Rules of Civil Procedure
for the Superior Courts of Arizona

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Rules of Civil Procedure
for the Superior Courts of Arizona

Prefatory Comment to the 2017 Amendments

The 2017 amendments make extensive changes to the Arizona Rules of Civil Procedure (ñARCPò).

These amendments ñrestyleò the ARCP in a manner similar to the 2007 restyling of the Federal Rules of Civil Procedure. Informative titles and subheadings are added, which make rules and sections easier to locate. By using clearer language and, if possible, plain English, these rules should be easier to understand. The restyled rules avoid long sentences, ambiguous terminology (such as the word ñshallò), and legal jargon. These rules also use consistent formatting conventions and terminology.

If no good reason exists to depart from the newly restyled language of a federal rule, these amendments adopt the restyled federal wording verbatim. These amendments also renumber various subdivisions of Arizona rules to be consistent with the numbering of parallel federal subdivisions. If there are sound reasons for an Arizona rule to differ substantively from a corresponding federal rule, the amended Arizona rule maintains those differences. Even in these circumstances, however, and to enhance the clarity of the Arizona rule, wording was revised and structure was reorganized pursuant to restyling conventions.

The amended rules also include substantive changes, *including but not limited to the following*. The amendments eliminate several archaic practices and traps, such as requirements to verify answers for certain pleadings, or if certain defenses are raised. Several amendments are devoted to procedures involving electronic discovery and electronically stored information. Revisions to Rules 26.1 and 37(g) are intended to meet the realities of identifying, handling, and producing electronically stored information in a rational and cost-effective fashion. Other major substantive changes include rules governing document preparation, the deadlines for responding to written discovery, and provisions regarding sanctions, change of judge, and the timing of requests for attorneyôs fees and costs.

The wording of an amended rule may be very different, or only slightly different, from the rule that it replaces. The intent of these differences is to make the ARCP more functional, and easier to understand and use. Prior case law continues to be authoritative, unless it would be inappropriate because of a new requirement or provision in these amended rules.

The amended rules attempt to incorporate substantive requirements previously contained within comments to the former ARCP. Because of that, these amendments delete most of those comments, along with comments that have long ago outlived their usefulness. Parties may continue to refer to comments to pre-2017 versions of the ARCP to the extent those comments still apply to these amended rules.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope and Purpose

These rules govern the procedure in all civil actions and proceedings in the superior court of Arizona. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. One Form of Action

There is one form of actionð the civil action.

II. COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

Rule 3. Commencing an Action

A civil action is commenced by filing a complaint with the court.

Rule 4. Summons

(a) Issuance; Service.

(1) ***Pleading Defined.*** As used in Rules 4, 4.1 and 4.2, ñpleadingò means any of the pleadings authorized by Rule 7 that brings a party into an action.

(2) ***Issuance.*** On or after filing a pleading, the filing party may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal and issue it to the filing party for service. A summonsð or a copy of the summons if addressed to multiple partiesð must be issued for each party to be served.

(3) ***Service.*** A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 4.1, or Rule 4.2, as applicable.

(b) Contents; Replacement Summons.

(1) ***Contents.*** A summons must:

(A) name the court and the parties;

(B) be directed to the party to be served;

(C) state the name and address of the attorney of the party serving the summons orð if unrepresentedð the name and address of the party;

(D) state the time within which the defendant must appear and defend;

(E) notify the party to be served that a failure to appear and defend will result in a default judgment against that party for the relief demanded in the pleading;

(F) state that ñrequests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceedingò;

(G) be signed by the clerk; and

(H) bear the courtôs seal.

(2) ***Replacement Summons.*** If a summons is returned without being served, or if it has been lost, a party may ask the clerk to issue a replacement summons in the same form as the original. A replacement summons must be issued and served within the time prescribed by Rule 4(i) for service of the original summons.

(c) Fictitiously Named Parties; Return. If a pleading identifies a party by a fictitious name under Rule 10(d), the summons may issue and be directed to a person with the fictitious name. The return of service of process on a person identified by a fictitious name must state the true name of the person who was served with the process.

(d) Who May Serve Process.

(1) ***Generally.*** Service of process must be made by a sheriff, a sheriffôs deputy, a constable, a constableôs deputy, a private process server certified under to the Arizona Code of Judicial Administration § 7-204 and Rule 4(e), or any other person specially appointed by the court. Service of process may also be made by a party or that partyôs attorney if expressly authorized by these rules.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person must be not less than 21 years of age and must not be a party, an attorney, or an employee of an attorney in the action in which process is to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process by filing a motion with the presiding superior court judge in the county where the action is pending. The motion must be accompanied by a proposed order. If the proposed order is signed, no minute entry will issue. Special appointments should be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

(e) Statewide Certification of Private Process Servers. A person seeking certification as a private process server must file with the clerk an application under Arizona Code of Judicial Administration § 7-204. Upon approval of the court or presiding judge of the county in which the application is filed, the clerk will register the person as a certified private process server, which will remain in effect unless and until the certification is withdrawn by the court. The clerk must maintain a register for this purpose. A certified private process server will be entitled to serve in that capacity for any state court anywhere within Arizona.

(f) Acceptance or Waiver of Service; Voluntary Appearance. There are two ways to accomplish service with the assent of the served partyð waiver and acceptance. A party also may voluntarily appear without being served.

(1) ***Waiver of Service.*** A party subject to service under this rule, Rule 4.1 or Rule 4.2 may waive issuance or service of process. The waiver of service must be in writing, signed by that party or their authorized agent or attorney, and the waiver must be filed in the action. A party who waives service receives additional time to serve a responsive pleading, as provided in Rule 12(a)(1)(A)(ii).

(2) ***Acceptance of Service.*** A party subject to service under this rule, Rule 4.1 or Rule 4.2 may accept service. The acceptance of service must be in writing, signed by that party or by that partyôs authorized agent or attorney, and the acceptance must be filed in the action. A party who accepts service does not receive the additional time to serve a responsive pleading under Rule 12(a)(1)(A)(ii).

(3) ***Voluntary Appearance.***

(A) *In Open Court.* A party on whom service is required may, in person or by attorney or by an authorized agent, enter an appearance in open court, and the appearance must be noted by the clerk upon the docket and entered in the minutes.

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 7 constitutes an appearance by the party.

(4) ***Effect.*** Waiver, acceptance, and appearance under (f)(1), (f)(2), and (f)(3) have the same force and effect as if a summons had been issued and served.

(g) Return; Proof of Service.

(1) ***Timing.*** If service is not accepted or waived, and no voluntary appearance is made, then the person effecting service must file proof of service with the court. Return of service should be made by no later than when the served party must respond to process.

(2) ***Service by the Sheriff.*** If process is served by a sheriff or a sheriffôs deputy, the return must be officially marked on or attached to the proof of service and promptly filed with the court.

(3) ***Service by Others.*** If served by a person other than the sheriff or a deputy sheriff, the return must be promptly filed with the court and be accompanied by an affidavit establishing proof of service. If the server is a registered private process server, the affidavit must clearly identify the county in which the server is registered.

(4) ***Service by Publication.*** If the summons is served by publication, the return of the person making such service must be made as provided in Rules 4.1(*l*) and 4.2(f).

(5) ***Service Outside the United States.*** Service in a place outside the United States must be proved as follows:

(A) if effected under Rule 4.2(i)(1), as provided in the applicable treaty or convention; and

(B) if effected under Rule 4.2(i)(2) or (3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Affidavit, Official Mark of Sheriff as Prima Facie Evidence.*** The affidavit of service or sheriffôs official mark is prima facie evidence of service of the summons and the pleading being served.

(7) ***Validity of Service.*** Failure to make proof of service does not affect the validity of service.

(h) Amendment of Process or of Proof of Service. At any time and on such terms as it deems just, the court may allow any process or proof of service to be amended, unless the court finds that it would materially prejudice the substantial rights of the party subject to service.

(i) Time Limit for Service. If a defendant is not served with process within 120 days after the complaint is filed, the courtð on motion, or on its own after notice to the

plaintiffð must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This Rule 4(i) does not apply to service in a foreign country under Rules 4.2(i), (j), (k) and (*l*).

Rule 4.1. Service of Process Within Arizona

(a) Territorial Limits of Effective Service. All processð including a summonsð may be served anywhere within Arizona.

(b) Serving a Summons and Complaint or Other Pleading. The summons and the pleading being served must be served together within the time allowed under Rule 4(i). The serving party must furnish the necessary copies to the person who makes service. Service is complete when made.

(c) Waiving Service.

(1) ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under Rules 4.1(d), (h)(1)-(3), (h)(4)(A) or (i) has a duty to avoid unnecessary expense in serving the summons. To avoid costs, the plaintiff may notify the defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed to the defendant and any other person required in this rule to be served with the summons and the pleading being served;

(B) name the court where the pleading being served was filed;

(C) be accompanied by a copy of the pleading being served, two copies of a waiver form prescribed in Rule 84, Form 2, and a prepaid means for returning the completed form;

(D) inform the defendant, using text provided in Rule 84, Form 1, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time to return the waiver, which must be at least 30 days after the date when the request was sent; and

(G) be sent by first-class mail or other reliable means.

(2) ***Failure to Waive.*** If a defendant fails without good cause to sign and return a waiver requested by a plaintiff, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorneyôs fees, of any motion required to collect those service expenses.

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent.

(4) ***Results of Filing a Waiver.*** When the plaintiff files an executed waiver, proof of service is not required and, except for the additional time in which a defendant may answer or otherwise respond as provided in Rule 4.1(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual. Unless Rules 4.1(c), (e), (f), or (g) apply, an individual may be served by:

(1) delivering a copy of the summons and the pleading being served to that individual personally;

(2) leaving a copy of each at that individualôs dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(e) Serving a Minor. Unless Rule 4.1(f) applies, a minor younger than 16 years old may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner:

(1) to the minorôs legal guardian whether it be the minorôs father, mother or court appointed guardian, if any of them reside or may be found within Arizona; or

(2) if none of them resides or is found within Arizona, to any adult having the care and control of the minor, or any person of suitable age and discretion with whom the minor resides.

(f) Serving a Minor Who Has a Guardian or Conservator. If a court has appointed a guardian or conservator for a minor, the minor must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the minor in that same manner.

(g) Serving a Person Adjudicated Incompetent Who Has a Guardian or Conservator. If a court has declared a person to be insane, gravely disabled, incapacitated or mentally incompetent to manage that personôs property and has appointed a guardian or conservator for the person, the person must be served by serving the guardian or conservator in the manner set forth in Rule 4.1(d) for serving an individual, and separately serving the person in that same manner.

(h) Serving a Governmental Entity. If a governmental entity has the legal capacity to be sued and if it has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to the following individuals:

(1) for service on the State of Arizona, the Attorney General;

(2) for service on a county within Arizona, the clerk of the Board of Supervisors for that county;

(3) for service on a municipal corporation, the clerk of that municipal corporation; and

(4) for service on any other governmental entity:

(A) the individual designated by the entity, as required by statute, to receive service of process; or

(B) if the entity has not designated a person to receive service of process, then the entityôs chief executive officer(s), or, alternatively, its official secretary, clerk, or recording officer.

(i) Serving a Corporation, Partnership or Other Unincorporated Association. If a domestic or foreign corporation, partnership or other unincorporated association has the legal capacity to be sued and has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process andð if the agent is one authorized by statute and the statute so requiresð by also mailing a copy of each to the defendant.

(j) Serving a Domestic Corporation if an Authorized Officer or Agent Is Not Found Within Arizona.

(1) ***Generally.*** If a domestic corporation does not have an officer or an agent within Arizona on whom service of process can be made, the corporation may be served by depositing two copies of the summons and the pleading being served with the Arizona Corporation Commission. Following this procedure constitutes personal service on that corporation.

(2) ***Evidence.*** If the sheriff of the county in which the action is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find an officer or agent of such corporation on whom process may be served, the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in Arizona.

(3) ***Commission's Responsibilities.*** The Arizona Corporation Commission must retain one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or any of the corporationôs officers or directors, using any address obtained from the corporationôs articles of incorporation, other Corporation Commission records, or any other source.

(k) Alternative Means of Service.

(1) ***Generally.*** If a party shows that the means of service provided in Rule 4.1(c) through Rule 4.1(j) are impracticable, the court, on motion and without notice to the person to be served, may order that service may be accomplished in another manner.

(2) ***Notice and Mailing.*** If the court allows an alternative means of service, the serving party must make a reasonable effort to provide the person being served with actual notice of the actionôs commencement. In any event, the serving party must mail the summons, the pleading being served, and any court order authorizing an alternative means of service to the last known business or residential address of the person being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements of Rule 4.1(*l*), Rule 4.1(m), Rule 4.2(f), or Rule 4.2(g) are met and the procedures provided in those rules are followed.

(l) Service by Publication.

(1) ***Generally.*** A party may serve a person by publication only if:

(A) the last known address of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has not been able to ascertain the personôs current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing the person with notice of the actionôs commencement.

(2) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks:

(i) in a newspaper published in the county where the action is pending; and

(ii) if the last known address of the person to be served is in a different county, in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 4(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(3) ***Mailing.*** If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(4) ***Return.***

(A) *Required Affidavit.* The party or person making service must prepare, sign and file an affidavit stating the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.

(m) Service by Publication on an Unknown Heir in a Real Property Action. An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.1(*l*), if:

(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and

(2) the heir must be a party to the action to permit a complete determination of the action.

Rule 4.2. Service of Process Outside Arizona

(a) Extraterritorial Jurisdiction; Personal Service Outside Arizona. An Arizona state court may exercise personal jurisdiction over a person, whether found within or outside Arizona, to the maximum extent permitted by the Arizona Constitution and the United States Constitution. A party may serve any person located outside Arizona as provided in this rule, and, when service is made, it has the same effect as if personal service were accomplished within Arizona.

(b) Direct Service.

(1) ***Generally.*** A party may serve process outside Arizona, but within the United States, in the same manner as provided in Rules 4.1(d)-(i).

(2) ***Who May Serve.*** Service must be made by a person who is authorized to serve process under the law of the state where service is made.

(3) ***Effective Date of Service.*** Service is complete when made, and the time period under Rule 4.2(m) starts to run on that date.

(c) Service by Mail.

(1) ***Generally.*** If a serving party knows the address of the person to be served and the address is outside Arizona but within the United States, the party (or its counsel) may serve the person by mailing the summons and a copy of the pleading being served to the person at that address by registered mail (postage prepaid), requiring a signed and returned receipt.

(2) ***Affidavit of Service.*** When the post office returns the signed receipt, the serving party must file an affidavit stating:

(A) the person being served is known to be located outside Arizona but within the United States;

(B) the serving party mailed the summons and a copy of the pleading (or other request for relief) to the person by registered mail;

(C) the serving party received a signed return receipt, which is attached to the affidavit and which indicates that the person received the described documents; and

(D) the date of receipt by the person being served.

(d) Waiver of Service.

(1) ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under Rules 4.2(b), (c), (h), (i) or (k) has a duty to avoid unnecessary expense in serving the summons. The plaintiff may notify the defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed to the defendant in accordance with Rules 4.2(b), (c), (h), (i), or (k), as applicable;

(B) name the court where the pleading being served was filed;

(C) be accompanied by a copy of the pleading being served, two copies of a waiver form set forth in Rule 84, Form 2, and a prepaid means for returning the completed form;

(D) inform the defendant, using the text provided in Rule 84, Form 1, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time to return the waiver, which must be at least 30 days after the date when the request was sent, or 60 days after it was sent if it was sent outside any judicial district of the United States; and

(G) be sent by first-class mail or other reliable means.

(2) ***Failure to Waive.*** If a defendant located within the United States fails without good cause to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorneyôs fees, of any motion required to collect those service expenses.

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent, or 90 days after it was sent if it was sent outside any judicial district of the United States.

(4) ***Results of Filing a Waiver.*** When the plaintiff files an executed waiver, proof of service is not required and, except for the additional time in which a defendant may answer or otherwise respond as provided in Rule 4.2(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(e) Service on a Nonresident Under the Nonresident Motorist Act.

(1) ***Generally.*** In an action involving the operation of a motor vehicle in Arizona, a party may serve a nonresidentð including a minor, insane or incompetent personð as provided in A.R.S. § 28-2327.

(2) ***Effective Date of Service.*** If service is made under A.R.S. § 28-2327, service is complete 30 days after:

(A) the filing of the defendantôs return receipt and the serving partyôs affidavit of compliance, as provided in A.R.S. § 28-2327(A)(1); or

(B) the filing of the officerôs return of personal service, as provided in A.R.S. § 28-2327(A)(2).

(3) ***Effect.*** Within 30 days after completion of service, the defendant must answer in the same manner as if the defendant had been personally served with a summons in the county in which the action is pending.

(f) Service by Publication.

(1) ***Generally.*** A party may serve a person by publication only if:

(A) the last known address of the person to be served is outside Arizona but:

(i) the serving party, despite reasonably diligent efforts, has not been able to ascertain the personôs current address; or

(ii) the person to be served has intentionally avoided service of process; and

(B) service by publication is the best means practicable in the circumstances for providing notice to the person of the actionôs commencement.

(2) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons and a statement describing how a copy of the pleading being served may be obtained at least once a week for 4 successive weeks in a newspaper published in the county where the action is pending.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone else authorized to serve process under Rule 4(d).

(C) *Alternative Newspapers.* If no newspaper is published in a county where publication is required, the serving party must publish the summons and statement in a newspaper in an adjoining county.

(D) *Effective Date of Service.* Service is complete 30 days after the summons and statement is first published in all newspapers where publication is required.

(3) ***Mailing.*** If the serving party knows the address of the person being served, it must, on or before the date of first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid.

(4) ***Return.***

(A) *Required Affidavit.* The party or person making service must prepare, sign and file an affidavit describing the manner and dates of the publication and mailing, and the circumstances warranting service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) *Accompanying Publication.* A printed copy of the publication must accompany the affidavit.

(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.

(g) Service by Publication on an Unknown Heir in a Real Property Action. An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.2(f), if:

(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or is some other type of action involving title to real property; and

(2) the heir must be a party to the action to permit a complete determination of the action.

(h) Serving a Corporation, Partnership or Other Unincorporated Association Located Outside Arizona but Within the United States. If a corporation, partnership or other unincorporated association is located outside Arizona but within the United States, it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process andð if the agent is one authorized by statute and the statute so requiresð by also mailing a copy of each to the defendant.

(i) Serving an Individual in a Foreign Country. Unless federal law provides otherwise, an individualð other than a minor, an incompetent person, or a person whose waiver has been filed under Rule 4.2(d)ð may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as set forth by the foreign countryôs law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign countryôs law, by:

(i) delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(D) by other means not prohibited by international agreement, as the court orders.

(j) Serving a Minor or Incompetent Person in a Foreign Country. A party may serve a minor, a minor with a guardian or conservator, or an incompetent person who is located in a place not within any judicial district of the United States in the manner set forth in Rule 4.2(i)(2)(A) and (B) or by such means as the court may otherwise order.

(k) Serving a Corporation, Partnership, or Other Incorporated Association in a Foreign Country. Unless federal law provides otherwise or the defendantôs waiver has been filed under Rule 4.2(d), a corporation, partnership, or other unincorporated association that has the legal capacity to be sued may be served at a place not within any judicial district of the United States by delivering a copy of the summons and pleading being served in the manner set forth in Rule 4.2(i) for serving an individual, except personal delivery under Rule 4.2(i)(2)(C)(i).

(l) Serving a Foreign State. A foreign state or one of its political subdivisions, agencies, or instrumentalities must be served in accordance with 28 U.S.C. § 1608.

(m) Time to Serve an Answer After Service Outside Arizona. Unless Rule 4.2(d)(3) applies, or the parties agree or the court orders otherwise, a person served outside Arizona under Rule 4.2 must serve a responsive pleading within 30 days after the completion of service. Service of a responsive pleading must be made in the same manner, and the served person is subject to the same consequences, as if the person had been personally served with a summons in the county in which the action is pending.

Rule 5. Serving and Filing Pleadings and Other Documents

(a) Service Generally.

(1) ***Scope.*** This rule governs service on other parties after service of the summons and complaint, counterclaim, or third-party complaint.

(2) ***When Required.*** Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in (c):

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under (d) because there are numerous defendants;

(C) a discovery document required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar document.

(3) ***If a Party Fails to Appear.*** No service is required on a party who is in default for failing to appear, except as provided in Rule 55. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rules 4, 4.1, or 4.2, as applicable.

(4) ***Seizing Property.*** If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) Service; Parties Served; Continuance. If there are several defendants, and some are served with process and others are not, the plaintiff may proceed against those who have been served or move to defer disclosure or other case-related activity until additional parties are served.

(c) Service After Appearance; Service After Judgment; How Made.

(1) ***Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party.

(2) ***Service Generally.*** A document is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the personôs office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the personôs dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it via U.S. mail to the personôs last known addressð in which event service is complete upon mailing;

(D) delivering it by any other means, including electronic means other than that described in Rule 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that mannerð in which event service is complete upon transmission; or

(E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the actionð in which event service is complete upon transmission.

(3) ***Certificate of Service.*** The date and manner of service must be noted on the last page of original of the served document or in a separate certificate, in a form substantially as follows:

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]

If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the document was served by mail. This conclusive presumption will only apply if service in some form has actually been made.

(4) ***Service After Judgment.*** After the time for appeal from a judgment has expired or a judgment has become final after appeal, a motion, petition, complaint or other pleading requesting modification, vacation or enforcement of that judgment must be served in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d) Serving Numerous Defendants.

(1) ***Generally.*** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendantsô pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) ***Notifying Parties.*** A copy of every such order must be served on the parties as the court directs.

(e) Sensitive Data.

(1) ***Generally.*** A person must refrain from including the following sensitive data in any document the person files with the court, whether filed electronically or in paper, unless otherwise ordered by the court or as otherwise provided by law:

(A) *Social Security Numbers*. If an individualôs social security number must be included in a document, only the last four digits of that number may be used.

(B) *Financial Account Numbers*. If financial account numbers are relevant or set forth in a document, only the last four digits of these numbers may be used.

(2) ***Responsibility With Filer.*** The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or seal or redact documents that contain sensitive data.

(3) ***Request for Relief.*** If a document is subject to availability by remote electronic access under Rule 123, Rules of the Supreme Court of Arizona, any party or the partyôs attorney may ask the court to order, or the court may order on its own, that the document be sealed and/or replaced with an identical document with the sensitive data redacted or removed.

(4) ***Sanctions.*** If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.

(f) Filing; Attachments.

(1) ***Filing.*** After a complaintôs filing, if a document must be filed within a specified time, it must be both filed and served within that time period.

(2) ***Documents Not to Be Filed.*** The following documents may not be filed separately and may be filed as attachments or exhibits to other documents only if relevant to the determination of an issue before the court:

(A) *Subpoenas*. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;

(B) *Discovery Documents*. Notices of deposition; deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(C) *Proposed Pleadings*. Any proposed pleading, unless filing is necessary to preserve the record on appeal;

(D) *Prior Filings*. Any document that has been previously filed in the action, which may be called to the courtôs attention by incorporating it by reference;

(E) *Authorities Cited in Memoranda*. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(F) *Offers of Judgment.* Offers of judgment served under Rule 68.

(3) ***Attachments to Judge.*** Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 5(f)(2) to a copy of a motion, response or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

(4) ***Sanctions.*** If this rule is violated, the court may order the removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the clerkôs costs of filing, preservation, or storage. It may also impose any additional sanctions provided in Rule 16(i).

(g) Filing With the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. A judge may permit a document to be filed

with the judge, who must note the filing date on the document and then transmit it to the clerk for inclusion in the clerkôs record.

(h) Compulsory Arbitration. A complaint and an answer must be accompanied by the certificate required by Rule 72(e) and the corresponding local rule.

(i) Proposed Orders; Proposed Judgments.

(1) ***Required Format.*** A proposed order or proposed judgment must be prepared and filed as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 7.1. There must be at least two lines of text on the signature page.

(2) ***Service and Filing.*** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed orders or proposed judgment until the court has signed it and authorized its entry. A party may file an unsigned order or judgment only if necessary to preserve the record on appeal.

(3) ***Stipulations and Motions; Proposed Forms of Order.***

(A) All written stipulations must be accompanied by a proposed order. If the proposed order is signed and entered, no minute entry need issue.

(B) If a motion is accompanied by a proposed order, no minute entry need issue if the order is signed and entered.

Rule 5.1. Duties of Counsel

(a) Attorney of Record: Withdrawal and Substitution of Counsel.

(1) ***Attorney of Record: Duties of Counsel.***

(A) *Appearance Required.* An attorney may appear as attorney of record by filing a documentð including a notice of appearance, complaint, answer, motion to quash, notice of association of counsel, or notice of substitution of counselð that identifies the attorney as the attorney of record for a party. No attorney may file anything in any action or act on behalf of a party in open court without appearing as attorney of record.

(B) *Duties.* Once an attorney has appeared as an attorney of record in an action, the attorney will be deemed responsible as the partyôs attorney of record in all matters involving the action until the action ends or the attorney withdraws as the partyôs attorney or is substituted as the partyôs attorney by another attorney.

(2) ***Withdrawal and Substitution*****.**

(A) *Court Order Required.* Except as otherwise provided in these rules or in any local rules pertaining to domestic relations actions, an attorney may not withdraw, or be substituted, as attorney of record in any pending action unless authorized to do so by court order.

(B) *Application to Withdraw or Substitute Counsel.* An application to withdraw or be substituted as attorney of record for a party must be in writing, state the reasons for the withdrawal or substitution and set forth the clientôs address and telephone number. Additionally:

(i) If the application bears the clientôs written approval, it must be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing attorney must give prompt notice of the entry of such order, together with the clientôs name and address, to all other parties.

(ii) If the application does not bear the written approval of the client, it must be made by motion and must be served on the client and all other parties. The motion must be accompanied by a certificate of the moving attorney that the client has been notified in writing of the status of the action (including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions); or the client cannot be located or cannot be notified of the motionôs pendency and the case status.

(C) *Withdrawal After Trial Setting.* No attorney will be permitted to withdraw as attorney of record after a trial date is set, unless:

(i) the application includes the signed statement of a substituting attorney stating that the attorney is aware of the trial date and will be prepared for trial, or the signed statement of the client stating that the client is aware of the trial date and has made suitable arrangements to be prepared for trial; or

(ii) the attorney seeking withdrawal shows good cause for allowing the attorney to withdraw even though the action has been set for trial.

(b) Responsibility to Court. Each attorney of record is responsible for keeping advised of the status of, and the deadlines in, pending actions in which that attorney has appeared. If an attorney changes his or her office address, the attorney must notify the clerk and court administrator, in each of the counties in which that attorney has actions that are pending, of the attorneyôs current office address and telephone number.

(c) Limited Appearance.

(1) ***Scope.*** In accordance with ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake limited representation of a person involved in any court proceeding, including vulnerable adult exploitation actions.

(2) ***Notice.*** An attorney may make a limited appearance by filing and serving a Notice of Limited Scope Representation in a form substantially as prescribed in Rule 84, Form 8.

(3) ***Service.*** Service on an attorney making a limited appearance on behalf of a party will constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but will not extend the attorneyôs responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

(4) ***Withdrawal.*** Upon an attorneyôs completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) *With Consent*. If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating:

(i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and

(ii) the last known address and telephone number of the party who will no longer be represented.

The attorney must serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorneyôs withdrawal from the action will be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) *Without Consent*. If the client does not consent to withdrawal or to sign a Notice of Withdrawal with Consent, the attorney must file a motion to withdraw, which must be served on the client and all other parties, along with a proposed order.

(i) If no objection is filed within 10 days after the motion is served on the client, the court must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney must serve a copy of the order on the client.

The withdrawing attorney also must promptly serve a written notice of the entry of such order, together with the name, last known address, and telephone number of the client, on all other parties.

(ii) If an objection is filed within 10 days after the motion is served, the court must conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

(d) Notice of Settlement. It is the duty of an attorney of record, or any party if unrepresented by counsel, to give prompt notice to the assigned judge or commissioner, the clerk and court administrator of the settlement of any action or matter set for trial, hearing or argument. If prompt notice is not afforded, the court may impose sanctions on the attorneys of record or the parties to ensure future compliance with this rule. Jury fees may be taxed as costs as provided in statute and local rule.

Rule 6. Computing and Extending Time

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) ***Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period.

(2) ***Exclusions if the Deadline Is Less Than 11 Days.*** Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

(3) ***Last Day.*** Include the last day of the period unless it is a Saturday, Sunday or legal holiday. When the last day is excluded, the period runs until the next day that is not a Saturday, Sunday or legal holiday.

(4) ***Next Day.*** The ñnext dayò is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(b) Extending Time.

(1) ***Generally.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or the request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) ***Exceptions.*** A court may not extend the time to act under Rules 50(b), 52(b), 59(d), (g) and (*l*), and 60(c) except as those rules allow. Additionally, on motion, a court may extend the time to act under these rules for 10 days after the entry of the order extending the time, if:

(A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of judgment or the order, but did not receive notice from the clerk or any party within 21 days after its entry; and

(C) the court finds that no party would be unfairly prejudiced by extending the time to act.

(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E). When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the specified period would otherwise expire under Rule 6(a). This rule does not apply to the clerkôs distribution of notice of entry of judgment under Rule 58(e).

III. PLEADINGS AND MOTIONS; PRETRIAL PROCEDURES

Rule 7. Pleadings Allowed; Form of Motions and Other Documents

Only these pleadings are allowed: a complaint; an answer to a complaint; an answer to a counterclaim designated as a counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and if the court orders one, a reply to an answer.

Rule 7.1. Forms of Documents

(a) Caption. Documents filed with the court must contain the following information as single-spaced text on the first page of the document:

(1) To the left of the center of the page starting at line 1, the filing partyôs typed or printed name, address, telephone number, email address, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third party plaintiff). If the document is being presented

by a litigant representing himself or herself, all of this information must be included except the email address and the State Bar of Arizona identification numbers;

(2) Centered on or below line 6 of the page, the typed or printed title of the court;

(3) Below the title of the court and to the left of the center of the document, the typed or printed title of the action or proceeding;

(4) Opposite the title, in the space to the right of the center of the page, the typed or printed case number of the action or proceeding; and

(5) Immediately below the case number, a brief description of the nature of the document, typed or printed.

(b) Document Format.

(1) ***Generally.*** Unless the court orders otherwise on its own or at the request of a party, all documents filedð other than a document submitted as an exhibit or attachment to a filingð must be prepared as follows:

(A) *Text and Background.* The text of every document must be black on a plain white background. All documents filed must be single-sided and must have line numbers at double-spaced intervals along the left side of the page.

(B) *Font.* Every typed document must use an easily readable 12-point font. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in 12-point font and must not appear in the space required for the bottom margin.

(C) *Page Size.* Each page of a document must be 8 ½ by 11 inches.

(i) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(iii) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

(D) *Margins and Page Numbers*. Margins must be set as follows: Margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a

right-hand margin of not less than 1/2 inch; and a margin at the bottom of the page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

(E) *Handwritten Documents*. The court strongly encourages the filing of documents that are typed and prepared on a computer. If a document is handwritten, the text must be legible, and be printed and not include cursive writing or script.

(F) *Line Spacing*. Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) *Headings and Emphasis*. Headings must be underlined, or be in italics or bold font. Underlining, italics, or bold font also may be used for emphasis.

(H) *Citations*. Case names and citation signals must be in italics or underlined.

(I) *Originals*. Only originals may be filed, except that if it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

(J) *Court Forms*. Printed court forms may be single-spaced except that those requiring the signature of a judge or commissioner must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming or imaging.

Rule 7.2. Motions

(a) Requirements.

(1) ***Generally.*** An application to the court for an order must be by motion which, unless made during a hearing or trial, must be in writing, state with particularity the grounds for granting the motion, and set forth the relief or order sought.

(2) ***Supporting Memorandum.*** All motions must be accompanied by a memorandum setting forth the reasons for granting the motion, along with citations to the specific portions or pages of supporting authorities and evidence.

(3) ***Responsive and Reply Memoranda.*** Unless a specific rule states otherwise, an opposing party must file any responsive memorandum within 10 days after the motion and supporting memorandum are served; and within 5 days after a responsive memorandum is served, the moving party may file a reply

memorandum, which may address only those matters raised in the responsive memorandum.

(4) ***Affidavits and Other Evidence.*** Affidavits and other evidence submitted in support of any motion or memorandum must be filed with the motion or memorandum, unless the court orders otherwise.

(5) ***Motions in Open Court.*** The court may waive any of these requirements for motions made in open court.

(b) Effect of Non-compliance or Waiver. The court may summarily grant or deny a motion if:

(1) the motion, supporting memorandum, or responsive memorandum does not substantially comply with Rule 7.2(a);

(2) the opposing party does not file a responsive memorandum; or

(3) counsel for any moving or opposing party fails to appear at the time and place designated for oral argument.

(c) Rulings on Motions.

(1) ***Generally.*** Except as these rules otherwise provide, the court at any time or place, and on such notice, if any, as the court considers reasonable, may make orders for the advancement, conduct, and hearing of motions.

(2) ***Law and Motion Day.*** The court may establish by local rule or order a regular day, time and place to hear, consider and resolve motions.

(3) ***Summary Motions.*** The court may provide by local rule or order for the submission and determination of motions without oral argument based on the filing of brief written statements setting forth reasons in support or opposition to a motion.

(d) Oral Argument. The court by local rule or order may limit the length of oral argument, which may not be exceeded without prior court approval.

(e) Motions for Reconsideration.

(1) ***Generally.*** A party seeking reconsideration of a court order or ruling may file a motion for reconsideration.

(2) ***Procedure.*** All such motions, however denominated, must be submitted without oral argument and without the filing of a responsive or reply memorandum, unless the court orders otherwise. No motion for reconsideration may be granted, however, without the court providing all other parties an opportunity to respond.

(3) ***No Effect on Appeal Deadline.*** A motion for reconsideration is not a substitute for a motion filed under Rule 50(b), 52(b), 59 or 60, and will not extend the time within which a notice of appeal must be filed.

(f) Limitations on Motions to Strike.

(1) ***Generally.*** Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order.

(2) ***Procedure.*** Unless the motion to strike permitted by Rule 7.2(f)(1) is expressly authorized by rule or statute:

(A) it may not exceed 2 pages in length, including its supporting memorandum;

(B) any responsive memorandum must be filed within 5 days after service of the motion and may not exceed 2 pages in length; and

(C) no reply memorandum may be filed unless the court orders otherwise.

(3) ***Objections to Admission of Evidence on Written Motions.***

(A) *Objections.* Any objections to, and any arguments regarding the admissibility of, evidence offered in support of or in opposition to a motion (other than a summary judgment motion) must be presented in the objecting partyôs responsive or reply memorandum and may not be presented in a separate motion to strike or other separate filing. Rule 56(c)(4) provides the procedure for raising objections to the admissibility of evidence in offered in support of, or in opposition to, a summary judgment motion.

(B) *Response to Objections.* Any response to an objection must be included in the responding partyôs reply memorandum and may not be presented in a separate responsive memorandum.

(C) *Objections to Evidence Offered in a Reply Memorandum.* If the evidence at issue is offered for the first time in connection with a reply memorandum, an objecting party may file a separate objection limited to addressing the new evidence and not exceeding 3 pages in length, within 5 days after the reply memorandum is served. No responsive memorandum may be filed unless the court orders otherwise.

(g) Agreed Extensions of Time for Filing Memoranda.

(1) ***Generally.*** Subject to the courtôs power to reject any such agreement, parties may agree to extend the dates on which response and reply memoranda are due if the

extension does not otherwise conflict with other deadlines set by the court or these rules.

(2) ***Procedure.*** To make an extension effective, the parties must file a notice setting forth the agreed-upon dates on which the response or reply briefs will be due. The notice must set forth in its title the number of extensions agreed to with respect to that filing (e.g., ñNotice of First Extension of Time to File Response on Motion to Dismissò).

(3) ***Limitations.*** No extension will be effective without prior court approval if it purports to make the filing of a reply or other final memorandum due fewer than 5 days before a date for hearing or oral argument previously set by the court, or if the notice of the extension is filed after the memorandum is due.

(4) ***Effective Date.*** No order is necessary to obtain an extension under this rule. The extension is effective upon the filing of the notice of extension, unless and until the court enters an order disapproving the time extension.

(h) Good Faith Consultation Certificate. When these rules require that a ñgood faith consultation certificateò accompany a motion, the movant must attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring withð or attempting to confer withð the party or person against whom the motion is directed. The consultation required by this rule must be in person or by telephone, and not merely by letter or email.

Rule 7.3. Motions *in Limine*

(a) Obligation to Confer. Within sufficient time to comply with Rule 7.3(b), the parties must confer to identify any disputed evidentiary issue that they anticipate will be the subject of a motion *in limine*.

(b) Deadline for Filing. Unless a different schedule is ordered by the court, the parties must file all motions *in limine* for which pretrial rulings are desired no later than 30 days before either a Trial Management Conference or, if no Trial Management Conference is set, the date of the trial.

(c) No Replies Permitted. The moving party may not file a reply in support of its motion *in limine*.

(d) Pretrial Rulings. All motions *in limine* submitted in accordance with Rule 7.3(b) must be ruled on before trial unless the court determines the particular issue of admissibility is better considered at trial. The courtôs denial of a motion *in limine* preserves the moving partyôs objection to the evidence for purposes of appeal.

(e) Effect of Noncompliance. Motions *in limine* not filed in accordance with Rule 7.3(b) will be deemed untimely and will not be ruled on before trial unless good cause is shown. The failure to file a motion *in limine* in compliance with this rule does not operate as a waiver of the right to object to evidence at trial.

Rule 7.4. Orders to Show Cause

(a) Generally. A court, on application supported by affidavit showing sufficient cause, may issue an order requiring a party to show cause why the party applying for the order should not have the relief it requests in its application. The court must designate a date by which the party must respond, and may set a hearing on the application.

(b) Service. An order to show cause must be served in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5. Service must be effected within such time as the court orders.

Rule 7.5. Joint Filings

(a) Duties. If a rule or order requires parties to jointly prepare and file a document with the court, each party has a duty to:

(1) make itself reasonably available to participate in preparing the document;

(2) promptly respond to communications from any other party concerning the document;

(3) cooperate and make a good faith effort to resolve differences about the documentôs content, format and the manner in which it will be filed; and

(4) assure that the document is timely filed.

(b) Separate Sections. If a rule or order allows it, each party or side may prepare its own section of a joint filing, but each section must be clearly identified as being separately prepared by that party or side. A party or side may not make changes to another partyôs ~~or sideôs~~ section of a draft joint filing.

(c) Separate Filing. If the filing of a joint document becomes impractical because another party fails to comply with its duties under this rule, a party may prepare and file a document on its own behalf. If it does so, the filingôs title must indicate that the party is filing it separately from the other party.

(d) Sanctions~~. On motion or on its own, a~~ A court may sanction any party who violates any of its duties under this rule.

Rule 8. General Rules of Pleading

(a) Claim for Relief. A pleading that states a claim for relief must contain:

(1) a short and plain statement of the grounds for the courtôs jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses; Admissions and Denials.

(1) ***Generally.*** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) ***Denials—Responding to the Substance.*** A denial must fairly respond to the substance of the allegation.

(3) ***General and Specific Denials.*** A party who intends in good faith to deny all the allegations of a pleadingð including the jurisdictional groundsð may do so by a general denial subject to the obligations provided in Rule 11(a). A party who does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) ***Denying Part of an Allegation.*** A party who intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) ***Lacking Knowledge or Information.*** A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) ***Effect of Failing to Deny.*** An allegationð other than one relating to the amount of damagesð is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

(c) Affirmative Defenses.

(1) ***Generally.*** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction;

(B) arbitration and award;

(C) assumption of risk;

(D) contributory negligence;

(E) duress;

(F) estoppel;

(G) failure of consideration;

(H) fraud;

(I) illegality;

(J) laches;

(K) license;

(L) payment;

(M) release;

(N) res judicata;

(O) statute of frauds;

(P) statute of limitations; and

(Q) waiver.

(2) ***Mistaken Designation.*** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

(1) ***Generally.*** Each allegation of a pleading must be simple, concise, and direct. No technical form is required.

(2) ***Alternative Statements of a Claim or Defense.*** A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single

count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

(f) Claims for Damages. In all actions in which a party is pursuing a claim other than for a sum certain or for a sum which can by computation be made certain, no dollar amount or figure for damages sought may be stated in any pleading allowed under Rule 7. The pleading setting forth the claim may include a statement reciting that the minimum jurisdictional amount established for filing the action has been satisfied.

(g) Civil Cover Sheets.

(1) ***Generally.***

(A) When filing a civil action, a plaintiff must complete and submit a Civil Cover Sheet in a form approved by the Supreme Court. The public may obtain this form from the website of the Administrative Office of the Courts.

(B) The Civil Cover Sheet must contain:

(i) the plaintiffôs correct name and mailing address;

(ii) the plaintiffôs attorneyôs name and bar number;

(**iii)** the defendantôs name(s);

(iv) the nature of the civil action or proceeding;

(v) the main case categories and subcategories designated by the Administrative Director;

(vi) whether the action meets the criteria for a complex civil action listed in Rule 8(h); and

(vii) such other information as the Supreme Court may require.

(C) A superior court may require by local rule that additional information be provided in an Addendum to the Civil Cover Sheet.

(2) ***Writs of Garnishment.*** A writ of garnishment does not require a Civil Cover Sheet, but it must include, under the case number on the petitionôs or complaintôs first page, one of the following notations, as applicable:

(A) federal exemption;

(B) enforce order of support;

(C) enforce order of bankruptcy;

(D) enforce collection of taxes; or

(E) non-earnings.

(3) ***Complex Civil Actions.*** If an action is designated as complex under Rule 8(h), the notation ñcomplexò must appear under the case number on the complaintôs first page. This requirement is in addition to the designation required under Rule 8(g)(1) in the Civil Cover Sheet.

(h) Complex Civil Litigation Program Designation.

(1) ***Definition.*** In those counties in which a complex civil litigation program has been established, a ñcomplex civil actionò is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.

(2) ***Factors.*** In deciding whether a civil action is a complex civil action under (h)(1), the court must consider the following factors:

(A) numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;

(B) management of a large number of witnesses or a substantial amount of documentary evidence;

(C) management of a large number of separately represented parties;

(D) coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;

(E) substantial postjudgment judicial supervision;

(F) the action would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law;

(G) inherently complex legal issues;

(H) factors justifying the expeditious resolution of an otherwise complex dispute; and

(I) any other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) ***Procedure for Designating a Complex Civil Action.***

(A) *Generally.* When filing its initial complaint, a plaintiff may designate an action as a complex civil action by filing a motion and separate certification of complex civil action identifying the case attributes in Rule 8(h)(2) justifying the designation. The certification must be in a form approved by the Supreme Court as set forth in Rule 8(h)(8) and must be served on the defendant along with the motion when the complaint is served. A plaintiffôs certification, and any controverting certificate of a party represented by an attorney, must be signed by at least one attorney of record in the attorneyôs individual name. A party who is not represented by an attorney must sign the partyôs certification of complexity or controverting certification.

(B) *Effect of Signature.* The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of this rule; that the signer has read the certificate of complexity or controverting certificate; that to the best of the signerôs knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to complexity is not set forth for any improper purpose. Rule 11(a) applies to every certification of complexity filed under this rule.

(4) ***Procedure for Opposing Designation.*** If a plaintiff has certified an action as complex, the court has not previously declared the action to be a complex civil action, and the defendant disagrees with the plaintiffôs assertion as to complexity, the defendant must fileð no later than when that party files its first responsive pleadingð a response to plaintiffôs motion and a controverting certification that specifies the particular reason for the defendantôs disagreement with plaintiffôs certificate.

(5) ***Designation by Defendant or Joint Designation.*** If the plaintiff has not done so and if the court has not already made a ruling in this matter, a defendant may designate an action as a complex civil action by filing a motion and the certification of complex civil action described in Rule 8(h)(3) with or before the filing of defendantôs first responsive pleading. The parties may join in designating an action as a complex civil action by filing a joint motion and certification of complex civil action with or before the filing of defendantôs first responsive pleading.

(6) ***Action by Court.***

(A) *On Motion When Filing an Initial Pleading.* The presiding superior court judge in the county in which the action is pending, or the judgeôs designee, must

decide, with or without a hearing, whether the action is a complex civil action within 30 days after the filing of the response to the designating partyôs motion.

(B) *Later Ruling.* At any time during the pendency of an action, the court, on motion or on its own, may decide that a civil action is a complex civil action or that an action previously declared to be a complex civil action is not a complex civil action.

(C) *Sanctions.* If the court finds that a party or its counsel has made an allegation as to complexity that was not made in good faith, the court, on motion or on its own, may make such orders with regard to such conduct as are just, including, among others, any action authorized under Rule 11(a).

(7) ***Not Appealable.*** Parties do not have the right to appeal the courtôs decision regarding the designation of an action as complex or noncomplex.

(8) ***Program Designation Certification Form.*** The certification of a complex civil action must be substantially in the form set forth in Rule 84, Form 10.

Experimental Rule 8.1. Assignment and Management of Commercial Cases

(a) Application; Definitions. This rule applies in counties that have established specialized courts for commercial cases, which are referred to in this rule as ñthe commercial court.ò

The commercial court will hear ñcommercial cases,ò as defined in Rule 8.1(a)(1), which also meet the criteria of either Rule 8.1(b) or Rule 8.1(c).

(1) A ñcommercial caseò is one in which:

(A) At least one plaintiff and one defendant are ñbusiness organizations;ò

(B) The primary issues of law and fact concern a ñbusiness organization;ò or

(C) The primary issues of law and fact concern a ñbusiness contract or transaction.ò

(2) A ñbusiness organizationò includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A ñbusiness organizationò excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

(3) A ñbusiness contract or transactionò is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services,

intellectual property, funds, realty, or other obligations. The term ñbusiness contract or transactionò excludes a ñconsumer contract or transaction.ò

(4) A ñconsumer contract or transactionò is one that is primarily for personal, family, or household purposes.

(b) Cases With No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court will hear a commercial case that:

(1) Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

(2) Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

(3) Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;

(4) Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;

(5) Is a shareholder or member derivative action;

(6) Arises from a commercial real estate transaction;

(7) Arises from a relationship between a franchisor and a franchisee;

(8) Involves the purchase or sale of securities or allegations of securities fraud; or

(9) Concerns a claim under state antitrust law.

(c) Cases Subject to an Amount in Controversy Requirement. If the amount in controversy is at least $50,000, the commercial court will hear a commercial case that:

(1) Arises from a contract or transaction governed by the Uniform Commercial Code;

(2) Involves the sale of services by, or to, a business organization;

(3) Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;

(4) Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or

(5) Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.

(d) Ineligible Case Types. Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

(1) Evictions;

(2) Eminent domain or condemnation;

(3) Civil rights;

(4) Motor vehicle torts and other torts involving physical injury to a plaintiff;

(5) Administrative appeals;

(6) Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or

(7) Wrongful termination of employment.

(e) Assignment of Cases to Commercial Courts.

(1) ***Plaintiff's Duties.*** If a case meets the definition of a ñcommercial caseò as set forth above, and also meets the criteria of either Rule 8.1(b) or Rule 8.1(c), the plaintiff must include in the initial complaintôs caption the words ñeligible for commercial court.ò At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.

(2) ***Assignment to Commercial Court.*** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge.

(3) ***Motion to Reconsider Assignment to Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judgeôs own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through 8.1(d). Any party filing a motion under this Rule must do so no later than 20 days after the defendant files an answer or a motion under Rule 12, or within 20 days after that partyôs appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.

(4) ***Motion to Transfer to Commercial Court.*** On the courtôs own initiative, on motion of a party filed within 20 days after a defendant files an answer or a motion

under Rule 12, or on motion of a party filed within 20 days of that partyôs appearance, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).

(5) ***Complex Cases.*** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a complex civil litigation program under Rule 8(i).

(f) Case Management. Rules 16(a) through 16(k) apply to cases in the commercial court, except:

(1) ***Scheduling Conference.*** Scheduling conferences under Rule 16(d) are mandatory.

(2) ***Initial Conference.*** Before filing a Joint Report, the parties must confer, as set forth in the commercial courtôs ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information (ñESIò), including:

(A) Requirements and limitations on disclosure and production of ESI;

(B) The form or formats in which the ESI will be disclosed or produced; and

(C) If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.

(3) ***Joint Report.*** The partiesô Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including the following:

(A) Whether the parties have reached any agreements with regard to ESI, what those agreements are, those areas on which they were unable to agree, and whether the parties request the court to enter an order concerning ESI;

(B) Whether the parties reached agreements under Rule 502 of the Rules of Evidence;

(C) Whether any party is requesting the court to enter a protective order under Rule 26(c), and if so, a brief statement concerning the need for a protective order; and

(D) Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

(g) Motions. With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.

Rule 9. Pleading Special Matters

(a) Capacity or Authority to Sue; Legal Existence.

(1) ***Generally.*** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) a partyôs capacity to sue or be sued;

(B) a partyôs authority to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party.

(2) ***Raising Those Issues.*** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the partyôs knowledge.

(b) Fraud, Mistake, Condition of the Mind. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a personôs mind may be alleged generally.

(c) Conditions Precedent. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document or Act. In pleading an official document or official act, it suffices to allege that the document was legally issued or the act was legally done.

(e) Judgment. In pleading a judgment or decision, it suffices to plead the judgment or decision without pleading facts showing that the decision-maker had jurisdiction to render it.

(f) Time and Place. An allegation of time or place is material when testing a pleadingôs sufficiency.

(g) Special Damages. If an item of special damage is claimed, it must be specifically stated.

(h) Complaint in an Action for Libel or Slander. In an action claiming libel or slander, it suffices to allege generally that a defamatory matter pertained to the plaintiff. It is not necessary for the plaintiff to allege extrinsic facts supporting that allegation. If the defendant controverts the allegation in an answer, the plaintiff must prove it at trial.

Rule 10. Form of Pleadings

(a) Caption; Names of Parties. Every pleading must have a caption in the form prescribed by Rule 7.1(a), along with the pleadingôs designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation ñ*et al.*ò

(b) Paragraphs; Separate Statements. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrenceð and each defense other than a denialð must be stated in a separate count or defense.

(c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. If the defendantôs true name is discovered, the pleading or proceeding should be amended accordingly.

Rule 11. Signing Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person

(a) Signature. Every pleading, written motion, and other document served or filed with the court must be signed by at least one attorney of record in the attorneyôs nameð or by a party personally if the party is unrepresented. The document must state the signerôs address, e-mail address and telephone number. Unless a rule or statute specifically states otherwise, pleadings need not be verified or accompanied by affidavit. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorneyôs or partyôs attention.

(b) Representations to the Court. By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the personôs knowledge, information and belief formed after reasonable inquiry:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ***Generally.*** If a pleading, motion or other document is signed in violation of this rule, the court, on motion or on its own, must impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorneyôs fee.

(2) ***Consultation.*** Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by good faith consultation as provided in Rule 7.2(h); and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 11(c)(3).

(3) ***Motion for Sanctions.*** A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 11(b);

(C) be accompanied by a Rule 7.2(h) good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 11(a)(2)(B).

(d) Assisting Filing by Self-Represented Person. An attorney may help draft a pleading, motion or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented personôs representation of facts, unless the attorney has reason to believe that such

representations are false or materially insufficient, in which case the attorney shall make an independent reasonable inquiry into the facts.

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

(a) Time to Serve a Responsive Pleading.

(1) ***Generally.*** Unless another time is specified by rule or statute, the time for serving a responsive pleading is as follows:

(A) A defendant or third-party defendant must serve an answer:

(i) within 20 days after being served with the summons and complaint, except as otherwise provided in Rules 4.2(d) and 4.2(m); or

(ii) if it has timely waived service under Rule 4(f), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant or third-party defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

(2) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the courtôs action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. A party does not waive a defense or objection by joining it with one or more other defenses or objections in a responsive pleading or in a motion. A party may assert improper venue as a defense only if the action cannot be or could not have been transferred to the proper county under A.R.S. § 12-404.

(c) Motion for Judgment on the Pleadings. After the pleadings are closedð but no later than the date on which dispositive motions must be filedð a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to, and not excluded by, the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before filing a responsive pleading. The motion must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after the pleading is served.

(g) Joining Motions.

(1) ***Right to Join*.** A motion under this rule may be joined with any other motion allowed by this rule.

(2) ***Limitation on Further Motions*.** Except as provided in Rule 12(h)(2) or (3), a party who makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) ***When Some Are Waived.*** A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7;

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Preliminary Hearings. If a party so moves, any defense listed in Rule 12(b)(1)-(7)ð whether made in a pleading or by motionð and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaim and Crossclaim

(a) Compulsory Counterclaim.

(1) ***Generally.*** A pleading must state as a counterclaim any claim thatð at the time of its serviceð the pleader has against an opposing party if the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing partyôs claim; and

(B) does not require adding another party over whom the court cannot acquire jurisdiction.

(2) ***Exceptions.*** The pleader need not state the claim if:

(A) when the action was commenced, the claim was the subject of another pending action; or

(B) the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(b) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(c) Relief Sought in a Counterclaim. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

(d) Counterclaim Against the State. These rules do not expand the right to assert a counterclaimð or to claim a creditð against the State of Arizona or one of its an officers or agencies.

(e) Counterclaim Maturing or Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Crossclaim Against a Coparty.

(1) ***Generally.*** A party may state as a crossclaim any claim against a coparty if the claim arises out of the same transaction, occurrence, or event that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(2) ***When Co-Defendants Must Present Crossclaims.*** A defendantôs crossclaim against a co-defendant must be stated when the defendant files an answer or other response to the complaint or counterclaim, unless an amendment is later allowed under Rule 15(a).

(g) Joining Additional Parties. Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

(h) Separate Trials; Separate Judgments. If the court orders separate trials under Rule 42(b), it may enter judgment on a counterclaim or crossclaim under Rule 54(b) when it has jurisdiction to do so, even if the opposing partyôs claims have been dismissed or otherwise resolved.

Rule 14. Third-Party Practice

(a) When a Defending Party May Bring in a Third Party.

(1) ***Timing of the Summons and Third-Party Complaint.*** A defending party may, as third-party plaintiff, serve a summons and third-party complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the courtôs leave if it files the third-party complaint more than 10 days after serving its original answer.

(2) ***Third-Party Defendant's Claims and Defenses.*** The person served with the summons and third-party complaintð the ñthird-party defendantò:

(A) must defend against the third-party plaintiffôs claim under Rules 8 and 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(f);

(C) may assert against the plaintiff any defense that the third-party plaintiff has to the plaintiffôs claim; and

(D) may also assert against the plaintiff any claim arising out of the transaction or occurrence that is the subject matter of the plaintiffôs claim against the third-party plaintiff.

(3) ***Plaintiff's Claims Against a Third-Party Defendant.*** The plaintiff may assert against the third-party defendant any claim arising out of the transaction or occurrence that is the subject matter of the plaintiffôs claim against the third-party plaintiff. The third-party defendant must then defend against the plaintiffôs claim under Rules 8 and 12 and assert any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(f).

(4) ***Motion to Strike, Sever, or Try Separately.*** Any party may move to strike the third-party claim, to sever it, or to try it separately.

(5) ***Third-Party Defendant's Claim Against a Nonparty.*** A third-party defendant may proceed under this rule against a nonparty who is or may be liable to the third-party defendant for all or part of any claim against it.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a nonparty as a third party if this rule would allow a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments Before Trial.

(1) ***Amending as a Matter of Course.*** A party may amend its pleading once as a matter of course:

(A) no later than 21 days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B) no later than 21 days after a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under Rule 12(b), (e), or (f) is served, on or before the date on which a response to the motion is due, whichever is earlier.

(2) ***Other Amendments.*** In all other instances, a party may amend its pleading only with leave of court or with the written consent of all opposing parties who have appeared in the action. Leave to amend must be freely given when justice requires.

(3) ***Effect on Pending Motions.*** After the filing of a motion under Rule 12(b), (e), or (f), an amendment as a matter of course does not, by itself, moot the motion as to the adequacy of the pleadingôs allegations as revised in the amended pleading and does not relieve a party opposing the motion from filing a timely response.

(4) ***Proposed Pleading as an Exhibit.*** A party moving for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion. The exhibit must show the respects in which the proposed pleading differs from the existing pleading by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) ***Filing and Response.*** If a motion for leave to amend is granted, the moving party must file and serve the amended pleading within 10 days after the entry of the order granting the motion, unless the court orders otherwise. If the pleading is one to which a responsive pleading is required, an opposing party must answer or otherwise respond an amended pleading within the time remaining for response to the original pleading or within 10 days after the amended pleading is served, whichever is later, unless the court orders otherwise.

(b) Amendments During and After Trial.

(1) ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would unfairly prejudice that partyôs action or defense on the merits. The court may grant a continuance to enable the objecting party to respond to the evidence.

(2) ***For Issues Tried by Consent.*** When an issue not raised by the pleadings is tried by the partiesô express or implied consent, it must be treated in all respects as if raised in the pleadings. A party may moveð at any time, even after judgmentð to amend the pleadings to conform to the evidence and to raise an unpleaded issue. But failure to amend does not affect the result of the trial of that issue.

(c) Relation Back of Amendments.

(1) ***Amendment Adding Claim or Defense.*** An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading.

(2) ***Amendment Changing Party*.** An amendment changing the party against whom a claim is asserted relates back if:

(A) Rule 15(c)(1) is satisfied; and

(B) within the applicable limitations periodð plus the period provided in Rule 4(i) for the service of the summons and complaintð the party to be brought in by amendment:

(i) has received such notice of the institution of the action that it will not be prejudiced in maintaining a defense on the merits, and

(ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(3) ***Service*.** Service of process in compliance with Rules 4.1(h), (i), or (j) satisfies the requirements of Rule 15(c)(2)(B)(i) and (B)(ii) with respect to the state, county, or municipal corporationð or any agency or officer of those entitiesð to be brought into the action as a defendant.

(d) Supplemental Pleadings. On motion and reasonable notice, the court may permit the party to file a supplemental pleading setting forth any transaction, occurrence, or event

that happened after the date of the pleading to be supplemented. A court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The court may order the opposing party to plead to the supplemental pleading within a specified time.

Rule 16. Scheduling and Management of Actions

(a) Objectives. In accordance with Rule 1, the court must manage a civil action with the following objectives:

(1) expediting a just disposition of the action;

(2) establishing early and continuing control so that the action will not be protracted because of lack of management;

(3) ensuring that discovery is appropriate to the needs of the action considering the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, the burden or expense imposed by the discovery, and the partiesô resources;

(4) discouraging wasteful, expensive and duplicative pretrial activities;

(5) improving the quality of case resolution through more thorough and timely preparation;

(6) facilitating the appropriate use of alternative dispute resolution;

(7) conserving partiesôresources;

(8) managing the courtôs calendar to eliminate unnecessary trial settings and continuances; and

(9) adhering to applicable standards for timely resolution of civil actions.

(b) Joint Report and Proposed Scheduling Order.

(1) ***Applicability.*** This Rule 16(b) applies to all civil actions except:

(A) medical malpractice actions;

(B) actions subject to compulsory arbitration under Rule 72(b);

(C) actions designated complex under Rule 8(i)(6); and

(D) actions seeking the following relief:

(i) change of name;

(ii) forcible entry and detainer;

(iii) enforcement, domestication, transcript, or renewal of a judgment;

(iv) an order pertaining to a subpoena sought under Rule 45.1(e);

(v) restoration of civil rights;

(vi) injunction against harassment or workplace harassment;

(vii) delayed birth certificate;

(viii) amendment of birth certificate or marriage license;

(ix) civil forfeiture;

(x) distribution of excess proceeds;

(xi) review of a decision of an agency or a court of limited jurisdiction; and

(xii) declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2.

(2) ***Conference of the Parties.*** No later than 60 days after any defendant has filed an answer to the complaint or 180 days after the action commences, whichever occurs firstð the parties must confer regarding the subjects set forth in Rule 16(d).

(3) ***Filing of Joint Report and Proposed Scheduling Order.*** No later than 14 days after the parties confer under Rule 16(b)(2), they must file a Joint Report and a Proposed Scheduling Order with the court statingð to the extent practicableð their positions on the subjects set forth in Rule 16(d) and proposing a Scheduling Order that specifies deadlines for the following by calendar date, month, and year:

(A) service of initial disclosures under Rule 26.1 if they have not already been served;

(B) identification of areas of expert testimony;

(C) identification of and disclosure of expert witnesses and their opinions under Rule 26.1(a)(6);

(D) propounding of written discovery;

(E) disclosure of non-expert witnesses;

(F) completion of depositions;

(G) completion of all discovery other than depositions;

(H) final supplementation of Rule 26.1 disclosures;

(I) holding a Rule 16.1 settlement conference or private mediation;

(J) filing of dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

(4) ***Requirements of Joint Report and Proposed Scheduling Order.*** Unless the court orders otherwise for good cause, the partiesô Proposed Scheduling Order must set the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the action commenced. The Joint Report must certify that the parties conferred regarding the subjects set forth in Rule 16(d). The attorneys of record and all unrepresented parties that have appeared in the action are jointly responsible for arranging and participating in the conference, for attempting in good faith to agree on a Proposed Scheduling Order, and for filing the Joint Report and the Proposed Scheduling Order with the court.

(5) ***Forms.*** The parties must file the Joint Report and the Proposed Scheduling Order using the forms approved by the Supreme Court and set forth in Forms 11-13, Rule 84, Appendix of Forms.

(A) *Expedited.* The parties must use Forms 11(a) and (b) (Expedited Case) when all of the following factors apply:

(i) Every party except defaulted parties has filed an answer;

(ii) There are no third party claims;

(iii) The parties intend to have no more than one expert per side; and

(iv) Each party intends to call no more than four lay witnesses at trial.

(B) *Standard.* The parties must use Forms 12(a) and (b) (Standard Case) if the action is not eligible for management as an Expedited Case or Complex Case.

(C) *Complex.* The parties must use Forms 13(a) and (b) (Complex Case) if the factors enumerated in Rule 8(i)(2) apply, regardless of whether the court has designated the action as complex.

(6) ***Case Designation.*** On any partyôs request, the court may designate any action as expedited, standard, or complex. The court should endeavor to conduct trial in expedited actions within 12 months after the action commenced.

(c) Scheduling Orders.

(1) ***Timing.*** The court must issue a Scheduling Order as soon as practicable either after receiving the partiesô Joint Report and their Proposed Scheduling Order under Rule 16(b) or after holding a Scheduling Conference.

(2) ***Contents.*** The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted under Rule 16(b). The Scheduling Order must also set either (1) a trial date or (2) a date for a Trial-Setting Conference under Rule 16(f) at which a trial date may be set. Absent leave of court, no trial may be set unless the parties certify that they engaged in a settlement conference, or private mediation or that they will do so by a date certain approved by the court. The Scheduling Order also may direct that a party must request a conference with the court before moving for an order relating to discovery. It also may address other appropriate matters.

(3) ***Modification of Dates Established by Scheduling Order.*** The parties may modify the dates established in a Scheduling Order that govern court filings or hearings only for good cause and with the courtôs consent. Once a trial date is set, the parties may modify that date only under Rule 38.1.

(d) Scheduling Conferences in Non-medical Malpractice Actions. Except in medical malpractice actions, on a partyôs written request the court mustð or on its own the court mayð set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) determine what additional disclosures, discovery and related activities will be undertaken and a schedule for those activities;

(2) discuss which form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3);

(3) determine whether the court should enter orders addressing one or more of the following:

(A) setting forth any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;

(B) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information; and

(C) adopting any agreements the parties reach for asserting claims of privilege or of protection for trial preparation materials after production;

(4) determine a schedule for the disclosure of expert witnesses and whether the parties should be required to provide signed reports from retained or specially employed experts setting forth a complete statement of all opinions, the basis and reasons for the opinions, and the facts or data considered by the expert in forming the opinions;

(5) determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D);

(6) determine a date for the disclosure of non-expert witnesses and the order of their disclosure;

(7) determine a deadline for the filing of dispositive motions;

(8) resolve any discovery disputes;

(9) eliminate non-meritorious claims or defenses;

(10) permit the amendment of the pleadings;

(11) assist in identifying those issues of fact that are still contested;

(12) obtain stipulations for the foundation or admissibility of evidence;

(13) determine the desirability of special procedures for managing the action;

(14) consider alternative dispute resolution and determine a deadline for the parties to participate in a settlement conference or private mediation;

(15) determine whether any time limits or procedures set forth in these rules or local rules should be modified or suspended;

(16) determine whether the parties have complied with Rule 26.1;

(17) determine a date for filing the Joint Pretrial Statement required by Rule 16(g);

(18) set a trial date and determine the anticipated number of days needed for trial;

(19) discuss the imposition of time limits on trial proceedings, the use of juror notebooks, the giving of brief pre-voir dire opening statements and preliminary jury instructions, and the effective management of documents and exhibits;

(20) determine how a verbatim record of future proceedings in the action will be made; and

(21) discuss other matters and enter other orders that the court deems appropriate.

(e) Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Actions. This Rule 16(e) applies in medical malpractice actions. Within 5 days after receiving answers or motions from all served defendants, a plaintiff must notify the court so that it can set a Comprehensive Pretrial Conference.

Within 60 days after receiving the notice, the court must conduct a Comprehensive Pretrial Conference. At that Conference, the court and the parties must:

(1) Determine the additional disclosures, discovery and related activities to be undertaken and a schedule for those activities. The schedule must include the depositions to be taken, any medical examination that a defendant desires to be made of a plaintiff, and the additional documents, electronically stored information, and other materials to be exchanged. Except on the partiesô stipulation or on motion showing good cause, only those depositions specifically authorized in the conference may be taken. On any defendantôs request, the court must require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(a)(2) or records ordered to be produced by the court. If records are obtained under such authorization, the party obtaining the records must furnishð at its sole expenseð complete copies to all other parties;

(2) Determine a schedule for the disclosure of standard-of-care and causation expert witnesses. Unless good cause is shown, such disclosure must be simultaneous and be made within 30 to 90 days after the conference, depending on the number and complexity of the issues. Unless good cause is shown, no motion for summary judgment based on the lack of expert testimony may be filed until after the date set for the simultaneous disclosure of expert witnesses;

(3) Determine the order of and dates for the disclosure of all other expert and non-expert witnesses. The deadlines for disclosing all witnesses, expert and non-expert, must be at least 45 days before the close of discovery. Unless extraordinary circumstances are shown, the court must preclude any untimely disclosed witness from testifying at trial;

(4) Determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D);

(5) Determine whether additional non-uniform interrogatories and/or requests for admission or production are necessary and, if so, the number permitted;

(6) Resolve any discovery disputes;

(7) Discuss alternative dispute resolution, including mediation, and binding and non-binding arbitration;

(8) Assure compliance with A.R.S. § 12-570;

(9) Set a date for a mandatory settlement conference;

(10) Set a date for filing the Joint Pretrial Statement required by Rule 16(g);

(11) Set a trial date;

(12) Determine how a verbatim record of future proceedings in the action will be made; and

(13) Discuss other matters and enter other orders that the court deems appropriate.

(f) Trial Setting Conference.

(1) ***Generally.*** If the court has not already set a trial date in a Scheduling Order or otherwise, the court must hold a Trial-Setting Conferenceð as set by the Scheduling Orderð for the purpose of setting a trial date. The conference must be attended in personð or telephonically, as permitted by the courtð by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. If a trial date is not set at the Trial-Setting Conference, the court must schedule another Trial-Setting Conference as soon as practicable for the setting of a trial date.

(2) ***Subject Matter.*** In addition to setting a trial date, the court may discuss at the Trial-Setting Conference:

(A) the status of discovery and any dispositive motions that have been or will be filed;

(B) a date for holding a Trial Management Conference under Rule 16(g);

(C) the imposition of time limits on trial proceedings;

(D) the use of juror questionnaires;

(E) the use of juror notebooks;

(F) the giving of brief pre-voir dire opening statements and preliminary jury instructions;

(G) the effective management of documents and exhibits; and

(H) other matters that the court deems appropriate.

(g) Joint Pretrial Statement: Preparation; Trial Management Conference.

(1) ***Preparation of Joint Pretrial Statement.*** Counsel or the unrepresented parties who will try the action and who are authorized to make binding stipulations must confer and prepare a written Joint Pretrial Statement, signed by each counsel or unrepresented party. The parties must file the Joint Pretrial Statement no later than 10 days before the date of the Trial Management Conference, or if no conference is scheduled, 10 days before trial. Plaintiffs must submit their portion of the Joint Pretrial Statement to all parties no later than 20 days before the date when the

Statement must be filed. All other parties must submit their portion of the Joint Pretrial Statement to all parties no later than 15 days before the date when the Statement must be filed.

(2) ***Contents of Joint Pretrial Statement.*** The parties must prepare the Joint Pretrial Statement as a single document that must contain the following:

(A) Stipulations of material fact and applicable law;

(B) Contested issues of fact and law that the parties agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law that the party believes are material;

(D) A list of witnesses each party intends to call to testify at trial, identifying those witnesses whose testimony will be presented solely by deposition. Each party must list any objection to a witness and the basis for that objection. Unless the court orders otherwise for good cause, no witness may testify at the trial other than those listed;

(E) Each partyôs final list of exhibits to be used at trial for any purpose, including impeachment. Each party must list any objection to an exhibit and the basis for that objection. Unless the court orders otherwise for good cause, no exhibit may be used at trial other than those listed. The parties should identify any exhibits that the stipulate can be admitted into evidence, with such stipulations being subject to court approval;

(F) A statement by each party identifying any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. The parties must designate deposition testimony by transcript page and line numbers. The parties must file with the Joint Pretrial Statement a copy of any proposed deposition summary and the written transcript of designated deposition testimony. Each party must list any objection to the proposed deposition summaries and designated deposition testimony and the basis for that objection. Unless the court orders otherwise for good cause, no deposition testimony may be used at trial other than that designated or counter-designated in the Joint Pretrial Statement or that used solely for impeachment purposes;

(G) a brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party must submit a separate statement for the courtôs consideration;

(H) Requested technical equipment;

(I) Requested interpreters;

(J) If the trial is to a jury, the number of jurors and alternates, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(K) Whether any party is invoking Rule 615 of the Arizona Rules of Evidence regarding the exclusion of witnesses from the courtroom;

(L) A brief description of settlement efforts; and

(M) How a verbatim record of the trial will be made.

(3) ***Delivery of Exhibits.*** Plaintiffs must deliver copies of all their exhibits to all parties no later than 10 days before the date when the Joint Pretrial Statement must be filed. All other parties must deliver copies of all their exhibits to all parties no later than 5 days before the date when the Joint Pretrial Statement must be filed. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before these deadlines.

(4) ***Additional Documents to File if Trial Is to a Jury.*** If the trial is to a jury, the parties mustð on the same day they file the Joint Pretrial Statementð file (A) an agreed-upon set of jury instructions, verdict forms, and voir dire questions, and (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon.

(5) ***Jury Notebooks.*** A party intending to submit a jury notebook to the jurors must serve a copy of the notebook on the other parties no later than 5 days before the Trial Management Conference, or, if no conference is scheduled, no later than 5 days before the trial.

(6) ***Trial Memoranda.*** A party must file any trial memorandum no later than 5 days before the Trial Management Conference, or, if no conference is scheduled, no later than 5 days before the trial.

(7) ***Trial Management Conference.*** Any Trial Management Conference scheduled by the court should be held as close to the time of trial as reasonable under the circumstances. The conference must be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(8) ***Modifications.*** This ruleôs provisions may be modified by court order.

(h) Pretrial Orders. After any conference held under this rule, the court must enter an order reciting the action taken. This order controls the later course of the action unless modified by a later court order. The order entered after a Trial Management Conference under Rule 16(g) may be modified only to prevent manifest injustice.

(i) Sanctions.

(1) ***Generally.*** Except on a showing of good cause, the courtð on motion or on its ownð must enter such orders as are justð including, among others, any of the orders in Rule 37(b)(2)(B), (C), or (D)ð if a party or attorney:

(A) fails to obey a scheduling or pretrial order or fails to meet the deadlines set in the order;

(B) fails to appear at a Scheduling Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference;

(C) is substantially unprepared to participate in a Scheduling Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference;

(D) fails to participate in good faith in a Scheduling Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference; or

(E) fails to participate in good faith in the preparation of a Joint Report and Proposed Scheduling Order or a Joint Pretrial Statement.

(2) ***Award of Expenses.*** Unless the court finds the conduct substantially justified or that other circumstances make an award of expenses unjust, the court mustð in addition to or in lieu of any other sanctionð require the party, the attorney representing the party, or both to pay:

(A) another partyøs reasonable expenses, including attorneyøs fees, incurred as a result of the conduct;

(B) an assessment to the clerk; or

(C) both.

(3) ***Trial Date.*** The fact that a trial date has not been set does not preclude sanctions under this rule, including the sanction of excluding untimely disclosed information from evidence.

(j) Alternative Dispute Resolution. On motionð or on its own after consulting with the partiesð the court may direct the parties to submit the dispute that is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

(k) Time Limits. The court may impose reasonable time limits on trial proceedings.

* * *

Comment

2017 Amendment

Federal Rule of Civil Procedure 26(b)(1) was amended effective December 1, 2015, to expressly use the word ñproportionalò in describing the scope of discovery. The amendments to Arizona Rules of Civil Procedure 16(a) and 26(b)(1)(C) have not been amended to incorporate use of the word ñproportional,ò but instead Rule 16(a)(3) uses the word ñappropriate.ò This was done to avoid any possible misreading of the rules that might place undue emphasis on any one factor (e.g., the amount in controversy). No single factor is intended to be dispositive in all cases, but rather the factors should be considered together in determining the appropriateness of given discovery in an action. While the language of the ñproportionalò versus ñappropriateò differs, the factors under Federal Rule of Civil Procedure 26(b)(1) for reaching that determination are similar to those under amended Arizona Rule of Civil Procedure 16(a)(3) and 26(b)(1)(C).

Rule 16.1. Settlement Conferences: Objectives

(a) Generally. At any partyôs request or on its own, a court may hold one or more pretrial settlement conferences unless the action is a lower court appeal or is subject to compulsory arbitration under Rule 72. A pretrial settlement conference must be held in a medical malpractice action.

(b) Deadlines and Scheduling.

(1) ***Timing.***

(A) In a medical malpractice action, the court must schedule and conduct a settlement conference no earlier than 4 months after the Rule 16(e) conference and no later than 30 days before trial.

(B) In all other actions, the Scheduling Order sets the deadline for a settlement conference, unless the court orders otherwise.

(2) ***Scheduling and Planning.*** The order setting a settlement conference should include the date, time and place of the conference, the deadline by which settlement conference memoranda must be submitted, and other matters the court deems appropriate. An order setting a settlement conference may not be modified except by court order for good cause.

(c) Settlement Conference Memoranda.

(1) ***Requirement and Timing.*** Each party must submit a settlement conference memorandum to the court at least 5 days before the settlement conference.

(2) ***Method of Submission.***

(A) In a medical malpractice action, a settlement conference memorandum must be filed and served on all other parties participating in the conference.

(B) In all other actions, a settlement conference memorandum must not be filed. Instead, it must be delivered under seal to the judge assigned to the action. Unless the court orders otherwise, the memorandum does not need to be served on the other parties.

(3) ***Contents.*** Each settlement conference memorandum must provide:

(A) a general description of the claims, defenses and issues in the action, and the partyôs position on each claim, defense and issue;

(B) a general description of the evidence that that the party anticipates presenting at trial;

(C) a summary of any settlement negotiations that have already occurred;

(D) the partyôs assessment of the likely outcome if the action proceeds to trial; and

(E) any other information that might be helpful to the settling the action.

(4) ***Admissibility.*** No part of any settlement conference memorandum is admissible in evidence.

(d) Attendance. Every party and its counsel must attend a settlement conference unless specifically excused by the court for good cause. Additionally, each party must have a representative present who has actual authority to enter into a binding settlement agreement. All participants must appear in person unless the parties agree or the court orders otherwise.

(e) Confidentiality. The court may order that discussions between the court and a party or the partyôs counsel during a settlement conference be treated confidentially and not be revealed to others.

(f) Transfer. On motion or on its own, the court may transfer a settlement conference to another court division that is willing to conduct the conference.

(g) ***Ex Parte*** **Communications.** The court, with the consent of the parties participating in the conference, may engage in *ex parte* communications if the court believes it might facilitate the actionôs settlement.

(h) Sanctions. A court may enter any of the sanctions provided in Rule 16(i) if a party or its counsel is substantially unprepared to participate in a settlement conference or fails to participate in the conference in good faith.

Rule 16.2. Initial Case Management Conference in Actions Assigned to the Complex Civil Litigation Program

(a) Conference; Subjects for Consideration. Once an action is determined to be a complex civil action under Rule 8(h)(6), the court must conduct an initial case management conference at the earliest practical date with all represented parties, and must promptly enter a Case Management Order after the conference. Among the subjects that should be considered at such a conference are:

(1) the status of parties and pleadings;

(2) determining whether severance, consolidation, or coordination with other actions is desirable;

(3) scheduling motions to dismiss or other preliminary motions;

(4) scheduling class certification motions, if applicable;

(5) scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master;

(6) issuing protective orders;

(7) any requirements or limitations for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;

(8) any measures the parties must take to preserve discoverable documents or electronically stored information;

(9) any agreements reached by the parties for asserting claims of privilege or of protection as to trial-preparation materials after production;

(10) appointing liaison counsel and admission of non-resident counsel;

(11) scheduling settlement conferences;

(12) whether the requirements and timing for disclosure under Rule 26.1 should be varied;

(13) scheduling expert disclosures and whether sequencing of expert disclosures is warranted;

(14) scheduling dispositive motions;

(15) adopting a uniform numbering system for documents and establishing a document depository;

(16) determining whether electronic service of discovery materials and pleadings is warranted;

(17) organizing a master list of contact information for counsel;

(18) determining whether expedited trial proceedings are desired or appropriate;

(19) scheduling further conferences as necessary;

(20) use of technology, videoconferencing and/or teleconferencing;

(21) determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination of these procedures; and

(22) such other matters as the court or the parties deem appropriate in managing or expediting the action.

(b) Meeting of Parties Before Conference. Before the initial case management conference, all parties who have appeared in the action, or their counsel, must meet and confer concerning the matters to be raised at the conference, must attempt in good faith to reach agreement on as many case management issues as possible, and must submit a joint report to the court no later than 7 days before the conference. The court may sanction a party or its counsel if the party or counsel fails to participate in good faith in this meeting.

(c) Purpose of Conference. The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(d) Establishing Time Limits. Time limits should be regularly used to expedite major phases of a complex civil action. Time limits should be established early, tailored to the circumstances of each action, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference must be set by the court as early as possible.

(e) Commencement of Discovery. Unless the parties agree by stipulation filed with the court or the court orders otherwise, no party may initiate discovery or disclosure in a complex civil action until the court has entered a Case Management Order in the action.

IV. PARTIES

Rule 17. Plaintiff and Defendant; Capacity; Public Officers

(a) Real Party in Interest.

(1) ***Designation Generally.*** An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) a personal representative or executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for anotherôs benefit; and

(G) a party authorized by statute.

(2) ***Action in the Name of the State for Another's Use or Benefit.*** When a state statute so provides, an action for anotherôs use or benefit must be brought in the name of the State of Arizona.

(3) ***Joinder of the Real Party in Interest.*** The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

(b) Actions by Personal Representatives; Setting Aside Judgment. An executor, administrator, or guardian may commence or maintain any action that the testator or intestate could have commenced or maintained, and an action may be brought against an executor, administrator, or guardian if it could have been brought against the testator or intestate. The judgment in such an action is as conclusive as if it was rendered in favor of or against the testator or intestate. An interested person may apply to set aside the judgment on the ground that it resulted from fraud or collusion by the executor, administrator, or guardian.

(c) Actions by or Against a County, City, or Town. An action brought by or against a county or an incorporated city or town must use its corporate name when identifying it as a party.

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be identified as a party by the officerôs official title rather than by name, provided that it is sufficient to identify the particular public officer being sued, but the court may require the officerôs name to be used or added to identify the officer as the party.

(e) Actions Against a Surety, Assignor, or Endorser. A plaintiff may sue a contractual assignor, endorser, guarantor, surety, or the drawer of a bill that has been accepted, without joining the maker, acceptor, or other principal obligor if:

(1) the latter resides outside Arizona, or in a part of Arizona where it cannot be served under Rules 4, 4.1, or 4.2;

(2) the latterôs residence is unknown and cannot be ascertained through reasonable diligence;

(3) the latter is dead; or

(4) the latter is insolvent.

(f) Minor or Incompetent Person.

(1) ***With a Representative.*** The following representatives may sue or defend on behalf of a minor or an incompetent person:

(A) a general guardian;

(B) a conservator; or

(C) a similar fiduciary.

(2) ***Without a Representative.***

(A) *Generally.* A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litemð or issue another appropriate orderð to protect a minor or incompetent person who is unrepresented in an action.

(B) *Consent.* No person may be appointed guardian ad litem unless the person files a written consent to the appointment.

(C) *Bond.* If a next friend or guardian ad litem brings an action on behalf of a minor, that person may not receive any of the minorôs money or property without filing a bond as security in an amount and under such terms as the court approves.

(D) *Liability for Costs.* Unless the court orders otherwise, a next friend or guardian ad litem may not be held personally liable for costs.

(E) *Compensation.* The court may award reasonable compensation to a next friend or a guardian ad litem for their services, which must be taxed as part of the actionôs costs.

(g) Partnerships. A partnership may sue and be sued in the name that it has adopted or by which it is known.

Rule 18. Joinder of Claims

(a) Generally. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

(b) Joinder of Contingent Claims. A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the partiesô relative substantive rights. In particular, a party may state a claim for money and a claim to set aside a conveyance that is fraudulent as to that party, without first obtaining a judgment for the money.

Rule 19. Required Joinder of Parties

(a) Persons Required to Be Joined if Feasible.

(1) ***A Person Required to Be Made a Party.*** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that personôs absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the personôs absence may:

(i) as a practical matter impair or impede the personôs ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) ***Joinder by Court Order.*** If a person required to be made a party has not been joined, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) ***Venue.*** If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the personôs absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the personôs absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

(c) Pleading the Reasons for Nonjoinder. When asserting a claim for relief, a party must state:

(1) the name, if known, of any person required to be joined if feasible who is not joined; and

(2) the reasons for not joining that person.

(d) Exception of Class Actions. This rule is subject to Rule 23.

Rule 20. Permissive Joinder of Parties

(a) Persons Who May Join or Be Joined.

(1) ***Plaintiffs.*** Persons may join in one action as plaintiffs if:

(A) they assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all plaintiffs will arise in the action.

(2) ***Defendants*.** Persons may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

(3) ***Extent of Relief*.** Neither a plaintiff nor a defendant need be interested in obtaining or defending against all the relief demanded. The court may grant judgment to one or more plaintiffs according to their rights, and against one or more defendants according to their liabilities.

(b) Protective Measures. The court may issue ordersð including an order for separate trialsð to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party.

Rule 21. Improper Joinder and Non-joinder of Parties; Severance

Joinder of a party that is not permitted under Rule 20(a) is not a ground to dismiss an entire action. At any timeð on just termsð the court may dismiss an improperly joined party or join any party who may be properly joined under Rule 20(a). The court may also sever any claim against a party, and that severed claim may proceed as a separate and independent action.

Rule 22. Interpleader

(a) Grounds.

(1) ***Generally.*** Interpleader is a procedure where one holding money or property subject to adverse claims may seek to avoid multiple liability by joining in a single action anyone who asserts or may assert claims to the money or property.

(2) ***By a Plaintiff.*** A plaintiff may join as defendants anyone who asserts or may assert claims to the money or property.

(3) ***By a Defendant.*** A defendant may seek interpleader through a crossclaim or counterclaim.

(4) ***Propriety of Interpleader.*** Interpleader is proper even though:

(A) the claims, or the titles on which the claims depend, do not have ~~lack~~ a common origin or are adverse and independent rather than identical; or[1]

(B) the party requesting interpleader denies liability in whole or in part to any or all of the claimants.

(b) Release from Liability Upon Deposit or Delivery. A party requesting interpleader under Rule 22(a) may move the court for an order discharging that party from liability to the claimants. The court may discharge the party upon:

(1) the partyôs deposit in court of the money claimed; or

(2) the partyôs delivery of the property as the court directs.

(c) Relation to Other Rules. This rule supplementsð and does not limitð the joinder of parties allowed by Rule 20.

Rule 23. Class Actions

(a) Prerequisites. One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(1) prosecuting separate actions by or against individual class members would create a risk of:

(A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudications with respect to individual class members thatð as a practical matterð would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede the other membersô ability to protect their interests;

[1] "Do not have…" is more user-friendly than "lack".

(2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate for the class as a whole; or

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) the class membersô interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) ***Certification Order.***

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must hold a hearing and determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must:

(i) define the class and the class claims, issues, or defenses; and

(ii) appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before final judgment.

(2) ***Notice.***

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

(B) *For (b)(3) Classes.* For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified

through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) ***Judgment.*** Whether or not favorable to the class, the judgment in a class action must:

(A) for any class certified under Rule 23(b)(1) or (b)(2), include and describe those whom the court finds to be class members; and

(B) for any class certified under Rule 23(b)(3), include and specify or describe those to whom the Rule 23(c)(2) notice was directed, who have not requested exclusion, and whom the court finds to be class members.

(4) ***Particular Issues.*** When appropriate, an action may be brought or maintained as a class action with respect to particular issues.

(5) ***Subclasses.*** When appropriate, a class may be divided into subclasses that are each treated as a class under this rule.

(d) Conducting the Action.

(1) ***Generally.*** In conducting an action under this rule, the court may issue orders that:

(A) determine the course of proceedings or prescribe measures to prevent undue repetition or complication in presenting evidence or argument;

(B) requireð to protect class members and fairly conduct the actionð giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the membersô opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise come into the action;

(C) impose conditions on the representative parties or on intervenors;

(D) require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly; or

(E) deal with similar procedural matters.

(2) ***Combining and Amending Orders.*** An order under Rule 23(d)(1) may be altered or amended from time to time and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the courtôs approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

(1) the court must direct notice in a reasonable manner to all class members who would be bound by the proposal;

(2) if the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate;

(3) the parties seeking approval must file a statement identifying any agreement made in connection with the proposal;

(4) if the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion by individual class members who had an earlier opportunity to request exclusion but did not do so; and

(5) any class member may object to the proposal if it requires court approval under this rule; the objection may be withdrawn only with the courtôs approval.

(f) Appeals. The courtôs order certifying or denying class action status is appealable in the same manner as a final order or judgment. During the pendency of an appeal under A.R.S. § 12-1873, all discovery and other proceedings are stayed except thatð on motionð the court may permit discovery to continue.

(g) Class Counsel.

(1) ***Appointing Class Counsel.*** Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counselôs experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counselôs knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counselôs ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorneyôs fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorneyôs fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) ***Standard for Appointing Class Counsel.*** When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) ***Interim Counsel.*** The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) ***Duty of Class Counsel.*** Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorneyôs fees and nontaxable costs that are authorized by law or by the partiesô agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(g)ð subject to the provisions of this ruleð at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master, as provided in Rule 53.

Rule 23.1. Derivative Actions

(a) Applicability. This rule applies when one or more shareholders, members, or partnersð as applicableð of a corporation, limited liability company, limited partnership, or unincorporated association bring a derivative action to enforce a right that the corporation, limited liability company, limited partnership, or unincorporated association may properly assert but has failed to enforce.

(b) Pleading Requirements. The complaint must:

(1) be verified;

(2) allege facts sufficient to show that the plaintiff has standing to maintain the derivative action; and

(3) allege facts sufficient to show that the plaintiff satisfies all statutory and other requirements under the law for maintaining the derivative action.

(c) Settlement, Voluntary Dismissal, and Compromise. A derivative action may not be settled, voluntarily dismissed, or compromised without court approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders, members, or partnersð as applicableð in the manner that the court orders. If the court determines that a proposed settlement, voluntary dismissal, or compromise will substantially affect the interests of the shareholders, members, or partnersð or a class of shareholders, members, or partnersð the court must order that notice be given to the affected shareholders, members or partners.

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may enter any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) has an unconditional right to intervene under a statute; or

(2) claims an interest relating to the subject of the action, and is so situated that disposing of the action in the personôs absence may as a practical matter impair or impede the personôs ability to protect that interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) ***Generally.*** On timely motion, the court may permit anyone to intervene who:

(A) has a conditional right to intervene under a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) ***By a Government Officer or Agency.*** On timely motion, the court may permit a state governmental officer or agency to intervene if a partyôs claim or defense is based on:

(A) a statute administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency.

(3) ***Delay or Prejudice.*** In exercising its discretion over permissive intervention, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original partiesô rights.

(c) Procedure.

(1) ***Requirements of Motion.*** Anyone moving to intervene must:

(A) serve the motion on the parties as provided in Rule 5; and

(B) attach as an exhibit to the motion a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought.

(2) ***Filing and Service of Pleading in Intervention.*** Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene.

(3) ***Response to Pleading in Intervention.*** If the pleading in intervention is one to which a party must respond, that party must plead in response to the pleading in

intervention within 20 days after it is served. If the pleading in intervention does not require a party to file a responsive pleading, that party may plead in response to the pleading in intervention within 20 days after it is served.

Rule 25. Substitution of Parties

(a) Death.

(1) ***Substitution if the Claim Is Not Extinguished.*** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedentôs successor or representative may file a motion to substitute. If the motion is not made within 90 days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

(2) ***Statement Noting Death.*** A party or the decedentôs successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedentôs successor or representative if one exists and is known by the party filing the statement. Anyone filing a statement noting death must serve the statement on the parties as provided in Rule 5 and on nonparties in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(3) ***Service of Motion to Substitute.*** Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 5 and on the decedentôs successor or representative in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(4) ***Continuation Among the Remaining Parties.*** After a partyôs death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(b) Incompetency. If a party becomes incompetent, the court mayð on motion or on stipulation of the parties and the incompetent partyôs representativeð permit the action to be continued by or against the partyôs representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5 and on the representative of the incompetent party in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(c) Transfer of Interest. If a partyôs interest is transferred, the action may be continued by or against that party, unless the courtð on motion or on stipulation of the parties and the transfereeð orders the transferee to be substituted in the action or joined with the

original party. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5 and on the transferee in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officerôs successor is automatically substituted as a party. Counsel for the public officer must file a notice of the substitution and later proceedings should be in the substituted partyôs name, but any misnomer not affecting the partiesô substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

V. DISCLOSURE AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

(1) depositions by oral examination or written questions under Rules 30 and 31, respectively;

(2) written interrogatories under Rule 33;

(3) production of documents or things or permission to enter onto land or other property, for inspection and other purposes under Rule 34;

(4) physical and mental examinations under Rule 35;

(5) requests for admission under Rule 36; and

(6) subpoenas for production of documentary evidence or for inspection of premises under Rule 45(c).

(b) Discovery Scope and Limits. Unless the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

(1) ***Generally.***

(A) *Scope.* Parties may obtain discovery regarding any nonprivileged matter that is relevant to the subject matter of the pending action, including matters relevant to: (i) the claim or defense of any party; (ii) the existence, description, nature, custody, condition and location of any books, documents, or other tangible things; and (iii) the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought

will be inadmissible at the trial if that information appears reasonably calculated to lead to the discovery of admissible evidence.

(B) *Specific Limits on Discovery of Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 26(b)(1)(C). The court may specify conditions for the disclosure or discovery.

(C) *Limits on Discovery.* The courtð on motion under Rule 26(c) or on its own after reasonable notice to the partiesð must limit discovery that would otherwise be permissible if it determines that the discovery: (i) is unreasonably cumulative or duplicative; (ii) can be obtained from another source that is more convenient, less burdensome, or less expensive; (iii) seeks information that the party has had ample opportunity to obtain; or (iv) is unduly burdensome or expensive given the needs of the action, the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, and the partiesô resources.

(2) ***Insurance Agreements.*** Disclosure of insurance agreements is required under Rule 26.1(a)(10).

(3) ***Work Product and Witness Statements.***

(A) *Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial*. Ordinarily, a party may not discover documents and tangible things that another party or its representative (including the other partyôs attorney, consultant, surety, indemnitor, insurer, or agent) prepared in anticipation of litigation or for trial. But, subject to Rule 26(b)(4), a party may discover those materials if:

(i) the materials are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure of Opinion Work Product.* If the court orders discovery of materials under Rule 26(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of partyôs attorney or other representative concerning the litigation.

(C) *Discovery of Own Statement.* Any party or other person mayð on request and without the showing required under Rule 26(b)(3)(A)ð obtain the partyøs or other personøs own previous statement about the action or its subject matter. If the request is refused, the party or other person may move for a court order, and Rule 37(a)(4) applies to the award of expenses. A statement discoverable under this rule is either:

(i) a written statement that the party or other person signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, video, audio, or other recordingð or a transcription of itð that recites substantially verbatim the partyøs or other personøs oral statement.

(4) ***Expert Discovery.***

(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been disclosed as an expert witness under Rule 26.1(a)(6).

(B) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. A party may discover such facts or opinions only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

(i) pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (B); and

(ii) for discovery under Rule 26(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expertøs facts and opinions.

(D) *Number of Experts Per Issue.*

(i) *Generally.* Unless the parties agree or the court orders otherwise for good cause, each side is presumptively entitled to call only one retained or specially employed expert to testify on an issue. When there are multiple parties on a side and those parties cannot agree on which expert to call on an

issue, the court may designate the expert to be called orð for good causeð allow more than one expert to be called.

(ii) *Standard-of-Care Experts in Medical Malpractice Actions.* Notwithstanding the limits of Rule 26(b)(4)(D)(i), a defendant in a medical malpractice action mayð in addition to that defendantôs standard-of-care expert witnessð testify on the issue of that defendantôs standard-of-care. In such an instance, the court is not required to allow the plaintiff an additional expert witness on the issue of the standard-of-care.

(5) ***Notice of Non-party at Fault.*** No later than 150 days after filing its answer, a party must serve on all other partiesð and may file with the courtð a notice disclosing any person: (A) not currently or formerly named as a party in the action; and (B) whom the party alleges was wholly or partly at fault under A.R.S. § 12-2506(B). The notice must: (A) disclose the identity and location of the non-party allegedly at fault; and (B) disclose the facts supporting the allegation of fault. The trier of fact may not allocate any percentage of fault to a non-party who is not disclosed in accordance with this rule except on stipulation of all the parties or on motion showing good cause, reasonable diligence, and lack of unfair prejudice to all other parties.

(c) Protective Orders.

(1) ***Generally.*** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pendingð or alternatively, on matters relating to a deposition, the court in the county where the deposition will be taken. Subject to Rule 26(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the discovery;

(B) specifying terms and conditions, including time and place, for the discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) ***Ordering Discovery.*** If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) ***Awarding Expenses.*** Rule 37(a)(4) applies to the award of expenses on a motion for a protective order.

(4) ***Confidentiality Orders.***

(A) *Burden of Proof.* Before the court may enter an order that limits a party or person from disclosing information or materials produced in the action to a person who is not a party to the action and before the court may deny an intervenorôs request for access to such discovery materials: (a) the party seeking confidentiality must show why a confidentiality order should be entered or continued; and (b) the party or intervenor opposing confidentiality must show why a confidentiality order should be denied in whole or in part, modified or vacated. The burden of showing good cause for an order remains with the party seeking confidentiality.

(B) *Findings of Fact.* When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to: (i) any partyôs or personôs need to maintain the confidentiality of such information or materials; (ii) any nonpartyôs or intervenorôs need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal. No such findings of fact are needed if the parties have stipulated to such an order or if a motion to intervene and to obtain access to materials subject to a confidentiality order is unopposed.

(C) *Least Restrictive Means.* An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

(d) Sequence of Discovery. Unless, on motion, the court orders otherwise for the partiesô and witnessesô convenience and in the interests of justice:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

(e) Supplementing Discovery Responses. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect.

(f) Sanctions. The court may impose an appropriate sanctionð including any order under Rule 16(i)ð against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(g) Discovery Motions. Any discovery motion must attach a good faith consultation certificate complying with Rule 7.2(h).

Rule 26.1. Prompt Disclosure of Information

(a) Duty to Disclose; Disclosure Categories. Within the times set forth in Rule 26.1(d) or in a Scheduling Order, each party must disclose in writing and serve on all other parties a disclosure statement that sets forth:

(1) The factual basis of each of the disclosing partyôs claims or defenses;

(2) The legal theory on which each of the disclosing partyôs claims or defenses is based, includingð if necessary for a reasonable understanding of the claim or defenseð citations to relevant legal authorities;

(3) The name, address, and telephone number of each witness whom the disclosing party expects to call at trial, and a description of the substanceð and not merely the subject matterð of the testimony sufficient to fairly inform the other parties of each witnessôexpected testimony;

(4) The name and address of each person whom the disclosing party believes may have knowledge or information relevant to the subject matter of the action, and a fair description of the nature of the knowledge or information each such person is believed to possess;

(5) The name and address of each person who has given a statementð as defined in Rule 26(b)(3)(C)(i) and (ii)ð relevant to the subject matter of the action, and the custodian of each of those statements;

(6) The name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the expertôs qualifications, and the name and address of the custodian of copies of any reports prepared by the expert;

(7) A computation and measure of each category of damages alleged by the disclosing party, the documents or testimony on which such computation and measure are based, and the name, address, and telephone number of each witness whom the disclosing party expects to call at trial to testify on damage;

(8) The existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party plans to use at trial;

(9) The existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party believes may be relevant to the subject matter of the action; and

(10) For any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, (A) the existence and contents of the insurance policy, indemnity agreement, or suretyship agreement; (B) the existence and contents of any disclaimer, limitation or denial of coverage or reservation of rights under the insurance policy, indemnity agreement, or suretyship agreement; and (C) the remaining dollar limits of coverage under the insurance policy, indemnity agreement or suretyship agreement. A party need only supplement its disclosure regarding the remaining dollar limits of coverage upon another partyôs written request made within 30 days before a settlement conference or mediation or within 30 days before trial. Within 10 days after such a request is served, a party must supplement its disclosure of the remaining dollar limits of coverage. For purposes of this rule, an insurance policy means a contract of or agreement for or effecting insurance, or the certificate memorializing itð by whatever name it is calledð and includes all clauses, riders, endorsements, and papers attached to, or a part of, it, but does not include an application for insurance. Information concerning an insurance policy, indemnity agreement, or suretyship agreement is not admissible in evidence merely because it is disclosed under this rule.

(b) Disclosure of Hard Copy Documents and Electronically Stored Information.

(1) ***Hard Copy Documents.*** Unless there is good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule 26.1(a)(8), (9), and (10). If production is not so made, the party must provide with its disclosure the name and address of the custodian of the documents. A party who produces hard copy documents for inspection must produce them as they are kept in the usual course of business.

(2) ***Electronically Stored Information.***

(A) *Duty to Confer.* When the existence of electronically stored information is disclosed or discovered, the parties must confer promptly and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;

(ii) the form in which the information will be produced; and

(iii) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(B) *Resolution of Disputes.* If the parties are unable to satisfactorily resolve any dispute, they may present it to the court for resolution in a single joint motion. The joint motion must include the partiesô positions and the separate certification from all counsel required under Rule 26(g).

(C) *Production of Electronically Stored Information.* Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule 26.1(a)(8) and (9). Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) *Presumptive Form of Production.* Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

(c) Purpose; Scope.

(1) ***Purpose.*** The purpose of the disclosure requirements of this Rule 26.1 is to ensure that all parties are fairly informed of the facts, legal theories, witnesses, documents, and other information relevant to the action.

(2) ***Scope.*** A party must include in its disclosures information and data in its possession, custody and control as well as that which it can ascertain, learn, or acquire by reasonable inquiry and investigation.

(d) Time for Disclosure; Continuing Duty.

(1) ***Initial Disclosures.*** Unless the parties agree or the court orders otherwise, a party seeking affirmative relief must serve its initial disclosure of information under Rule 26.1(a) as fully as then reasonably possible no later than 40 days after the filing of the first responsive pleading to the complaint, counterclaim, crossclaim or third party complaint that sets forth the partyôs claim for affirmative relief. Unless the parties agree or the court orders otherwise, a party filing a responsive pleading must serve its initial disclosure of information under Rule 26.1(a) as fully as then reasonably possible no later than 40 days after it files its responsive pleading.

(2) ***Additional or Amended Disclosures.*** The duty of disclosure prescribed in Rule 26.1(a) is a continuing duty, and each party must serve additional or amended disclosures whenever new or additional information is discovered or revealed. A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is revealed to or discovered by the disclosing party. If the information is disclosed in a written discovery response or a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement. A party seeking to use information that it first disclosed later than the deadline set in a Scheduling Orderð or in the absence of such a deadline, later than 60 days before trialð must obtain leave of court to extend the time for disclosure as provided in Rule 37(c)(2) or (c)(3).

(e) Signature Under Oath. Each disclosure must be in writing and signed under oath by the party making the disclosure.

(f) Claims of Privilege or Protection of Work Product Materials.

(1) ***Information Withheld*.** When a party withholds information from disclosure or discovery on a claim that it is privileged or subject to protection as work product, the party must:

(A) expressly make the claim; and

(B) describe the nature of the information not produced or disclosed in a manner thatð without revealing information that is itself privileged or protectedð will enable other parties to assess the claim.

(2) ***Information Produced.*** If a party contends that information subject to a claim of privilege or of protection as work product material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party who received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

Rule 26.2. Exchange of Records and Discovery Limits in Medical Malpractice Actions

(a) Exchange of Medical Records.

(1) ***By Plaintiff.*** Within 5 days after the date that plaintiff notifies the court under Rule 16(e) that all served defendants have either answered or filed motions, plaintiff must serve on defendants copies of all of plaintiffôs available medical records relevant to the condition that is the subject matter of the action.

(2) ***By Defendants.*** Within 10 days after the date plaintiff serves medical records under Rule 26.2(a)(1), each defendant must serve on plaintiff copies of all of plaintiffôs available medical records relevant to the condition that is the subject matter of the action.

(3) ***By Request.*** In lieu of serving copies of the above-described medical records, counsel mayð before the deadline for service of the recordsð inquire of opposing counsel concerning the records that opposing counsel wishes produced and may then serve by the deadline copies of only those records specifically requested.

(b) Discovery Limits Before Comprehensive Pretrial Conference.

(1) ***Generally.*** Unless the parties agree or the court orders otherwise for good cause, the parties are limited to the following discovery before the Comprehensive Pretrial Conference under Rule 16(e) is held:

(A) Service of the uniform interrogatories set forth in Rule 84, Form 4;

(B) Service of 10 additional non-uniform interrogatories under Rule 33, with any subpart to a non-uniform interrogatory counting as a separate interrogatory;

(C) Service of a request for production of documents under Rule 34, limited to the following items:

(i) a partyôs wage information if relevant;

(ii) written or recorded statements by any party or witness, including reports or statements of experts;

(iii) any exhibits the party intends to use at trial; and

(iv) incident reports; and

(D) Depositions of the parties and any known liability experts.

(2) ***Stipulations for Additional Discovery.*** A party may not unreasonably withhold a stipulation for additional discovery under Rule 26.2(b)(1). A party or counsel who unreasonably withholds a stipulation for additional discovery is subject to sanctions under Rule 26(f).

Rule 27. Discovery Before an Action Is Filed or During an Appeal

(a) Before an Action Is Filed.

(1) ***Petition.*** A person who wants to perpetuate testimony or to obtain discovery to preserve evidence about any matter cognizable in any Arizona state court may file a verified petition in the superior court in the county where any expected adverse party resides. The petition must be titled in the petitionerôs name and must:

(A) show that the petitioner expects to be a party to an action cognizable in any Arizona state court but cannot presently bring it or cause it to be brought;

(B) identify the subject matter of the expected action and the petitionerôs interest;

(C) show the facts that the petitioner desires to establish by the proposed discovery and the reasons for perpetuating it in advance of the expected action;

(D) identify the name or a description of each person whom the petitioner expects to be an adverse party and the personôs address to the extent known;

(E) identify the name and address of each person from whom discovery is soughtð who may but need not be a person identified as an expected adverse party under Rule 27(a)(1)(D)ð and the evidence the petitioner expects to obtain from the discovery; and

(F) ask for an order: (i) directing the clerk to issue a subpoena under Rule 45 at the petitionerôs request to obtain evidence from each named person in order to preserve the evidence; or (ii) under Rule 35 for a physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party.

(2) ***Hearing Required.*** Unless the petitioner and all expected adverse parties file a stipulation agreeing to the discovery requested in the petition, the court must hold a hearing on the relief that the petition seeks.

(3) ***Notice and Service.*** At least 20 days before the hearing date, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing. If an expected adverse party is a minor or incompetent, Rule 17(g) applies. The petition and notice may be served either inside or outside Arizona in the manner provided in Rules 4, 4.1, or 4.2 for serving a summons and pleading. If the petition seeks an order under Rule 35 for a physical or mental examination, the petition and notice must be served on the expected adverse party whose examination is sought or who has custody or legal control of the person whose examination is sought. In all other instances, if service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise.

(4) ***Opposition and Reply.*** At least 7 calendar days before the hearing date, any expected adverse party may file an opposition to the petition. The opposition must be served on the petitioner and each other expected adverse party using any of the methods described in Rule 5(c). Unless the court orders otherwise, the petitioner may not file a reply memorandum.

(5) ***Order and Effect.***

(A) *Order*. If satisfied that perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, the court must enter an order that identifies each person who may be served with a subpoena under Rule 45 to obtain testimony or to allow inspection of documents or premises and specifies the subject matter of the permitted examination.

(B) *Effect and Use*. Discovery authorized by the court must be conducted, and may be used, as provided in these rules. A reference in these rules to the court where an action is pending meansð for this ruleôs purposesð the court where the petition for the discovery was filed. A deposition to perpetuate testimony taken under these rules may be used under Rule 32(a) in any later-filed action in an Arizona state court involving the same subject matter. Subpoena recipients have

the rights of non-parties under Rule 45 regardless of whether they are identified as an expected adverse party under Rule 27(a)(1)(D).

(C) *Appointment of Counsel*. If a court authorizes a deposition but an expected adverse party is not served in the manner provided in Rules 4, 4.1, or 4.2 and is otherwise unrepresented by counsel, the court must appoint an attorney to represent that expected adverse party and to cross-examine the deponent. The petitioner must pay for an appointed attorneyôs services in an amount fixed by the court.

(b) Pending Appeal.

(1) ***Generally.*** The superior court that rendered judgment mayð if an appeal has been taken or may still be takenð permit a party to conduct discovery under the rules to preserve evidence for use in any later superior court proceedings in that action.

(2) ***Motion.*** The party who wants to perpetuate testimony or preserve evidence under the rules may move for leave to conduct discovery. The moving party must provide the same notice and serve the motion in the same manner as if the action was still pending in superior court. The motion must:

(A) identify the name and address of each person to be deposed or from whom discovery under the rules is sought, and the expected substance of the testimony or other discovery; and

(B) show the reasons for perpetuating the testimony or other discovery.

(3) ***Order and Effect.*** If satisfied that perpetuating the testimony or preserving the other evidence may prevent a failure or delay of justice, the court may order the requested discovery to be taken. Discovery authorized by the court must be conducted, and may be used, as provided in these rules.

Rule 28. Persons Before Whom Depositions May Be Taken; Depositions in Foreign Countries; Letters of Request and Commissions

(a) Deposition in the United States.

(1) ***Generally.*** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths by federal law, Arizona law, or the law in the place of examination;

(B) a person appointed by the court where the action is pending to administer oaths and take testimony; or

(C) any certified reporter designated by the parties under Rule 29.

(2) ***Definition of "Officer".*** The term ñofficerò as used in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29.

(b) Deposition in a Foreign Country.

(1) ***Generally.*** A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a ñletter rogatoryò;

(C) on notice, before a person authorized to administer oaths by federal law, Arizona law, or the law in the place of examination; or

(D) before a person commissioned by the court where the action is pending to administer any necessary oath and take testimony.

(2) ***Form of a Request, Notice or Commission.*** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed ñTo the Appropriate Authority in [name of country].ò A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(3) ***Letter of Request—Admitting Evidence.*** Evidence obtained in response to a letter of request need not be excluded because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Letters of Request and Commissions.

(1) ***Not Required.*** A deposition in a pending superior court action may be taken anywhere upon notice prescribed by these rules without a letter of request, commission, or other like writ.

(2) ***Issuing Letter of Request or Commission.*** The clerk may issue a letter of requestð whether or not captioned a ñletter rogatoryòð a commission, or both:

(A) on appropriate terms after an application and one full dayôs notice to the other parties; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) ***Objections; Waiver.*** A party waives any error in the form of a letter of request or commission if it does not file a written objection before the clerk issues the letter of request or commission. The court must rule on any timely filed objection before the clerk may issue a letter of request or commission.

(d) Disqualification. A deposition may not be taken before a person who is:

(1) any partyôs relative, employee, or attorney;

(2) related to or employed by any partyôs attorney; or

(3) financially interested in the action.

Rule 29. Modifying Discovery Procedures and Deadlines

(a) By Stipulation.

(1) ***Generally.*** Unless the court orders otherwise, the parties may stipulate to:

(A) take a deposition before any certified reporter, at any time or place, on any notice, and in any manner specifiedð in which event it may be used in the same way as any other deposition; and

(B) modify other procedures in these rules governing or limiting discovery.

(2) ***Court Order.*** Unless it interferes with court-ordered deadlines, the time set for a hearing, or the time set for trial, a stipulation under Rule 29(a)(1) is effective without court order.

(b) By Motion. A party may move to modify any procedure governing or limiting discovery. The motion must:

(1) set forth the modification sought;

(2) show good cause for the modification; and

(3) comply with Rule 26(g).

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) ***Depositions Permitted.*** A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a

party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold a stipulation for additional depositions under this rule.

(2) ***Depositions by Plaintiff Fewer Than 30 Days After Serving the Summons and Complaint.*** A plaintiff must obtain leave of court to take a deposition earlier than 30 days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

(3) ***Incarcerated Deponents.*** Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the personôs custodian or by leave of court on such terms as the court prescribes.

(4) ***Compelling Attendance of Deponent.*** A party may compel a non-party deponentôs attendance by serving a subpoena under Rule 45. A party noticing the deposition of a partyô or an officer, director, or managing agent of a partyô need not serve a subpoena under Rule 45.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.

(1) ***Notice Generally.*** Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time and place of the deposition and, if known, the deponentôs name and address. If the deponentôs name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

(2) ***Producing Documents.*** If a subpoena duces tecum has been or will be served on the deponent, the materials designated for production, as set out in the subpoena, must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents and tangible things at the deposition. The procedures under Rule 34 apply to any such request.

(3) ***Method of Recording.***

(A) *Permitted Methods.* Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may also be recorded by audio or audiovisual means.

(B) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

(C) *Additional Method.* With at least two days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(D) *Notice of Recording by Audiovisual Means.* Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).

(E) *Transcription*. Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition will be responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) ***By Remote Means.*** The parties may stipulate or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 28(a), 37(a)(1), 45(b)(3)(B), and 45(f), the deposition takes place where the deponent answers the questions. If the deponent is not in the officerôs physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent were in the officerôs physical presence.

(5) ***Officer's Duties.***

(A) *Before Deposition.* Unless the parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with a statement or notation on the record that includes:

(i) the officerôs name, certification number, if any, and business address;

(ii) the date, time and place of the deposition;

(iii) the deponentôs name;

(iv) the officerôs administration of the oath or affirmation to the deponent; and

(v) the identity of all persons present.

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) (A) through (C) at the beginning of each unit of the recording medium. The deponentôs and attorneysô appearance or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

(6) ***Notice or Subpoena Directed to an Entity.*** In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) ***Examination and Cross-Examination.*** The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personallyð or a person acting in the presence and under the direction of the officerð must record the testimony by the method(s) designated under Rule 30(b)(3).

(2) ***Objections.*** The officer must note on the record any objection made during the depositionð whether to evidence, to a partyôs, deponentôs, or counselôs conduct, to the officerôs qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the ~~party~~ person who asked the question, an objecting person

~~may~~ must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answerð or a deponent may refuse to answerð only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer and the testimony is taken subject to any objection.

(3) ***Conferences Between Deponent and Counsel.*** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) ***Participating Through Written Questions.*** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) ***Duration.*** Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

(2) ***Sanction.*** The court may impose an appropriate sanctionð including any order under Rule 16(i)ð against a party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct in connection with a deposition.

(3) ***Motion to Terminate or Limit.***

(A) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

(C) *Award of Expenses.* Rule 37(a)(4) applies to the award of expenses.

(e) Review by the Deponent; Changes.

(1) ***Review; Statement of Changes.*** If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

(2) ***Officer's Certificate to Attach Changes.*** The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

(f) Officer's Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) ***Certification and Delivery.*** The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponentôs testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked ñDeposition of [witnessôs name]ò and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) ***Documents and Tangible Things.***

(A) *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a partyôs request, be marked for identification and attached to the depositionð and any party may inspect and copy themð except that if the person who produced them wants to keep the originals, the person may:

(i) offer copies to be marked, attached to the deposition, and then used as originalsð after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

(ii) give all parties a fair opportunity to inspect and copy the originals after they are markedð in which event the originals may be used as if attached to the deposition.

(B) *Order Regarding the Originals.* On motion of any party, the court may order that the originals be attached to the deposition until final disposition of the action.

(3) ***Copies of the Transcript or Recording.*** Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or the deponent.

(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses. A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorneyôs fees, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) serve a subpoena on a nonparty deponent, who consequently did not attend.

Rule 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

(1) ***Depositions Permitted.*** A party may, by written questions, depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (c) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not, by written questions, depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold a stipulation for additional depositions under this rule.

(2) ***Service of Written Questions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.*** Unless a defendant has served a deposition notice or otherwise sought discovery under these rules, a plaintiff must obtain leave of court to serve written questions under Rule 31(b) earlier than 30 days after serving the summons and complaint on that defendant.

(3) ***Incarcerated Deponents.*** Subject to Rule 31(a)(1), a party may depose an incarcerated person only by agreement of the personôs custodian or by leave of court on such terms as the court prescribes.

(4) ***Compelling Attendance of Deponent.*** A party may compel a non-party deponentôs attendance by serving a subpoena under Rule 45. A party noticing the deposition of

a partyð or an officer, director, or managing agent of a partyð need not serve a subpoena under Rule 45.

(b) Notice; Service of Questions and Objections; Questions Directed to an Entity.

(1) ***Service of Written Questions; Required Notice.*** A party who wants to depose a person by written questions must serve them on all parties, with a notice stating, if known, the deponentôs name and address. If the deponentôs name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(2) ***Service of Additional Questions.*** Unless the parties agree or the court orders otherwise, any additional questions to the deponent must be served on all parties as follows: cross-questions, within 30 days after being served with the notice and direct questions; redirect questions, within 10 days after being served with cross-questions; and recross-questions, within 10 days after being served with redirect questions.

(3) ***Service of Objections.*** A party who objects to the form of a written question served under Rule 30(b)(1) or (2) must serve the objection in writing on all parties within the time allowed for serving the succeeding cross-, redirect, or recross-questions, or, if to a recross-question, within 5 days after service of the recross-questions.

(4) ***Questions Directed to an Entity.*** In accordance with Rule 30(b)(6), a party may depose by written questions a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or another entity.

(c) Delivery to the Officer; Officer's Duties. The party who noticed the deposition must deliver to the officer designated in the notice a copy of the notice and copies of all the questions and objections served under Rule 30(b). The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponentôs testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) deliver it to the party who noticed the deposition, attaching a copy of the notice, the questions, and the objections.

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) ***In the Same or Similar Action.*** At a hearing or trial, all or part of a deposition taken in the actionð or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interestð may be used against a party if:

(A) the testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) ***In a Different Action*.** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) ***Deponent's Availability at Trial.*** Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponentôs availability to testify at trial. Use of a deposition at trial does not limit, in any way, any partyôs right to call the deponent to testify in person.

(4) ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, the court may require the offeror to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) ***Substituted Party.*** Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

(b) Objections to Admissibility. Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) Form of Presentation. Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any partyôs request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is not available in audio or audiovisual form, the court may require a single presenter to read the designated portions of the deposition testimony to the jury.

(d) Waiver of Objections.

(1) ***To the Notice.*** An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) ***To the Officer's Qualifications.*** An objection to the qualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) ***To the Taking of the Deposition.***

(A) *Objection to Competence, Relevance, or Materiality.* An objection to a deponentôs competenceð or to the competence, relevance, or materiality of testimonyð is not waived by a failure to make the objection before or during the deposition, unless the ground for the objection could have been corrected at that time.

(B) *Objection to an Error or Irregularity at an Oral Deposition.* An objection to an error or irregularity at an oral deposition is waived if:

(i) the objection related to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a partyôs conduct, or other matters that could have been corrected at that time; and

(ii) the objection is not timely made during the deposition.

(C) *Objection to a Written Question.* An objection to the form of a written question under Rule 31 is waived if it is not served under Rule 31(b)(3).

(4) ***To the Officer's Completion and Return of Deposition.*** An objection to how the officer transcribed the testimonyð or to how the officer prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the depositionð is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Rule 33. Interrogatories to Parties

(a) Generally.

(1) ***Definition*.** Interrogatories are written questions served by a party on another party.

(2) ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories, including all subparts. A uniform interrogatory and its subparts count as one interrogatory.

(3) ***Scope.*** An interrogatory may ask about any matter allowed under Rule 26(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a partyôs contention about facts or the application of law to facts. On motion, the court may order that such a contention interrogatory need not be answered until a later time.

(4) ***Uniform Interrogatories*****.** Forms 4, 5, and 6 of Rule 84 contain uniform interrogatories, which a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatoryð such as by requesting a response only as to particular persons, events, or issuesð without converting it into a non-uniform interrogatory.

(b) Answers and Objections.

(1) ***Time to Respond.*** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after serviceð or execution of a waiver of serviceð of the summons and complaint on that defendant.

(2) ***Answers Under Oath.*** An answering party mustð to the extent it does not state an objectionð answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a partyð including a public or private entityð must furnish the information available to it. It also must reproduce the text of an interrogatory immediately above its answer to that interrogatory.

(3) ***Objections.*** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.

(4) ***Signature.*** The party who answers the interrogatories must sign them under oath. If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath. An attorney who objects to any interrogatories must sign the objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a partyôs business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

(a) Generally. A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding partyôs possession, custody, or control:

(A) any designated documents or electronically stored informationð including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilationsð stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure.

(1) ***Number.*** Unless the parties agree or the court orders otherwise, a party may not serve requests for more than 10 items or distinct categories of items on any other party.

(2) ***Contents of the Request.*** The request:

(A) must describe with reasonable particularity each item or distinct category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(3) ***Responses and Objections.***

(A) *Time to Respond.* Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served. But a defendant may serve its responses and any objections within 60 days after serviceð or execution of a waiver of serviceð of the summons and complaint on that defendant.

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state the grounds for objecting with specificity, including the reasons.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested formð or if no form was specified in the requestð the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless the parties agree or the court orders otherwise, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a native form or in another reasonably

usable form that will enable the requesting party to have the same ability to access, search and display the information as the producing party; and

(iii) Absent good cause, a party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Rule 35. Physical and Mental Examinations

(a) Examination on Order.

(1) ***Generally.*** The court where the action is pending may order a party whose physical or mental condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination a person who is in the partyôs custody or under the partyôs legal control.

(2) ***Motion and Notice; Contents of the Order.*** An order under Rule 35(a)(1):

(A) may be entered only on motion for good cause and on notice to all parties and the person to be examined;

(B) must specify the time, place, manner, conditions, and scope of the examination; and

(C) must specify the person or persons who will perform the examination.

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

(1) ***Notice.*** When the parties agree that an examination is appropriate but do not agree as to the examiner, the party seeking the examination may proceed by giving reasonableð and not fewer than 30 daysð written notice to all other parties. The notice must:

(A) identify the party or person to be examined;

(B) specify the time, place, and scope of the examination; and

(C) identify the examiner(s).

(2) ***Motion Objecting to Examiner.*** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may

order that the examination be conducted by a suitably licensed or certified examiner other than the one specified in the notice.

(3) ***Failure to Appear.*** Unless the party has filed a motion under Rule 36(b)(2), the party must appearð or produce the person in the partyôs custody or legal controlð for the noticed examination. If the party fails to do so, the court where the action is pending may on motion make such orders concerning the failure as are just, including those under Rule 37(f).

(c) Attendance of Representative; Recording.

(1) ***Attendance of Representative.*** Unless his or her presence may adversely affect the examinationôs outcome, the person to be examined has the right to have a representative present during the examination.

(2) ***Recording*.**

(A) *Audio Recording*. The person to be examined may audio-record any physical examination. Unless such recording may adversely affect the examinationôs outcome, the person to be examined may audio-record any mental examination.

(B) *Video Recording*. On order for good causeð or on stipulation of the parties and the person to be examinedð an examination may be video-recorded.

(C) *Copy of Recording*. A copy of a recording made of an examination must be provided to any party upon request.

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

(1) ***Contents.*** The examinerôs report must be in writing and set out in detail the examinerôs findings, including diagnoses, conclusions, and the results of any tests.

(2) ***Request by the Party or Person Examined.*** The party who is examinedð or who produces the person examinedð may request the examinerôs report, like reports of the same condition, and written or recorded notes from the examination. On such request, the party who moved for or noticed the examination must, within 20 days, deliver to the requestor copies of:

(A) the examinerôs report;

(B) like reports of all earlier examinations of the same condition; and

(C) all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing same with the copies.

(3) ***Request by the Examining Party.*** After delivering the materials required by Rule 35(d)(2), the party who moved for or noticed the examination is entitled, on its request, to receive from the party who was examinedð or who produced the person examinedð like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) ***Waiver of Privilege.*** By requesting and obtaining the examinerôs report, or by deposing the examiner, the party examined waives any privilege it may haveð in that action or any other action involving the same controversyð concerning testimony about all examinations of the same condition.

(5) ***Failure to Deliver a Report as Ordered.*** The court on motion may orderð on just termsð that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examinerôs testimony at trial.

(6) ***Scope.*** This Rule 35(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude obtaining an examinerôs report or deposing an examiner under other rules.

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) ***Scope.*** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) ***Form; Copy of a Document.*** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.

(4) ***Time to Respond; Effect of Not Responding.*** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. But a defendant may serve its answers and any

objections within 60 days after serviceð or execution of a waiver of serviceð of the summons and complaint on that defendant. A shorter or longer time for responding may be stipulated to or be ordered by the court.

(5) ***Answer.*** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(6) ***Objections.*** The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(7) ***Motion Regarding the Sufficiency of an Answer or Objection.*** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. If the court finds that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(e) applies to an award of expenses.

(b) Effect of an Admission; Withdrawing or Amending It. A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) Motion for Order Compelling Disclosure or Discovery.

(1) ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.2(h).

(2) ***Appropriate Court.*** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.

(3) ***Specific Motions.***

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26.1, any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

(i) a deponent fails to answer a question asked under Rule 30 or 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)(4);

(iii) a party fails to answer an interrogatory served under Rule 33;

(iv) a party fails to respond that inspection will be permittedð or fails to permit inspectionð as requested under Rule 34; or

(v) a person fails to produce documents requested in a subpoena served under Rule 45.

(C) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order to compel.

(4) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(5) ***Payment of Expenses; Protective Orders.***

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is grantedð or if the disclosure or requested discovery is provided after the motion was filedð the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, the party or attorney advising that conduct, or both, to pay the movantôs reasonable expenses incurred in making the motion, including attorneyôs fees. But the court must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing partyôs nondisclosure, response, or objection was substantially justified; or

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorneyôs fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to Comply With a Court Order.

(1) ***Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

(2) ***Sanctions by the Court Where the Action Is Pending.***

(A) *For Not Obeying a Discovery Order.* If a party or a partyôs officer, director, or managing agentð or a witness designated under Rule 30(b)(6) or 31(a)(4)ð fails to obey an order to provide or permit discovery, including an order under Rule 35 or Rule 37(a), the court where the action is pending may enter further just orders. They may include the following:

(i) directing that the matters described in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

(ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

(iii) striking pleadings in whole or in part;

(iv) staying further proceedings until the order is obeyed;

(v) dismissing the action or proceeding in whole or in part;

(vi) rendering a default judgment against the disobedient party; or

(vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

(B) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorneyôs fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.

(1) ***Failure to Timely Disclose.*** Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 26.1 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or on a motion.

(2) ***Inaccurate or Incomplete Disclosure.*** On motion, the court may order a party or attorney who makes a disclosure under Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for the reasonable cost, including attorneyôs fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.

(3) ***Other Available Sanctions.*** In addition to or instead of the sanctions under Rule 37(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorneyôs fees, caused by the failure;

(B) may inform the jury of the partyôs failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(4) ***Use of Information, Witness or Document Disclosed After Scheduling Order Deadline or Later Than 60 Days Before Trial.*** A party seeking to use information, a witness, or a document that it first disclosed later than (A) the deadline set in a Scheduling Order, or (B) in the absence of such a deadline, 60 days before trial, must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the information, witness, or document would be allowed under the standards of Rule 37(c)(1); and

(B) the party disclosed the information, witness, or document as soon as practicable after its discovery.

(5) ***Use of Information, Witness, or Document Disclosed During Trial.*** A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(B) the party disclosed the information, witness, or document immediately upon its discovery.

(d) Failure to Timely Disclose Unfavorable Information. If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 26.1, the court may impose serious sanctions, up to and including dismissal of the actionð or rendering of a default judgmentð in whole or in part.

(e) Expenses on Failure to Admit. If a party fails to admit what is requested under Rule 36 and if the requesting party later proves the matter trueð including the genuineness of a documentð the requesting party may move that the non-admitting party pay the reasonable expenses, including attorneyôs fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 36(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

(f) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.

(1) ***Generally.***

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(i) a party or a partyôs officer, director, or managing agentð or a person designated under Rules 30(b)(6) or 31(a)(4)ð fails, after being served with proper notice, to appear for his or her deposition; or

(ii) a partyð after being properly served with interrogatories under Rule 33 or a request for production under Rule 34ð fails to serve its answers, objections, or written response.

(B) *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule 7.2(h).

(2) ***Unacceptable Excuse for Failing to Act.*** A failure described in Rule 37(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) ***Types of Sanctions.*** Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both to pay the reasonable expensesð including attorneyôs feesð caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(g) Failure to Preserve Electronically Stored Information.

(1) ***Duty to Preserve.***

(A) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the actionôs commencement, whichever first occurs. A court order or statute also may impose a duty to preserve certain information.

(B) *Reasonable Anticipation.* A person reasonably anticipates an actionôs commencement if:

(i) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(ii) it seriously contemplates commencing an action or takes specific steps to do so.

(C) *Reasonable Steps to Preserve.*

(i) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(ii) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the informationôs probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the partyôs actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the partiesô resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a partyð either before or after an actionôs commencementð failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order under Rule 26(b)(1)(B). If the information cannot be restored or replaced through additional discovery, the court:

(A) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) only upon finding that the party acted with the intent to deprive another party of the informationôs use in the litigation, may:

(i) presume that the lost information was unfavorable to the party;

(ii) instruct the jury that it may or must presume the information was unfavorable to the party; or

(iii) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

VI. TRIALS

Rule 38. Right to a Jury Trial; Demand; Waiver

(a) Right Preserved. The right of trial by jury is preserved to the parties inviolate.

(b) Demand. On any issue triable of right by a jury, a party may obtain a jury trial as follows:

(1) ***Non-Medical Malpractice Actions.*** In all actions other than a medical malpractice action, a party may demand a jury trial by filing and serving a written demand at any time after the action is commenced, but no later than the date on which the