3) If the other party has no place of business, hand-delivery to the other party's residence, by leaving the document with someone of suitable age and discretion who lives there;
- (4) Mailing the document via first-class U.S. mail to the other party's last known address; or by using any type of professional delivery service that produces a written confirmation of delivery; or
- (5) Delivering the document by any method, including electronically, if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system to that method of service, or if the court orders service by that method.

Copies of documents to parties in default, as defined in Rule 140, must be provided as required by Rule 140.

c. Party represented by an attorney. If the other party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

d. Noting the method of service. On the last page of a document that is filed with the court, the party who is serving the document under paragraphs (b) and (c) must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

*"A copy has been or will be mailed/e-mailed/hand-delivered [select one]
"on [insert date] to:*

*"Name of opposing party or attorney
"Address of opposing party or attorney"*

e. Service of a motion after entry of judgment. Service of a motion that requests that a judgment be modified, vacated, or enforced must be served on the other party as if serving a summons and complaint under Rule 113.

f. Documents that are not filed with the court. Copies of the following documents must be served on every party as required by this rule, but are not filed with the court unless the court requests:

- (1) Subpoenas (Rules 123(c) and 137(b));
- (2) Discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, and responses to these requests. (Rules 123, 124, 125, and 126);
- (3) Disclosure statements (Rule 121).

Part VI: Disclosure Statements and Discovery.

Rule 121: Duty to provide a disclosure statement.

a. Disclosure of information. Within forty (40) days after the defendant has filed an answer, or at a time set by the court, each party must provide to the other parties a written disclosure statement. Every party's disclosure statement must include the following information:

- (1) *A list of trial witnesses.* This list must include the names, addresses, and telephone numbers of the witnesses the party will call if the lawsuit goes to trial, and a brief description of the testimony of each witness. If a witness is going to offer expert testimony, the list must include the expert's qualifications, and a summary of the opinions of the expert.
- (2) *A list of other witnesses.* This list must include the names, addresses, and telephone numbers of persons who will not be called as witnesses, and but those who may have information that may be favorable or unfavorable concerning the event or transaction that is the subject of the lawsuit, even if that information may be unfavorable to the disclosing party.
- (3) *Copies of exhibits and other information.* (i) A party must provide copies of any documents or exhibits the party will use to support a claim or defense, including copies of electronically stored documents.; (ii) In a contested case based upon the collection of a consumer debt (a debt entered into for personal, family, or household purposes), the Plaintiff must disclose all available evidence related to the allegations contained in the complaint. These include: 1. the agreement between the creditor and consumer, if available, upon which the complaint is based; 2. any available billing statement to the consumer; 3. if the debt has been assigned, evidence that the Plaintiff is the owner of the debt; 4. information concerning the date of the last payment made by the consumer, if

available;³ (iii) If the party intends to use at trial any document, object, or exhibit that cannot be easily copied, the party must make the item reasonably available for inspection by the other parties at the pretrial conference or as otherwise agreed to by the parties.

(4) **Statements of an opposing party.** A party must provide with their disclosure a copy of any relevant statements in either written or recorded form which that are within the party's possession or control and that were given by any opposing party. If a party is aware of a relevant written or recorded statement that is not within the party's possession or control, the party must identify the name and address of the person who gave the statement and the custodian of the copy of the statement, if known.

(5) **A list of other documents.** This list must include all other relevant documents that are known to exist, whether these other documents are favorable or not and whether they exist in paper or electronic formats, and their location, if known. The list must include any insurance agreements that may satisfy all or part of a judgment that may be entered in the lawsuit. A party may provide copies of these documents rather than a list of documents.

The disclosure statement must be signed by the party who prepared it, and by the party's attorney if represented, and it must be provided to ("served on") the other parties as provided in Rule 120.

A party is not required to disclose information that is legally privileged or that has been prepared specifically for litigation, except as stated in Rule 122(f)(3) of these rules and in Rule 26.1(f) of the Arizona Rules of Civil Procedure.

b. Disclosure of new information. If a party discovers new or different witnesses, or documents, or information that will be used at trial, the party has a duty to promptly provide to the other parties: (1) a statement identifying containing the additional witnesses, information, or (2) copies of the new documents, or (3) a statement describing the new information. The duty to make the disclosures required by this rule is a duty that continues until the lawsuit is concluded.

c. Penalties for failure to disclose. Disclosures by a party must include enough information that other parties will not be surprised by a witness or exhibit at trial. The court may penalize any party who fails to disclose or who fails to timely disclose witnesses or exhibits, or who discloses inaccurate information. The penalties can include an order by the court that certain witnesses, or exhibits or information may not be used at trial; that a particular fact is deemed established; that a pleading or a claim or defense in a pleading be stricken; or that the party be assessed the reasonable attorney's fees, costs, and expenses of a party who was harmed by inaccurate, untimely, or lack of disclosure. The court may also impose any other penalty that is reasonable and appropriate for a disclosure violation, as set forth in Rules 37(a), 37(b), 37(c) and 37(d) of the Arizona Rules of Civil Procedure.

Rule 122: General provisions regarding discovery.

a. Scope of discovery. Discovery is a process for obtaining additional information about a lawsuit. Parties may discover any non-privileged information that is relevant to the facts or issues involved in a lawsuit, whether the information relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, and including additional details concerning disclosures made under Rule 121.

A party may obtain discovery concerning the existence, description, nature, custody, condition and location of any records, documents, or other things, and the identity and location of persons having knowledge of any discoverable matter. A party may not object to a request for discovery on the grounds that the information sought will be inadmissible at trial if the requested information appears reasonably calculated to lead to the discovery of admissible evidence.

b. Discovery methods. A party may request discovery from another party by one or more of the following methods: depositions upon oral examination (Rule 123); written interrogatories (Rule 124); request for production of documents or things, or for permission to enter upon land or other property for inspection and other purposes (Rule 125); requests for admissions (Rule 126); and requests for physical and mental examinations (Rule 122(f)(6)).

c. Timing of discovery. Methods of discovery may be used in any sequence unless otherwise ordered by the court. A party may file a motion requesting the court to enter an order concerning the sequence of discovery by explaining how it would be for the benefit or convenience of parties or witnesses, or why it would be in the interests of justice.

d. Protective orders and limitations on discovery. If a motion of a party or of a person from whom discovery is sought shows good reasons, the court may in the interests of justice enter an order to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense in connection with a discovery request. Specific grounds for a motion for a protective order and the procedure to apply for a protective order are contained in Rule 26(c) of the Arizona Rules of Civil Procedure.

e. Supplementation of discovery responses. A party has a duty to amend a prior discovery response if the party knows that the response was incorrect when it was provided, or if the party knows that the response, although correct when it was provided, is no longer true and a failure to amend the response is in substance a knowing concealment.

f. Specific discovery issues.

(1) **Electronically stored information.** Electronically stored information is discoverable. However, a party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense.

(2) **Insurance agreements.** A party may obtain discovery of any insurance agreement that may satisfy all or part of a judgment that may be entered in a lawsuit. Information concerning the insurance agreement is not by reason of disclosure or discovery admissible in evidence at trial. For purposes of this paragraph, an application for insurance is not treated as part of an insurance agreement.

(3) **Materials prepared for litigation.** A party may obtain his or her own statement made to another party or the other party's representative without showing a need for the statement. Otherwise, a party may not obtain discovery of materials prepared for litigation by another party or by the other party's representative, unless the party seeking discovery shows the court that the party has a substantial need for the materials to prepare the lawsuit, and that there is no other way to obtain the materials or their equivalent without substantial hardship.

(4) **Experts.** A party may use interrogatories, a deposition, or both to discover facts and opinions known by someone who has been identified by another party as an expert witness. The party seeking discovery from an expert ~~taking the deposition of an expert witness~~ must pay the expert a reasonable fee for the expert's time actually spent ~~responding to interrogatories or at deposition.~~

(5) **Non-party at fault.** When, pursuant to A.R.S. § 12-2506(B), a party alleges in his or her answer that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury or property damage for which damages are sought in the lawsuit pursuant to A.R.S. § 12-2506(B), the answering party must provide the identity, location, and facts supporting the claimed liability of the non-party within sixty (60) days from the filing of the answer. No allocation of liability to any non-party whose identity has not been disclosed as required by this paragraph will be permitted, except as the parties may agree or as the court may allow upon motion showing good cause, reasonable diligence, and lack of unfair prejudice to the parties.

(6) **Court-ordered medical examination of a party.** When the mental or physical condition of a party, or of an individual under the legal control of a party, is at issue in a lawsuit, a party may file a motion in the court where the lawsuit is pending requesting an order that the party or individual submit to a physical or mental examination by a physician or a psychologist. The procedures for requesting an examination, and for reporting the results of an examination, are governed by Rule 35 of the Arizona Rules of Civil Procedure.

g. Agreements among parties. The parties may agree to modify discovery procedures, including but not limited to how a deposition may be taken, the length of a deposition, or extending or shortening the time allowed for responding to interrogatories or other discovery requests.

Rule 123: Depositions.

a. Definition; before whom a deposition may be taken. A deposition is an opportunity to question another party or a witness while the other party or witness is under oath. A deposition is taken out of court before an officer authorized to administer oaths, without a judge present. A certified court reporter in Arizona may administer oaths.

Questions and answers at a deposition are recorded by a certified court reporter, or by another method that is agreed to by the parties. A deposition may not be recorded by a party, by a person who is a relative, a friend, or an employee of a party, by an attorney for a party or an employee

or relative of an attorney for a party, or by a person who is financially interested in the lawsuit. Depositions in a foreign country are taken before a person as provided in Rule 28(b) of the Arizona Rules of Civil Procedure.

b. Notice of deposition. At least ten (10) days before the date of the deposition, a notice of deposition must be provided to ("served on") (1) the person who will be deposed and (2) the other parties to the lawsuit. The notice of deposition must state the name of the person who will be deposed; the location of the deposition; the date and starting time of the deposition; and the name of the court reporter who will be present. When a party deposes another party, a notice of deposition must also include the following language:

"The Justice Court Rules of Civil Procedure allow a party to take the deposition of another party. A deposition is an opportunity to ask questions to another person while the person is under oath. A deposition takes place out of court and a judge is not present. A deposition is recorded by a court reporter or by another method agreed to by the parties. A deposition may not take longer than four (4) hours, unless agreed to by the parties or unless ordered by the court.

"If you fail to appear for your deposition, the party who sent this notice may file a motion asking that the court order you to appear. If the court orders you to appear for your deposition, the court may also order that you pay the expenses, including attorney's fees, of the other parties incurred by the other parties in obtaining the order and other attorney's fees and expenses incurred as a result ~~because~~ of your failure to appear. If you fail to appear for your deposition after the court has ordered you to appear, the court may impose additional sanctions against you, including an order that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that your answer be stricken and that judgment be entered against you."

c. Procedure. Except as provided in paragraphs (a) and (b) above, the procedures and limitations for a deposition are contained in Rule 30 of the Arizona Rules of Civil Procedure. The attendance of a witness at a deposition may be obtained with a subpoena, as provided in Rule 45 of the Arizona Rules of Civil Procedure.

d. Use of depositions in court proceedings. Depositions may be used in court proceedings as set forth in Rule 32 of the Arizona Rules of Civil Procedure.

Rule 124: Interrogatories to parties.

a. Definition; uniform interrogatories. Interrogatories are written questions that are sent by a party to another party, and which must be answered in writing and under oath by the party to whom the interrogatories are sent. Standard interrogatories (also known as "uniform interrogatories") are available for contract and personal injury/accident cases. Uniform interrogatories may be found in Rule 84 of the Arizona Rules of Civil Procedure.

b. **Notice of service of interrogatories.** Interrogatories must be provided to ("served on") (1) the party who is required to answer them, and (2) the other parties to the lawsuit. The notice must state the specific calendar date that the answers are due based on these rules, or as ordered by the court. The notice must also include the following language:

"Interrogatories are written questions that are sent by a party to another party, and which must be answered in writing and under oath by the party to whom the interrogatories are sent. The Justice Court Rules of Civil Procedure allow a party to send up to forty (40) interrogatories to another party. If you do not answer an interrogatory because you object to the interrogatory, you must state a reason for your objection."

"If you do not answer these interrogatories by the date provided in this notice, the party who served them may file a motion asking that the court order you to answer them. If the court enters that order, the court may also require you to pay expenses, including attorney's fees, incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional sanctions against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default."

c. **Time for answers to interrogatories.** Answers to interrogatories are due forty (40) days from the date they are served, or as ordered by the court. The answers must be provided to every other party in the lawsuit.

d. **Procedure.** Except as provided by paragraph (b) and (c) above, the procedures and limitations for using interrogatories are contained in Rules 33 and 33.1 of the Arizona Rules of Civil Procedure.

Rule 125: Request for production of documents, electronically stored information, and things; request for entry upon land for inspection and other purposes.

a. **Definition.** A party may provide to ("serve on") any other party a request to produce and to permit the party making the request to inspect or to copy designated documents or electronically stored information, including written documents, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained when provided in a reasonably usable format; or to inspect, test, or sample designated tangible things; provided that the items requested are within the scope of Rule 122(a) and are in the possession or control of the party upon whom the request is served.

A party may also request that they be allowed to enter upon designated land or other property in the possession or control of the party upon whom the request is served, for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the land or property, provided that the request is within the scope of Rule 122(a).

b. **Notice of request.** A request under this rule must include a notice that provides the specific calendar date that the response is due based on these rules, or as ordered by the court. The notice must be provided to ("served on") (1) the party who is required to respond, and (2) the other parties to the lawsuit. A notice of a request made under this rule must contain the following language:

"The Justice Court Rules of Civil Procedure allow a party to request from another party up to ten (10) documents or items, or up to ten (10) -categories of documents or items. If you do not produce a document or a category of documents or items because you object to a specific request, you must state a reason for your objection.

"A party who produces documents must provide them as they are kept in the usual course of business, or they must organize and label them in response to the requests. Electronic documents or electronic records must be produced in the format that has been requested, or in the format that the electronic documents or records are usually kept.

"If you do not comply with the requests that have been made in this notice, the party who served them may file a motion asking that the court order you to comply. If the court enters that order, the court may also require you to pay expenses, including reasonable attorney's fees, incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional sanctions against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default."

c. **Time for response to request.** A response to a request under this rule is due forty (40) days from the date the request is served, or as ordered by the court. The response must be provided to every other party in the lawsuit.

d. **Procedure.** Except as provided in paragraphs (b) and (c) above, the procedures and limitations for making requests under this rule are contained in Rule 34 of the Arizona Rules of Civil Procedure.

Rule 126: Requests for admissions.

a. **Definition.** A party may provide to ("serve on") any other party written requests to admit the truth of specific facts in the lawsuit.

b. **Notice of requests.** Requests for admissions must include a notice that provides the specific calendar date that the responses are due based on these rules. The notice must be provided to ("served on") (1) the party who is required to respond, and (2) the other parties to the lawsuit. The notice must also include the following language:

"The Justice Court Rules of Civil Procedure allow a party to send up to twenty-five (25) requests for admissions to another party. You must admit or deny each of these requests, unless you object to a request, in which case you must state a reason for your objection.

"If you do not respond to these requests for admissions by the date provided in this notice, your failure to respond may be considered as an admission of the requests."

c. **Time for response to requests.** Responses to requests for admissions are due forty (40) days from the date they are served, or as ordered by the court. The response must be provided to every other party in the lawsuit.

d. **Effect of admission; second notice.** If a party has not responded to requests for admissions by the date specified in a notice under paragraph (b) of this rule, then the party making the requests must serve a second notice on the party to whom the requests were made in substantially the following form:

"[Case Caption][Notice]

"To: _____:

"Do not ignore this notice.

"You were served with requests for admission on _____ [insert date.] The rules of procedure required you to respond to these requests no later than _____ [insert date.] You have failed to respond to some or all of the requests.

"The rules will still allow you to respond to the requests for admission by _____ [insert date that is fifteen (15) days after the date of this notice]. Each request that you do not respond to by that date will be taken as true in this lawsuit.

"Date and signature: _____

"[Notation of service under Rule 120(e)]"

| Any matter thereafter admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits.

e. **Procedure.** Except as provided in paragraphs (b), (c), and (d) above, the procedures and limitations for making requests under this rule are contained in Rule 36 of the Arizona Rules of Civil Procedure.

Rule 127: Discovery violations.

a. **General rule.** A party may file a motion with the court requesting a court order that requires another party or a person to disclose information or to provide discovery responses in the following situations:

(1) If a party fails to disclose information that is required under Rules 121; to appear at a deposition under Rule 123, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6) of the Arizona Rules of Civil Procedure; to answer an interrogatory under Rule 124; to respond to a request for production or to permit entry upon property under Rule 125; or to appear for a medical examination under Rule 122(f)(6).

(2) If a person who is not a party fails to obey a subpoena that requires them to appear as a witness at a deposition under Rule 123, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6) of the Arizona Rules of Civil Procedure.

A failure to disclose, appear, answer, designate, or respond includes evasive or incomplete disclosures, appearances, answers, designations, or responses.

The court may also assess an appropriate sanction, as provided in Rule 26(f) of the Arizona Rules of Civil Procedure, against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct during discovery.

b. Procedure. Procedures for requesting sanctions for discovery violations and sanctions that the court may impose are governed by Rule 37 of the Arizona Rules of Civil Procedure. However, the provisions of Rule 37(e) of the Arizona Rules of Civil Procedure will not apply to civil cases in justice courts.

c. Discovery motion filed by an attorney. An attorney who files a motion under this rule must certify in the motion that counsel has been unable to satisfactorily resolve the matter after a good faith attempt to personally consult with the opposing party.

d. Failure to provide electronically stored information. Absent exceptional circumstances, a court may not impose sanctions under this rule on a party or a person for failing to provide electronically stored information that has been lost as a result of the routine, good-faith operation of an electronic information system.

Part VII: Motions.

Rule 128: Motions.

a. Defined. A motion is a request made by a party (the "moving party") ~~that~~for the judge to take certain action or ~~to~~enter a particular order.

b. Application of this rule. This rule applies to motions made under these rules, including but not limited to: motions under Rule 116 (a motion in response to a complaint), Rule 119 (a motion to amend or to supplement a pleading), Rule 127 (a motion concerning a discovery violation), Rule 128(g) (a motion for judgment on the pleadings), Rule 138 (a motion for new trial), and Rule 141 (a motion for relief from a judgment or an order). This rule also applies to motions that may not be provided for by these rules. This rule does not apply to motions that are made in open

court during a conference, hearing, or trial, or to motions brought under Rule 129 (motion for summary judgment).

c. Form of a motion; service; required notice. A motion must be in writing, and must comply with the format required by Rule 108. The original motion must be filed with the court. The moving party must include the following notice at the beginning of the motion:

"You have a right to file a written response to this motion within ten (10) days from the date this motion was served. Your response must be filed with the court, and copies of your response must be served on the other parties as provided by Rule 120 of the Justice Court Rules of Civil Procedure."

d. Content of a motion. A motion must state the specific action that the moving party is requesting the court to take, or the specific order that the moving party is requesting the court to enter. A motion that is made pursuant to one of these rules must identify that rule. A motion must include the facts and reasons that support the request. A motion ~~should~~must identify a rule, a statute, case, or other legal authority that supports the request made by the moving party. ~~A motion that is made pursuant to one of these rules must identify that rule.~~

e. Proceedings on a motion. Any party opposing a motion has ten (10) days after the motion is served to file a response to the motion with the court. The time to respond to a motion remains in effect even if the court has set a pretrial conference. The court may treat a party's failure to respond to a motion as the party's consent that the motion be granted. Within five (5) days after a response is filed, the moving party may file with the court a reply to the response, but a reply is not required. A response and a reply, if any, must be provided to ("served on") the other parties as provided by Rule 120.

f. Hearing on a motion. The court may rule on motions brought under this rule with or without a hearing. The court will provide the parties with at least five (5) days notice if a hearing is set on a motion. The court may treat a moving party's failure to attend a hearing on a motion as consent by that party that the motion be denied; and it may treat a responding party's failure to attend a hearing as consent that the motion be granted.

g. Motion for judgment on the pleadings. After the pleadings in a case have been filed, any party may file a motion for judgment on the pleadings. The motion will be granted if, for purposes of the motion only, all of the allegations in the pleadings filed by the party opposing the motion are considered to be true, and the moving party would be entitled to judgment in that party's favor on those allegations as a matter of law. If matters outside the pleadings are presented to the court, the court will treat the motion as a motion for summary judgment under Rule 129.

Rule 129: Motion for summary judgment.

a. Parties who may file a motion for summary judgment. Any party who has filed a claim, counterclaim, cross-claim, or third-party complaint, or any party against whom such a claim has

been made, may file a motion requesting the court to enter judgment in the party's favor without a trial.

b. Time for filing a summary judgment motion, response, and reply; required notice. A party may file a motion for summary judgment no sooner than the date that the answer is filed or is due, and no later than ninety (90) days before the date set for trial. A party's response to the motion must be filed within thirty (30) days after the motion has been served. The moving party may file a reply to the response within fifteen (15) days after the response is served, but a reply is not required.

A party who files a motion for summary judgment must include the following notice at the beginning of the motion:

"This motion asks the court to rule against you without holding a trial. You have a right to file a written response to this motion within thirty (30) days from the date this motion was served."

c. Summary judgment motion and proceedings. A summary judgment motion and the opposing party's response to the motion must each include:

(1) A statement of facts, with each of the facts stated separately in numbered paragraphs or numbered sentences. A statement of facts must be supported by affidavits, exhibits, or other material that establishes each fact by admissible evidence. It is not sufficient for a party who opposes a motion for summary judgment to merely deny facts; if a fact is disputed, evidence must be presented by the opposing party that establishes a factual dispute.

(2) A memorandum of law that summarizes the issues, provides legal authority in support of the party's position, and describes why the motion should be granted or denied by the court.

Notwithstanding Rule 129(e), the failure to file a response by a party who does not have the burden of proof on a claim or defense is not a sufficient basis for granting a summary judgment motion.

The court may rule on a motion for summary judgment with or without a hearing. The court may grant the motion if the record before the court shows that there is no genuine issue as to a material fact, and that the moving party is entitled to judgment as a matter of law. The court may grant the motion completely or partially. If the motion is partially granted, the court will advise the parties of the issues that remain undecided, and it will set those issues for trial. The court may grant a summary judgment motion on the issue of liability only if there is a genuine issue regarding the amount of damages.

d. Affidavits. Affidavits must meet the requirements of Rule 109(d). Affidavits in support of or opposed to a summary judgment motion must be based on personal knowledge and must contain only facts that would be admissible in evidence at trial. If affidavits or exhibits cannot be

presented by the opposing party within the time allowed for a response to the motion, the opposing party may ask the court for more time to respond by stating the reasons why additional time is required. The court may impose a sanction if an affidavit is submitted in bad faith, or if an affidavit is filed only to delay the lawsuit.

Part VIII: Optional mediation conference and pretrial conference.

Rule 130: Optional mediation conference.

a. Purpose and definitions. Each precinct individually or in cooperation with the presiding judge or justice of the peace for the county may establish a program through which a neutral, trained individual (a "mediator"), with the authorization of the court, can confer with the parties ~~before the first court date, or thereafter,~~ to assist them in attempting to reach a voluntary settlement of their lawsuit. This process is called "*mediation*." The provisions of this rule apply to those justice courts that have established such a program.

b. Notice of a mediation conference. Within a reasonable time after a response to a complaint has been filed, the court or the mediator will give the parties written notice of a date, time, and place for a mediation conference. The date and time of the mediation conference may be rescheduled by the court or by the mediator for a good reason.

c. Appearance at the mediation conference; providing documents. Every party must participate in the mediation conference in good faith. A party may appear and participate in person, or a party may participate by telephone with the prior approval of the court. Each party at a mediation conference must have lawful authority to settle the lawsuit, or must have a representative available who has the lawful authority to settle the lawsuit. At or before the conference, a party must provide to an opposing party any documents that are relevant to settling the lawsuit.

d. Settlement agreement. The parties and the mediator will discuss a settlement of the lawsuit at the conference. Statements made by a party at the conference, or a party's conduct, including offers of payment or willingness to accept an offer, are inadmissible to establish a claim or defense unless otherwise allowed by law. If a settlement is reached, the mediator will put the terms of the settlement in writing, and will have the parties sign the agreement as an enforceable contract. If a party has appeared by telephone, the mediator will mail the agreement to the party for signature, and the party must promptly sign and return the agreement to the mediator; or with the consent of a party, a mediator may sign the agreement on behalf of that party.

e. Notice to the court. The mediator will notify the court whether the mediation conference resulted in a settlement agreement. If an agreement was reached, the court will vacate any pending court dates. If an agreement was not reached, the mediator will advise the court, and the court will set the lawsuit for a pretrial conference or a trial. If a settlement was not reached because a party failed to participate in good faith, the mediator will inform the court of the manner in which the party failed to show good faith; and the court may order an appropriate

sanction provided under Rule 121(e) against that party. Not appearing at a mediation conference without a good reason is a failure to participate in good faith.

f. Court action after settlement at a mediation conference. If the court was notified by the mediator that a lawsuit was settled, the court may dismiss the lawsuit, with notice to the parties, thirty (30) days after the date of the mediation conference. If during that thirty (30) day period a party notifies the court that the terms of the settlement agreement have not been fulfilled, the court may set the lawsuit for a pretrial conference or a trial.

Rule 131: Pretrial conference; settlement conference.

a. Scheduling a pretrial conference; required appearance; penalties. The court may set a pretrial conference at any time after the parties have had an adequate opportunity to exchange disclosure statements.

The parties must attend a pretrial conference in person, unless the court for a good reason allows a party to appear by telephone. The court may impose a sanction provided under Rule 121(c) against a party for a failure to appear at the pretrial conference or for other violations of this rule.

The court may rule on a pending motion before the pretrial conference, and the court will vacate the pretrial conference if the result of the court's ruling on the motion is either a judgment or a dismissal, but a pending motion will not otherwise vacate a pretrial conference.

b. Purpose of a pretrial conference. At a pretrial conference, the parties and the court may discuss (1) the status of the lawsuit, including whether the parties served disclosure statements; (2) whether there is any further possibility of settlement; (3) whether the parties are engaging or intend to engage in the use of discovery under Rules 123 through 126; and (4) a date for trial. If discovery is complete or nearly complete, ~~the parties should~~ must be prepared to advise the court if they intend to file any motions; the number of witnesses they will call at trial; and how much time they will need for presenting their case at trial. In addition to setting a lawsuit for trial, the court may enter orders at the pretrial conference that will promote an efficient resolution of the lawsuit, including limitations on discovery.

c. Settlement conference with the trial judge. A judge who will hear the lawsuit may conduct a settlement conference, but if appropriate, the judge must advise the parties that during a settlement conference, the judge may meet with the parties separately, or that the judge may receive information from a party that would not be admissible at a subsequent trial. If the parties then agree, the judge can conduct a settlement conference.

d. Good faith settlement hearing. In a case where it is alleged that two or more parties are joint tortfeasors, a judge may conduct a good faith settlement hearing as provided in Rule 16.2 of the Arizona Rules of Civil Procedure.

Part IX: Trial.

Rule 132: Matters concerning trial.

Formatted: Font: 12 pt

a. Preparation of a pretrial statement. When the court sets a trial date, or at any time thereafter, the court may order that the parties jointly or individually prepare and file a pretrial statement by a specified date before the trial. The pretrial statement must include a summary of facts that are not in dispute; a statement of the factual and legal issues to be determined at trial; a list of each party's witnesses; if deposition testimony is going to be presented, a list of deposition page and line reference numbers that will be offered at trial; a list of each party's exhibits, and the basis of any party's objection to an exhibit. The court may impose any penalty permitted under Rule 127(b) for a violation of these requirements.

b. Motion to postpone a trial date. After a trial date has been scheduled, the court may grant a motion for postponement of the trial only if there are good reasons, or if the parties agree to a postponement. The mere filing of a motion or an agreement to postpone a trial does not vacate the trial date. The failure of a plaintiff to appear at the time set for trial may result in dismissal of the lawsuit, and the failure of a defendant to appear at the time set for trial may result in a judgment for the plaintiff.

c. Pretrial motions regarding the admissibility of evidence. If the parties cannot agree on the admissibility of particular evidence at a trial, a party may file a written motion before trial regarding admission or exclusion of that evidence. These motions are governed by Rule 7.2 of the Arizona Rules of Procedure, or as otherwise ordered by the court, and shall be filed no later than thirty days before trial.

Comment [BK4]: Rule 7.2(b) sets a deadline of either 30 days before trial or before a final pretrial conference, if one is set. There is no requirement for a final pretrial conference, so it may be easier to just make it 30 days before trial.

Rule 133: Trial by jury or to the court; change of precinct or judge; disability of a judge during trial; verdict or decision.

a. Setting a lawsuit for trial. (1) The court may set a date for trial once an answer has been filed, or (2) a party may request the court to set a trial date after the parties have had an adequate opportunity to serve disclosure statements. Absent the consent of the parties or good reasons as determined by the court, a trial may not be set to begin less than one hundred twenty (120) days after an answer was filed.

b. Trial by jury or to the court. A party may demand a trial by jury as provided in Rule 38 of the Arizona Rules of Civil Procedure. The trial of the issues so demanded will be by a jury, unless all of the parties agree to a trial by a judge without a jury; or unless the court finds that there is not a right to a trial by jury as to some or all of the issues. If a demand for trial by jury has not been timely made under Rule 38, the trial will be before the judge without a jury; but even if no party has demanded a jury, the court may order a trial by jury of any or all of the issues.

c. Order of a trial; time limitations. The order of proceedings in a trial by jury will be as provided by Rule 39 of the Arizona Rules of Civil Procedure. Rule 39, so far as applicable, will also govern a trial to a judge. The court may impose reasonable time limits for a trial or for any portion of a trial.

d. Change of precinct or judge for cause or as a matter of right. A party in a justice court lawsuit is entitled to a change of judge as a matter of right to the same extent and in the same manner as provided in Rule 42(f)(1) of the Arizona Rules of Civil Procedure. A party in a justice court lawsuit who believes that the party cannot have a fair and impartial trial before the justice of the peace, or in that judge's precinct, must proceed as provided in Arizona Revised Statutes § 22-204 or Rule 42(f)(2) of the Arizona Rules of Civil Procedure.

e. Disability of a judge. If a judge who starts a trial or a hearing becomes unable to proceed, the trial or hearing may continue with another judge as provided by Rule 63 of the Arizona Rules of Civil Procedure.

f. Verdict or decision. The jury's verdict or the decision of the judge sitting without a jury will be announced as provided by law, and judgment will be entered accordingly.

Rule 134: Procedure for jury trials.

Formatted: Font: 12 pt

a. Jury trial procedures. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided in Rules 38, 39, 47, 48, 49, and 51 of the Arizona Rules of Civil Procedure.

b. Motion for judgment as a matter of law. Motions for judgment as a matter of law during a jury trial, and related motions under Rule 50, must be made as provided by Rule 50 of the Arizona Rules of Civil Procedure.

Rule 135: Findings in a trial to the court.

a. General rule. In a case tried to the court without a jury, the court, if requested before trial, will make specific findings concerning the facts. The court will also state its conclusions of law based upon those findings. Findings of fact will not be set aside on appeal unless they are clearly erroneous, and due regard will be given to the opportunity of the trial judge to determine the credibility of a witness. Findings of fact and conclusions of law may be stated orally and recorded in open court following the close of the evidence, or the findings may be in an order or memorandum filed by the trial judge. A request for findings is not required for purposes of appeal.

b. Agreed statement of facts. The parties to a lawsuit may submit any contested issue to the court upon an agreed statement of facts that has been signed by the parties and filed with the court. The court will render conclusions of law based on the agreed statement of facts.

Rule 136: Consolidated and separate trials.

a. Consolidation. When lawsuits involving a common question of law or fact are pending before the court, the court may order a joint hearing or trial of any or all of the matters at issue in the lawsuits, or it may order all the lawsuits consolidated, and it may make appropriate orders concerning proceedings to avoid unnecessary costs or delay.

b. Separate trials. In furtherance of convenience or to avoid prejudice, or when separate trials will further judicial economy, the court may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

Rule 137: Witnesses and interpreters.

Formatted: Font: 12 pt

a. General rule. A witness is a person who provides sworn testimony during a lawsuit. A witness may be sworn with a solemn affirmation rather than an oath. The testimony of a witness at trial must be presented in person or by deposition, unless the parties agree otherwise or as the judge allows for a good reason. The admissibility of a witness' testimony will be determined by the Arizona Rules of Evidence.

b. Subpoena. The appearance of a witness for trial may be compelled by subpoena, as provided in Rule 45 of the Arizona Rules of Civil Procedure.

c. Interpreters. Matters involving interpreters are governed by Rule 43(c) of the Arizona Rules of Civil Procedure.

Rule 138: New trial.

a. Grounds and procedure. Under certain circumstances a party may request a new trial. The circumstances and procedures for a motion for new trial are detailed in Rule 59 of the Arizona Rules of Civil Procedure.

b. Time for filing. A motion for new trial must be filed within fifteen (15) days after entry of judgment, except for a motion for new trial filed after service by publication and default, as described in Rule 59(j) of the Arizona Rules of Civil Procedure.

Part X: Judgment.

Formatted: Font: 14 pt

Rule 139: Judgment.

a. Definition and requirements. A judgment is a final written order of the court that decides all of the claims in the lawsuit, and that can be appealed. A judgment must be signed by the judge, and filed and entered by the court.

b. Judgments involving multiple claims or multiple parties. An order that decides some but not all of the claims, or that concludes the lawsuit as to some but not all of the parties, is not a judgment that can be appealed, unless the order states that there is no just reason for delay and it specifically directs entry of the judgment.

c. Form of judgment prepared by a party. A form of judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A copy of a judgment prepared by a party must be served on the other parties as provided by Rule 120. A party who

prepares a judgment and submits it to the court must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit. The court will not approve or sign a judgment prepared by a party until the expiration of five (5) days after the proposed judgment has been served upon the opposing parties. An opposing party may file a written objection to the form of the judgment within that time. The requirements of this paragraph do not apply to parties in default under Rule 140.

If a party who submits a judgment also claims court costs under paragraph (d), or attorneys' fees under paragraph (e), those claims must be submitted to the court at the same time as the judgment that the party prepared.

d. Court costs. The prevailing party may request that the party's costs of the lawsuit, to the extent allowed by law, be included in the amount of the judgment. The party claiming costs must submit a statement of costs verified under Rule 109 to the court and to the other parties not later than twenty (20) days after the court has made a decision that entitles a party to a judgment. The party against whom costs are claimed may file an objection to those costs within five (5) days after receipt, and the court will then rule upon the objections and enter the approved amount, if any, in the judgment.

Comment [BK5]: There are only a couple of references to a "verified" filing in these rules, both relating to costs, so it is not much trouble to refer people back to the rule that helpfully defines what "verified" means.

e. Attorneys' fees. If a party has made a claim for attorneys' fees in a pleading, the party may request that attorneys' fees be included in the amount of the judgment. The party must file a motion with the court stating the legal basis of the claim for fees, with an affidavit and supporting exhibits, including any contract that provides for attorneys' fees. If a contract is longer than three (3) pages, then at a minimum the first page, the relevant provision for fees, and the signature page, if any, must be attached to the affidavit. The motion must be filed no later than twenty (20) days after the court has made a decision that entitles the party to judgment. The opposing party may file a response to the motion within the time allowed by Rule 128. The court may set a hearing on the motion, but the court may not enter judgment until the issue of attorneys' fees has been resolved.

f. Notice of entry of judgment. The court will provide every party who is not in default with a copy of the judgment entered by the court. A failure of the court to provide this copy does not affect the time to appeal or authorize the court to relieve a party's failure to appeal within the time allowed.

g. Voluntary reduction in the amount of a judgment. A party in whose favor a verdict or a judgment has been rendered may reduce the amount of the judgment as provided in Rule 58(b) of the Arizona Rules of Civil Procedure.

h. Entry of judgment after death of a party. Judgment may be entered after the death of a party upon a verdict or decision on an issue of fact that was rendered during the party's life.

i. Motion to alter or amend a judgment. A motion to alter or to amend a judgment must be made as provided in Rule 59(l) of the Arizona Rules of Civil Procedure.

Rule 140: Entry of default judgment.

a. When a default judgment may be entered. A default judgment may be entered pursuant to this rule against a party who was served with a complaint, counterclaim, cross-claim, or third-party complaint, and who failed to file an answer or otherwise respond within the time allowed by these rules.

b. Application for entry of default. A party seeking a default judgment must first file an application that the court enter a default against the party who failed to answer. The application must inform the party against whom default is sought of the party's failure to file an answer or otherwise respond within the time allowed by these rules. The application must further inform the party against whom default is sought, with either bold or enlarged font, that unless an answer or response is filed within ten (10) days from the filing of the application, the default will become effective and the entry of a default judgment will be requested. A default is entered against the party who has failed to respond when the application for entry of default is filed with the court.

c. Serving the application. The party who files an application for entry of default with the court must serve a copy of the application on the party claimed to be in default, as follows:

- (1) If the address of the party claimed to be in default is known, the application must be mailed to that address.
- (2) If the current address of the party claimed to be in default is unknown, the application must be mailed to the party's last known address.
- (3) If the party claimed to be in default has no known address, or the party has been served by alternative service or by publication, the party requesting the entry of default must state this in the application.
- (4) If the party who files the application knows that the party claimed to be in default is represented by an attorney concerning this lawsuit, the application must also be mailed to that attorney, whether or not the attorney has formally appeared in the lawsuit.

A party filing an application for entry of default must also serve the application on the other parties in the lawsuit as provided by Rule 120.

d. Answer or response. If the party claimed to be in default files with the court a written answer or other response within ten (10) days after the application was mailed pursuant to paragraph (c) of this rule, the default does not become effective, and the court cannot enter a default judgment against that party. The ten (10) day period begins the day after the application is filed with the court; the ten (10) day period does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail.

e. Request for entry of a default judgment without a hearing. After the ten (10) day period described above, the party who filed the application for entry of default may file a request for entry of a default judgment without a hearing. A party may request the entry of a default

judgment without a hearing if the party's claim is for a specific amount, or if the claim is for an amount that can be determined by a mathematical calculation. The party requesting the entry of a default judgment without a hearing must attach to the request for entry of a default judgment without a hearing a supporting affidavit concerning the claimed amount, along with attachments that prove the amount of the claim.

A request for entry of a default judgment without a hearing may include a request for an award of reasonable attorneys' fees if: (i) the complaint requested attorney's fees; (ii) an award of attorney's fees is allowed by law; (iii) the request includes a separate affidavit with supporting exhibits concerning the amount of the fees; and (iv) if the fee request is based on a written contract, the contract is submitted with the request. A request for the entry of a default judgment without a hearing may also include a request for an award of court costs by attaching to the request a statement of costs verified under Rule 109. Any requests for attorney's fees or costs must be filed at the same time as the request for entry of a default judgment.

A request for entry of a default judgment, with all of the attachments to the request, must be served upon the party claimed to be in default as provided in paragraph (c) of this rule. A party filing a request for entry of a default judgment must also serve the request and attachments on the other parties in the lawsuit as provided by Rule 120.

Even though the requirements of this paragraph may be met, the court may decline a request for entry of a default judgment and may instead set the matter for a default hearing. The court will not enter a default judgment against a minor child or an incompetent person, or a party who was served by publication, without a hearing.

f. Default judgment hearing. If the party who filed an application for entry of default has a claim that is not for a specific amount, or if the amount of the claim cannot be determined by a mathematical calculation, then not less than ten (10) days after the application for entry of default was filed, the party can file a request that the court set a default hearing to determine the terms of the judgment.

The party requesting the hearing must serve the party against whom judgment will be entered, if that party has a known address, and the party's attorney, if any, with a written notice of the hearing at least three (3) days before the default hearing date. That party or the party's attorney may participate if they appear at the default hearing. A notice of hearing must also be served on other parties in the lawsuit as provided by Rule 120.

The court may receive evidence at a default hearing, and the court must provide a jury trial when the law requires one. The court may enter a default judgment against a minor child or an incompetent person only if that child or person was represented at the hearing by a guardian or by legal counsel.

A default judgment entered at a hearing may include an award of attorneys' fees and costs when established in the manner provided in paragraph (e) of this rule. Any request for attorneys' fees or costs must be filed at the same time as the request for a default hearing.

g. Form of default judgment. A form of default judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A party may submit a form of default judgment at the time a request for entry of a default judgment is filed, or at the time of a default hearing. A party who prepares and submits a form of default judgment must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit and to the party or parties in default.

h. Default judgment against the State. A default judgment will be entered against the State or an officer or agency of the State only if the party requesting the default judgment proves the party's claim by satisfactory evidence.

i. Default judgment after service by publication. A default judgment may be entered against a party who was served by publication only if a verbatim record of the default proceeding is made and maintained by the court.

j. Setting aside a default or a default judgment. If the party claimed to be in default files a written answer after the ten (10) day period described in paragraph (d), but before the filing of a request for entry of a default judgment or a request for default hearing, the court for a good reason provided by the answering party, or the court on its own initiative, may set aside the default and allow the lawsuit to proceed as if the answer was timely, subject to an opportunity of the plaintiff to object. A default judgment that has been entered may be set aside by a motion as provided in Rule 141(c).

Rule 141: Correcting or setting aside a judgment or an order.

Formatted: Font: 12 pt

a. Correction of a clerical mistake. The court at any time may correct a clerical mistake in a judgment, in an order, or in another part of the court's record that occurred as a result of an oversight or omission of the court, and it may do so on its own motion or on motion of a party, and after such notice, if any, that the court requires.

b. Misstatement or miscalculation. When a judgment misstates the name of a party, or when a sum of money has been miscalculated or misstated, and in the court's record there is a verdict or other document that shows the correct name or the correct calculation, then the court may correct the judgment after notice to the parties. If the correction affects the amount of a judgment, a party may collect only the corrected amount.

c. Reasons for relief from a judgment or order. A party may file a motion asking the court for relief from a final judgment, order, or proceeding based on one or more of the following:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence that with the exercise of due diligence could not have been discovered in time to file a motion for a new trial;
- (3) Fraud, misrepresentation, or other misconduct of an opposing party;
- (4) The judgment is void;

- (5) The judgment has been satisfied, released, or discharged; or a prior judgment upon which it is based has been reversed or vacated; or it is no longer equitable that the judgment should have prospective application;
- (6) Any other reason that justifies relief from the judgment.

A motion under this subsection must be filed within a reasonable time, and for reasons (1), (2), and (3), within six (6) months after the judgment or order was entered, or after the proceeding occurred. The filing of a motion under this paragraph does not affect the finality of a judgment, nor does it suspend the operation of a judgment. This rule does not limit the power of the court to relieve a party from a judgment, order, or proceeding if a fraud was committed upon the court; and this rule does not limit the power of the court to grant relief to a defendant served by publication, as provided by Rule 140(j).

Rule 142: Stay of proceedings to enforce a judgment.

Formatted: Font: 12 pt

Formatted: Font: 12 pt

a. Pending motion under Rule 138 or Rule 141. The court may stay proceedings for enforcing a judgment while a motion under Rule 138 or Rule 141 is pending. The court may impose conditions as may be proper for the security of the affected parties.

b. Conveyances, instruments, or perishable property. A judgment directing the execution of a conveyance or instrument, or directing the sale of perishable property, may be stayed by the court with conditions for deposits or security as may be proper.

c. Judgment against the State or a political subdivision. Money judgments against the State or any political subdivision are automatically stayed when an appeal is filed.

d. Judgments entered under Rule 139(b). A judgment entered by the court pursuant to Rule 139(b) may be stayed until the entry of subsequent judgments or upon conditions as may be appropriate to protect the rights of the parties.

Rule 143: Harmless error.

Formatted: Font: 12 pt

Harmless error. An error by the trial court is not a good reason for setting aside a verdict, order, or judgment, or for granting a new trial, unless the error has affected a substantial right of a party, or the error has resulted in a substantial injustice, as provided in Rule 61 of the Arizona Rules of Civil Procedure.

Part XI: Dismissal of lawsuits.

Rule 144: Dismissal of lawsuits.

Formatted: Font: 12 pt

a. Application of this rule. This rule applies to a complaint, a counterclaim, a cross-claim, and a third-party complaint.

b. Voluntary dismissal before a response has been filed. A complaint or a third-party complaint may be dismissed by a notice that is filed by the plaintiff or by the third-party plaintiff at any time before a response has been filed under Rule 116. A counterclaim or a cross-claim may be dismissed before a response has been filed under Rule 117(e) by a notice filed by the claimant.

c. Voluntary dismissal by agreement of the parties. A lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by all of the parties who have appeared in the lawsuit. A particular claim or claims in a lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by the parties to that claim or claims.

d. Dismissal in other circumstances. Except as provided in paragraphs (b), (c), and (e), a lawsuit or claim shall be dismissed only upon motion and by court order, and only on terms and conditions that the court determines are fair and proper. Dismissal of a complaint will not result in dismissal of a counterclaim unless agreed to by the parties.

e. Dismissal for failure to conclude a lawsuit within ten months. If a final judgment has not been entered within ten (10) months from the date a lawsuit is filed, or if a party has not filed a written motion to extend the time for entry of judgment to a particular date, the court will mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that unless this requirement is met within two (2) months from the date of mailing, the court will dismiss the lawsuit for failure to have judgment timely entered. If the requirement has not been met within two (2) months from the mailing of the court's notice, the court may dismiss the lawsuit without further notice to the parties.

f. Dismissal without prejudice. A dismissal without prejudice means that a claim can be re-filed if all other legal requirements, including statutes of limitation, have been met. A dismissal under paragraphs (b), (c), or (e) of this rule is "without prejudice" unless the notice, agreement, or order to dismiss states that the dismissal is "with prejudice," in which event the lawsuit or claim cannot be re-filed.

Part XII: Special Proceedings.

Rule 145: Civil arrest warrant.

Formatted: Font: 12 pt

a. Definition. A "civil arrest warrant" is an order issued in a non-criminal lawsuit, which is directed to any peace officer in the state, to arrest the person named in the warrant and to bring that person before the court.

b. When a warrant may be issued. On motion of a party or on its own motion, the court may issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

- (1) Has been ordered by the court to appear in person at a specific time and location, and after receiving actual notice of the order that includes a warning that failure to appear

may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

(2) Has been personally served with a subpoena to appear in person at a specific time and location that includes a warning that failure to appear may result in the issuance of a civil arrest warrant, and has failed to appear as the subpoena commanded.

c. **Procedures.** The content of a civil arrest warrant, the time and manner of execution of a warrant, the duty of the court after execution of a warrant, and procedures for forfeiture of bond, are as provided in Rule 64.1 of the Arizona Rules of Civil Procedure.

Rule 146: Deposits with the court; proceedings against sureties.

Formatted: Font: 12 pt

a. **Voluntary deposit of money or thing.** In a lawsuit where some or the entire claim is for the disposition of money, or the disposition of an object that is capable of being delivered, a party, after giving notice to the other parties and after obtaining the permission of the court, may deposit the money or thing with the court.

b. **Deposit or delivery of money or thing by court order.** If a party has in its possession money or an object that is capable of being delivered, and the money or thing is the subject of the lawsuit and is held by the party as trustee for another party or that belongs or is due to another party, the court may order that the money or thing be deposited with the court, or otherwise delivered to a party, on conditions that are just and subject to further order of the court. The procedure is governed by Rules 67(b) and (c) of the Arizona Rules of Civil Procedure.

c. **Proceedings against sureties.** The court's jurisdiction over a surety, and the enforcement of the surety's liability, are as provided by Rule 65.1 of the Arizona Rules of Civil Procedure.

Rule 147: Enforcement of a judgment or order.

Formatted: Font: 12 pt

a. **Writs of execution or garnishment.** The process to enforce a judgment for the payment of money will be a writ of execution or a writ of garnishment, unless the court directs otherwise. The procedures for these writs will be as provided by law.

b. **Supplemental proceedings to enforce a judgment.** To enforce the judgment or a writ upon the judgment, the judgment creditor or a successor in interest when a successor has been shown to the satisfaction of the court, may obtain discovery from any person, including the judgment debtor, in the manner provided in the Arizona Rules of Civil Procedure or as otherwise provided by law.

Enforcement of an order concerning non-parties. Orders in favor of a person not a party to a lawsuit, or requiring obedience by a person not a party to a lawsuit, may be enforced by the same manner as orders concerning a party.

Part XIII: Forms.

Rule 148: Forms.

Formatted: Font: 12 pt

a. Forms adopted by the Arizona Supreme Court. Parties may use forms adopted by the Arizona Supreme Court for civil cases in justice court. The forms will be maintained and made available on the website of the Administrative Office of the Courts, at www.azcourts.gov. The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, and to make other necessary administrative amendments or technical corrections.

b. Notice to defendant. A form of a Notice to Defendant as specified in Rule 112(d) is contained in the appendix to these rules.

Appendix to the JCRCP

Notice to the Defendant: A lawsuit has been filed against you in justice court!

You have rights and responsibilities in this lawsuit. Read this notice carefully.

1. In a justice court lawsuit, individuals have a right to represent themselves, or they may hire an attorney to represent them. A family member or a friend cannot represent someone in justice court unless the family member or friend is an attorney. A corporation has a right to be represented by an officer of the corporation, and a limited liability company ("LLC") can be represented by a managing member. A corporation or an LLC can also be represented by an attorney.

If you represent yourself, you have the responsibility to properly complete your court papers and to file them when they are due. The clerks and staff at the court are not allowed to give you legal advice. If you'd like legal advice, you may ask the court for the name and phone number of a local lawyer referral service, the local bar association, or a legal aid organization.

2. You have a responsibility to follow the Justice Court Rules of Civil Procedure ("JCRCP") that apply in your lawsuit. The rules are available in many public libraries, at the courthouse, and online at www.azcourts.gov.

3. A "plaintiff" is someone who files a lawsuit against a "defendant." You must file an answer or other response to the plaintiff's complaint in writing and within twenty (20) days from the date you were served with the summons and complaint (or thirty (30) days if you were served out-of-state.) If you do not file an answer within this time, the plaintiff can ask the court to enter a "default" and a "default judgment" against you. Your answer must state your defenses to the lawsuit. Answer forms are available at the courthouse, and on the Supreme Court's website at www.azcourts.gov, or at www.azturbocourt.gov. You must provide to the plaintiff a copy of any document that you file with the court, including your answer.

4. You may bring a claim against the plaintiff if you have one. When you file your answer or written response with the court, you can also file your "counterclaim" against the plaintiff.

5. You must pay a filing fee to the court when you file your answer. If you cannot afford to pay a filing fee, you may apply to the court for a fee waiver or deferral, but you must still file your answer on time.

6. You may contact the plaintiff or the plaintiff's attorney and try to reach an agreement to settle the lawsuit. However, until an agreement is reached you must still file your answer and participate in the lawsuit. During the lawsuit, the court may require the parties to discuss settlement.

7. Forty (40) days after your answer has been filed, you and the plaintiff are required to provide a disclosure statement to each other. The disclosure statement provides information about witnesses and exhibits that will be used in the lawsuit. A party may also learn more about the other side's case through discovery. Read the Justice Court Rules of Civil Procedure for more information about disclosure statements and discovery.

8. The court will notify you of all hearing dates and trial dates. To assure that you receive these notices, you must keep the court informed, in writing, of your current address and telephone number until the lawsuit is over. You must appear at the time and place specified in each notice. Failure to appear may result in a judgment being entered against you.

