(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

VI. TRIALS

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(b) Demand. On any issue triable of right by a jury, a party may demand 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 court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed, whichever first occurs. A demand for a jury trial must[1] not be combined with any other motion or pleading filed with the court.

(2) ***Medical Malpractice Actions.*** In a medical malpractice action, it is presumed that one or more of the parties demand a jury trial and no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing and serving a written stipulation waiving the right to a jury trial, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation waiving the right to a jury trial may not be combined with any other motion or pleading filed with the court.

(c) Specifying Issues. In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.

(d) Waiver; Withdrawal. A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if the parties consent.

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[1] The current rule uses "shall" which is mandatory. In modernizing the rule, it makes sense to retain the mandatory meaning by using "must" instead of lessening the prohibition by using "may".

Rule 38.1. Setting of Civil Actions for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar

(a) Trial Setting. Civil actions are set for trial under Rule 16 or Rule 77. Preference is given to short causes and actions that are entitled to priority by statute, rule or court order. The court must give the parties at least 30 days' notice of the trial date.

(b) Postponements.

(1) ***Generally.*** If a court has set an action for trial on a specified date, it may not postpone the trial unless: (A) sufficient cause exists to do so, supported by affidavit or other evidence; (B) the parties consent; or (C) postponement is required by operation of law. Trial also may be postponed as authorized or required by local rule.

(2) ***Motion and Certification.*** A party seeking postponement of a trial must file a motion setting forth the basis for the request and any supporting evidence[2]. Moving counsel must attach a separate statement to the motion certifying that the requested postponement is not being sought solely for the purpose of delay and that the postponement will serve the interests of justice.

(3) ***Witness Unavailability or Absence.***

(A) *Generally.* If the basis for postponement is the unavailability or absence of a witness, the moving party must submit an affidavit stating or showing:

(i) the name and address of the witness—if known;

(ii) the witness's expected testimony;

(iii) the expected testimony's materiality;

(iv) the reason for the witness's unavailability or absence;

(v) the party's diligence in procuring such testimony and efforts to make the witness available; and

(vi) the testimony cannot be obtained from any other source.

(B) *Denial of a Motion for Postponement.* The court may deny a motion for postponement if, among other grounds, it rules that the described testimony would be inadmissible if presented at trial or if all non-moving[3] parties stipulate

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[2] Supporting evidence is not necessary if the motion is based on the parties' consent or because a postponement is required by operation of law. As such, "any" evidence is more accurate than "the" evidence which presumes there will be evidence.

[3] A non-moving party may not necessarily be an adverse party. Non-moving is more comprehensive than adverse.

that the movant's description of the witness's expected testimony is accurate and would be admissible if presented at trial. If the non-moving parties offer such a stipulation, the movant's description of the witness's expected testimony may be read to the jury at trial as the witness's testimony. Such testimony may be controverted as if the witness were personally present.

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(c) Scheduling Conflicts between Courts.

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(1) ***Notice to Courts and Counsel.*** Upon learning of a scheduling conflict between a trial in superior court and another trial or hearing in state or federal court, counsel must promptly notify the affected judges and counsel.

(2) ***Resolving a Conflict.*** Upon being advised of a scheduling conflict, the affected judges should confer with each other and counsel in an effort to resolve the conflict. Neither federal nor state court actions have priority in scheduling. A court may consider the following factors in resolving the conflict:

(A) whether the other action is a criminal matter, and, if so, whether a speedy trial problem exists;

(B) each action's relative length, urgency or importance;

(C) whether either action involves out-of-town witnesses, parties or counsel;

(D) the actions' respective ages;

(E) which action was first set for trial;

(F) any priority granted by rule or statute; and

(G) any other pertinent factor.

(3) ***Inter-division Conflicts.*** Conflicts in scheduling between divisions of the same court may be governed by local rule or general order.

(d) Dismissal Calendar.

(1) ***Placing an Action on the Dismissal Calendar.*** The clerk or court administrator must place a civil action on the Dismissal Calendar if 270 days have passed since the action was commenced, and if:

(A) in an action other than a medical malpractice action or an action assigned to arbitration, the parties have not filed a Joint Report and a Proposed Scheduling Order under Rule 16(b) or Rule 16.3;

(B) in a medical malpractice action, the court has not set a date for a Comprehensive Pretrial Conference under Rule 16(e) and the parties have not filed a proposed scheduling order; or

(C) in actions assigned to arbitration, the arbitrator has not filed a notice of decision under Rule 76.

(2) ***Dismissal.*** If an action remains on the Dismissal Calendar for 60 days, the court must dismiss it without prejudice and make an appropriate order regarding any bond or other posted security, unless, before the 60-day period expires:

(A) the parties file a Joint Report and a Proposed Scheduling Order under Rule 16(b) or Rule 16.3;

(B) in a medical malpractice action, the court sets a date for a Comprehensive Pretrial Conference under Rule 16(e) or the parties file a proposed scheduling order;

(C) in an action assigned to arbitration, the arbitrator files a notice of decision under Rule 76; or

(D) the court, on motion showing good cause, orders the action to be continued on the Dismissal Calendar for a specified period of time without being dismissed.

(3) ***Notification.*** The clerk or court administrator, whoever is designated by the presiding superior court judge in the county, must promptly notify counsel in writing when an action is placed on the Dismissal Calendar, but they are not required to provide further notice before the court dismisses an action under Rule 38.1(d)(2).[4]

Rule 39. Trial by Jury or by the Court

(a) If a Demand Is Made. If a jury trial is demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:

(1) the parties or their attorneys file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

(b) If No Demand Is Made. The court must try all issues on which a jury trial is not properly demanded, but the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

[4] Why was 38.1(d) removed? It is unclear whether it grants rights which other rules do not cover.

(c) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own initiative:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.[5]

Rule 40. Trial Procedures

(a) Scope. Rule 40 governs jury trials and, to the extent applicable, trials to the court.

(b) Objectives. The court should adopt trial procedures as necessary or appropriate to facilitate a just, speedy and efficient resolution of the action. To achieve this objective, the court may:

(1) impose time limits and allocate trial time;

(2) sequence the presentation of claims, evidence and arguments;

(3) allow advance scheduling of witnesses and other evidence;

(4) order pretrial admission of exhibits or other evidence;

(5) allow electronic presentation of evidence; and

(6) adopt other means of managing or expediting trial.

(c) Order of Trial. A trial must[6] proceed in the following order, unless the court orders otherwise for good cause:

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(1) ***Preliminary Instructions.*** Immediately after the jury is sworn, the court must give preliminary instructions as provided in Rule 51(a).

(2) ***Opening Statements.*** Each party may make a concise opening statement regarding the facts that it proposes to establish by evidence at trial. Any party may decline to make an opening statement. Opening statements should proceed in the following order:

(A) the plaintiff or the plaintiff's counsel;

(B) the defendant or the defendant's counsel, unless deferred until after the close of the plaintiff's presentation of evidence; and

[5] Why was Rule 40 removed? It does not seem to be replaced elsewhere.
[6] "Should" is meaningless because it does not obligate a court to abide by a rule and gives no recourse to a party who wishes to challenge a court's failure to abide by a rule, rather it contains only a moral obligation which is unenforceable. It is, in essence, a suggestion.

(C) other parties or their counsel, unless deferred until after the close of the plaintiff's and defendant's presentations of evidence, in the order the court directs.

(3) ***Evidence.*** Unless the court orders otherwise, the parties must introduce evidence in the following order:

(A) plaintiff;

(B) defendant;

(C) other parties, if any, in the order the court directs;

(D) plaintiff's rebuttal evidence;

(E) defendant's rebuttal evidence in support of the defendant's counterclaim(s), if any; and

(F) rebuttal evidence from other parties or with respect to cross-claims or third party complaints, as the court permits and in the order it directs.

(4) ***Final Instructions.*** Final jury instructions, as provided in Rule 51, must be given before or after counsel's closing arguments.

(5) ***Closing Argument.*** The Plaintiff must make the first and last argument in closing. If the remaining parties have different claims or defenses and are represented by different counsel, the court must [7] prescribe the order in which they will make their respective closing arguments.

(d) Supplementing Testimony. At any time before closing arguments begin and if justice requires, the court may allow a party to introduce omitted testimony on such terms as the court orders.

(e) Jury Deliberations.

(1) ***Place.*** During deliberations, jurors must be kept together in a convenient place in the charge of an officer that the court designates. The court may permit jurors to separate while not deliberating, or, on motion or on its own initiative, it may require them to be sequestered in the charge of a designated officer whenever they leave the courtroom or place of deliberation.

(2) ***Time.*** Juror deliberations should take place during normal work hours unless the court, after consulting the jury and the parties, determines that the interests of

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[7] This makes is much clearer who is to make the first and last statement. It also tracks the same order set forth in Rule 40(c)(2).

justice require evening or weekend deliberations and it will not impose an undue hardship on the jurors.

(f) Juror Notes and Notebooks.

(1) ***Juror Notes.*** The court must instruct the jurors that they may take and keep notes regarding the evidence to help refresh their memory during recesses, discussions and deliberations. The court must provide suitable writing materials for this purpose. After the jury has rendered its verdict, the notes must be collected and promptly destroyed by an officer of the court.

(2) ***Juror Notebooks.*** The court may allow jury instructions [8] and exhibits to be included in notebooks for each juror's use during trial to help the jurors perform their duties.

(3) ***Access.*** During recesses, discussions and deliberations, jurors must have access to their notes and to any juror notebooks allowed by the court.

(g) Officer Duties. Unless the court orders otherwise, the officer in charge of the jurors must not:

(1) allow any communication to be made to them, or make any, except to ask them if they have agreed on their verdict; or

(2) communicate to any person the status of the jury's deliberations or any verdict the jury may have reached before the verdict is rendered [9].

(h) Juror Admonitions.

(1) ***Discussions.***

(A) The court must admonish the jury that until deliberations are completed, and at all times when the jurors are allowed to separate during trial, they must not converse among themselves or with anyone else on any subject connected with the trial while not deliberating.

(B) Subject to such limitations as the court may impose for good cause, the jurors must be instructed that they are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, so

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[8] "Documents" should be defined to include jury instructions and any other allowed documentation. It is too vague. Exhibits covers most documentation. If an item is not an exhibit, the jury should not have access to it unless it is specifically set forth in this rule. For example, a jury should not have access to a deposition transcript if it was used for impeachment purposes but not admitted as an exhibit.

[9] There should be a logical ending point to this prohibition which will allow the jury to advise the court of its verdict.

long as they reserve judgment about the action's outcome until deliberations begin.

(2) ***Other Influences.*** The court must admonish jurors that they should not read or view any media stories or accounts from any other sources regarding the action, or view the place or places where the events at issue occurred until they have been discharged or dismissed.[10]

(i) Juror Communications.

(1) ***The Court.*** The officer in charge of the jurors must notify the court of any juror request to communicate with the court during deliberations. If the jury is brought into court, their foreman must state to the court, either orally or in writing, what they desire to communicate.

(2) ***Witnesses.*** Jurors may submit to the court written questions directed to witnesses or to the court. Counsel must be allowed to object to such questions out of the jury's presence. For good cause, the court may prohibit or limit jury questions to witnesses.

(j) Assisting Jurors at Impasse. If the jury advises the court that it has reached an impasse in its deliberations, the court may, in counsel's presence, ask the jurors to determine whether and how court and counsel can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur as appropriate.

(k) Dismissal and Discharge of Jury; New Trial.

(1) ***Discharge Before Verdict.*** After the action is submitted to them, the jurors may be discharged if the court determines that they are unlikely to reach a verdict, or if a calamity, sickness or accident requires it. If a jury is discharged without having rendered a verdict, the action may be tried again.

(2) ***Dismissal After Verdict.*** When dismissing a jury after the action's conclusion, the court should inform the jurors that they are discharged from service and, if appropriate, it may release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.

(l) Memoranda. Post-trial memoranda must not be filed, except:

(1) in support of or in opposition to a motion under Rules 50(b), 52(b), 59 or 60; or

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[10] There should be a logical ending point to this prohibition since there is no reason that the jury cannot review media once it has rendered its verdict.

(2) as ordered by the court.[11]

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) ***By the Plaintiff.***

(A) *On Notice or Court Order on Stipulation.* Subject to Rule 41(a)(1)(A)(iii), the plaintiff may dismiss an action:

(i) by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) by a court order based on a stipulation of dismissal signed by all parties who have appeared. The order may be signed by a judge, an authorized court commissioner, the court clerk or a deputy clerk.

(iii) Dismissals under this Rule 41(a)(1)(A) are subject to Rules 23(e), 23.1(c), 23.2, and 66(d) and any applicable statute.

(B) *Effect.* Unless the notice or order states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed an action in any court based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) ***By Other Court Order; Effect.*** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action must not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.

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(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, and excepting dismissals for lack of jurisdiction, improper venue, or failure to join a party under Rule 19:

(1) a dismissal under Rule 41(b) operates as an adjudication on the merits; and

(2) any other dismissal not under Rule 41 operates as an adjudication on the merits.

[11] Why was Rule 39(k) removed? It informs the court and parties of important procedural information.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) join for hearing or trial any or all matters at issue in the actions;

(2) consolidate the actions; or

(3) issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial, the court must preserve any right to a jury trial.

Rule 42.1. Change of Judge as a Matter of Right

(a) When Available. In any action in superior court, except an action in the Tax Court, each side is entitled as a matter of right to a change of one judge. Each action, whether single or consolidated, must be treated as having only two sides. If two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right, but each side must have the right to the same number of such changes. The term "judge" as used in this rule refers to any judge, judge pro tem, or court commissioner. The term "presiding judge" as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.

(b) Notice Requirements. A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:

(1) ***Written Notice.*** A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge and the court administrator, if any, by any method provided in Rule 5(c). The notice must not specify grounds, but must contain:

(A) the name of the judge to be changed;

(B) a statement that:

(i) the notice is timely under Rule 42.1(c);

(ii) no waiver has occurred under Rule 42.1(d); and

(iii) the party has not been granted a change of a judge as a matter of right previously in the action.

(2) ***Oral Notice.*** An oral request for change of judge must include the information required by Rule 42.1(b)(1)(A) and (B). When made, it is deemed to be an "oral notice of change of judge" for purposes of this rule. The judge must enter on the record the date of the oral notice, the name of the requesting party and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 42.1(a). For purposes of this rule, an oral notice is deemed "filed" on the date that it is made on the record.

(c) Time Limitations. A party is precluded from changing a judge as a matter of right unless timely notice is filed. The following time periods govern the timeliness of any notice of change of judge:

Notice must be filed 60 or more days before the date set for trial.[12] **(2)** If an assignment identifies a judge for the first time after the time period set forth in Rule 42.1(c)(1) has expired, or fewer than 10 days before that time period will expire, a notice is timely if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.

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[12] The proposed rule change limits a party's right to change the judge. In many cases, a party will not have even been exposed to a judge's demeanor within 90 days of appearing in a case. Section (d) provides sufficient limitation on a party's right to change a judge.

(3) A notice of change of judge is ineffective if filed within 3 days of a scheduled proceeding, unless the parties have received fewer than 5 days' notice of that proceeding or the judge's assignment. The filing of an ineffective notice neither requires a change of judge nor bars the party who filed it from later filing a notice of change of judge that satisfies this rule's requirements.

(d) Waiver. A party waives the right to change of a judge assigned to preside over any proceeding in the action, if:

(1) the party agrees to the assignment;

(2) the judge rules on any contested issue, provided the party had an opportunity to file a written or oral notice of change of judge before the ruling is made;

(3) the judge grants or denies a motion to dispose of one or more claims or defenses in the action;

(4) a scheduling, pretrial, trial-setting or similar conference begins;

(5) a scheduled contested hearing begins; or

(6) trial begins.

(e) Actions Remanded from an Appellate Court. In actions remanded by an appellate court, the right to a change of judge is renewed and no event connected with the first trial constitutes a waiver:

(1) if the appellate decision requires a new trial or reverses summary judgment on one or more issues; and

(2) the party seeking a change of judge—or the side on which the party belongs—has not previously exercised its right to a change of judge in the action after remand.[13]

(f) Procedures on Notice.

(1) ***On Proper Notice.*** If a notice is timely filed and no waiver has occurred, the judge named in the notice[14] should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge also may perform the functions of the presiding judge.

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[13] This additional language makes it clear that a party does not waive its right to change a judge after remand solely because the party may have previously requested a change of judge at some point before the original trial.

[14] Rule 42.1 does not have any provision for the filing of an affidavit instead of a notice.

(2) ***On Improper Notice.*** If the court determines that the party who filed the notice is not entitled to a change of judge, then the judge named in the notice may proceed with the action.

(3) ***Reassignment.***

(A) *On Stipulation.* If a notice of change of judge is filed, the parties should inform the court in writing if they have agreed on a judge who is available and is willing to hear the action. Such an agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the judge agreed on becomes unavailable. If a judge to whom an action is assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness or other legal incapacity, the parties may assert any rights under this rule as they existed immediately before the action's assignment to that judge.

(B) *Absent Stipulation.* If the parties have not stipulated on the record as to the assignment of a new judge, the presiding judge must promptly reassign the action.

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Rule 42.2. Change of Judge for Cause

(a) Generally. This rule governs proceedings for a change of judge under A.R.S. § 12-409. The term "judge" as used in this rule refers to any judge, judge pro tem, or court commissioner. The term "presiding judge" as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.

(b) Grounds. A party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. § 12-409.

(c) Filing and Service. The affidavit must be filed and copies served on the parties, the presiding judge, the noticed judge and the court administrator, if any, by any method provided in Rule 5(c).

(d) Timeliness and Waiver. An affidavit seeking a change of judge for cause must be filed within 20 days after discovering that grounds exist for a change of judge. Case events or actions taken before that discovery do not waive a party's right to a change of judge for cause.

(e) Hearing and Assignment. If a party timely files and serves an affidavit complying with A.R.S. § 12-409:

(1) Within 5 days after the affidavit is served, any other party may file an opposing affidavit or a responsive memorandum of no more than two pages in length. No reply memorandum or affidavits are permitted unless authorized by the presiding judge.

(2) The presiding judge must hold a hearing to determine the issues raised in the affidavit.[15]

(3) The judge named in the affidavit should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the request is decided and the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge may also perform the functions of the presiding judge.

(4) The presiding judge must decide the issues by the preponderance of the evidence. Under § 12-409(B)(5), the sufficiency of any "cause to believe" must be determined by an objective standard, not by reference to the affiant's subjective belief. If grounds for disqualification are found, the presiding judge must promptly reassign the action to the original judge or make a new assignment. Any new assignment must comply with A.R.S. § 12-411.

(5) If the court determines that the party who filed the affidavit is not entitled to a change of judge, then the judge named in the notice may proceed with the action.

Rule 43. Taking Testimony

(a) Definition of Witness. A witness is a person whose testimony under oath or affirmation is offered as evidence for any purpose, whether by oral examination, deposition or affidavit.

(b) Affirmation Instead of Oath. When these rules require an oath, a solemn affirmation suffices.

(c) Interpreter. The court may appoint an interpreter of its choosing and may set the interpreter's reasonable compensation. If so, the court must direct whether the compensation will be paid from funds provided by law or by one or more parties. When applicable, the court may order whether the compensation is to be taxed as costs.

[15] The proposed rule change removes the party's right to a hearing which should not be done on such an important issue, especially where the non-moving party has been granted the right to file a responsive affidavit to which the moving party cannot reply.

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(d) Limitation on Examining Witness. Except as allowed by the court, only one attorney for each party may examine a witness.

(e) In Open Court. At trial, witness testimony must take place in open court, unless a statute, these rules, or the Arizona Rules of Evidence provide otherwise. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(f) Evidence on a Motion. If a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(g) Preserving Recording of Court Proceedings.

(1) ***Transcripts and Other Recordings.*** The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person who recorded it, a court-designated custodian, or the clerk, in a place designated by the court. The recording must be retained according to the records retention and disposition schedules adopted by the Arizona Supreme Court, unless the court specifies a different retention period.

(2) ***Transcription.*** If a court reporter's verbatim recording is to be transcribed, the court reporter who made the recording must be given the first opportunity to make the transcription, unless that court reporter no longer serves in that position or is unavailable for any other reason.

Rule 44. Proving an Official Record

(a) Authenticating an Official Record—Generally.[16]

(1) ***Domestic Record.*** A record—or an entry in it—may be authenticated as an official record if it was made and kept by a public officer within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States and it is:

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(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal, or its equivalent:

[16] The current version of Rule 44(a) appears to attribute greater weight to the facts contained within public records by stating they are to be received as prima facie evidence of the facts stated therein. Is there a reason for removing this requirement?

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) ***Foreign Record.***

(A) *Generally.* A record—or an entry in it—may be authenticated as a foreign official record if:

(i) it is an official publication of the record; or

(ii) the record—or a copy—is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness.* A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States.

(C) *Other Means of Proof.* If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the contents of the record to be proved by an attested summary with or without a final certification.

(b) Means of Proving Appointment of Guardian, Personal Representative, Administrator or Conservator. The appointment and qualification of a guardian, personal representative, administrator or conservator may be proved by the letters issued as provided by law, or by a certificate of the clerk under official seal that the letters issued.

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(c) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry on a specified topic is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must

comply with Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

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(d) Other Proof. A party may authenticate an official record—or an entry or lack of an entry in it—by any other method authorized by law.[17]

Rule 44.1. Determining Foreign Law

A party who intends to raise an issue about a foreign country's law must give reasonable written notice, filed with the court. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Arizona Rules of Evidence. The court's determination must be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) Generally.

(1) ***Requirements—Generally.*** Every subpoena must:

(A) state the name of the Arizona court from which it is issued;

(B) state the title of the action, the name of the court in which it is pending, and its civil action number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and testify at a deposition, hearing or trial; or

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or

(iii) permit the inspection of premises; and

(D) be substantially in the form set forth in Rule 84, Form 9.

(2) ***Issuance by Clerk.*** The clerk must issue a signed but otherwise blank subpoena to a party requesting it. That party must complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Arizona Supreme Court.

[17] What was the purpose of removing Rule 44(c) and Rule 44(m)?

(b) Subpoena for Deposition, Hearing or Trial; Duties; Objections.

(1) ***Issuing Court.*** A subpoena commanding a person to attend and give testimony[18] at a hearing or trial must issue from the superior court for the county where the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding attendance and testimony at a deposition must issue from the superior court for the county where the action is pending.

(2) ***Combining or Separating a Command to Produce or to Permit Inspection.*** A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be included in a subpoena commanding attendance and testimony at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(3) ***Place of Appearance.***

(A) *Trial Subpoena.* Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding attendance and testimony at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) *Deposition or Hearing Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend and give testimony at a deposition or hearing may not require the subpoenaed person to travel to a place other than:

(i) the county where the person resides or transacts business in person;

(ii) the county where the person is served with a subpoena, or within forty miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) ***Command to Attend a Deposition—Notice of Recording Method.*** A subpoena commanding attendance and testimony at a deposition must state the method for recording the testimony.

(5) ***Objections; Appearance Required.*** Objections to a subpoena commanding attendance and testimony at a deposition, hearing, or trial, must be made by timely motion under Rule 45(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rule 45, a person who is properly served with a subpoena must attend and testify at the date, time and place specified in the subpoena.

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[18] The proposed rule changes suggests that a person would be required to attend but not necessarily provide testimony,

(c) Subpoena to Produce Materials or to Permit Inspection; Duties; Objections.

(1) ***Issuing Court.*** If separate from a subpoena commanding attendance and testimony at a deposition, hearing, or trial, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, must issue from the superior court for the county where the production or inspection is to be made.

(2) ***Electronically Stored Information.***

(A) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) *Form for Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1)(B) and (C). The court may specify conditions for the discovery.

(3) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands attendance and testimony at a deposition, hearing or trial.

(4) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or organize and label them to correspond with the categories in the demand.

(5) ***Objections.***

(A) *Form and Time for Objection.*

(i) A person commanded to produce documents, electronically stored information or tangible items, or to permit inspection, may serve a written objection to producing, inspecting, copying, testing or sampling any or all of the materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or cost. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

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(ii) The objection must be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials, or to permit inspection, with a command to attend and testify at a deposition, hearing or trial, may object to any portion of the subpoena. A person objecting to the portion of a combined subpoena that commands attendance and testimony at a deposition, hearing or trial must attend and testify at the date, time and place specified in the subpoena, unless excused as provided in Rule 45(b)(5).

(B) *Procedure After Objecting.*

(i) A person objecting to a subpoena to produce materials or to permit inspection need not comply with those portions of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move under Rule 37(a) to compel compliance with the subpoena. The motion must comply with Rule 37(a)(2)(C), and must be served on the subpoenaed person and all other parties in accordance with Rule 5(c).

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(iii) Any order to compel entered by the court must protect a person who is neither a party nor a party's officer from undue burden or expense resulting from compliance.

(C) *Claiming Privilege or Protection.*

(i) A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must

expressly make the claim and describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the demanding party to assess the claim.

(ii) If a person claims that information that is subject to a claim of privilege or of protection as trial preparation material has been inadvertently produced in response to a subpoena,[19] the person making the claim may notify any party that 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; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. A receiving party may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(6) ***Production to Other Parties.*** Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information or tangible things in response to a subpoena must promptly make such materials available to all other parties for inspection and copying, in accordance with[20] Rule 26.1.

(d) Service.

(1) ***General Requirements; Tendering Fees.*** A subpoena may be served by any person who is not a party and is at least 18 years old. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance, tendering to that person the fees for 1 day's attendance and the mileage allowed by law.

(2) ***Exceptions to Tendering Fees.*** Fees and mileage need not be tendered when the subpoena commands a party to attend a trial or hearing or is issued on behalf of the state or any of its officers or agencies.[21]

(3) ***Service on Other Parties.*** A copy of every subpoena and any proof of service must be served on every other party in accordance with Rule 5(c).

(4) ***Service within[22] the State.*** A subpoena may be served anywhere within the state.

[19] It doesn't seem advisable to remove the requirement of 'inadvertent' since there are instances when parties waive their privileges or protections willingly.

[20] No need to make it longer or reiterate Rule 26.1's other requirements.

[21] The current rule makes it clear that a **party** is not entitled to fees but a **non-party** still should be.

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(5) ***Proof of Service.*** Proof of service should not be filed except as allowed by Rule 5(f)(2)(A). Any such filing must be with the clerk of the court for the county where the action is pending and must include the server's certified statement of the date and manner of service and the names of the persons served.

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(e) Protecting a Person Subject to a Subpoena; Motion to Quash or Modify.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or an attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and may impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court in the county where the case is pending or from which a subpoena was issued must quash or modify a subpoena if it:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* On timely motion, the superior court of the county where the case is pending or from which a subpoena was issued may quash or modify a subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party's officer to incur substantial travel expense; or

(iv) justice so requires.

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[22] Generally, prepositions are not capitalized in the headings throughout the rules.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) if the person's travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena must be served on the party or the attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any such motion on all other parties.

(f) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party's officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

Rule 45.1. Interstate Depositions and Discovery

(a) Definitions. In this rule:

(1) Foreign jurisdiction means a state other than Arizona;

(2) Foreign subpoena means a subpoena issued under a foreign court's authority;

(3) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;

(4) Subpoena means a document issued under court authority requiring a person to:

(A) attend and testify at a deposition;

(B) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or

(C) permit the inspection of premises.

(b) Issuing Subpoena.

(1) ***Presenting the Foreign Subpoena.*** To obtain a subpoena under this Rule 45.1, a party must present a foreign subpoena to the court clerk in the county where the discovery will be conducted. The foreign subpoena must include the following phrase below the case number: "For the Issuance of an Arizona Subpoena Under Ariz. R. Civ. P. 45.1." A request for a Rule 45.1 subpoena does not constitute an appearance in an Arizona court.

(2) ***Clerk's Duties.*** On receiving a foreign subpoena under Rule 45.1(b)(1), the clerk must promptly issue a signed but otherwise blank subpoena to the party requesting it, and that party must complete the subpoena before service.

(3) ***Content of Subpoena.*** A subpoena under Rule 45.1(b)(2) must:

(A) state the name of the issuing Arizona court;

(B) bear the caption and case number of the out-of-state case to which it relates, identifying (before the case number) the foreign jurisdiction and court where the case is pending;

(C) accurately incorporate the discovery requested in the foreign subpoena;

(D) contain or be accompanied by the names, addresses, telephone numbers and email addresses of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel;

(E) be in the form required by Rule 45(a)(1); and

(F) comply with Rule 45's other requirements.

(c) Service. A subpoena issued as provided in Rule 45.1(b) must be served in compliance with Rule 45(d).

(d) Deposition, Production, and Inspection. Rule 45 applies to subpoenas issued under Rule 45.1(b). Discovery taken under this rule must be conducted consistent with, and subject to applicable limitations in, the Arizona Rules of Civil Procedure, except as follows:

(1) Rules 30(a)(1) ("Depositions Permitted") and 30(a)(2) ("Depositions by Plaintiff Fewer than 30 Days after Serving the Summons and Complaint") and 30(a)(4) ("Compelling Attendance of Deponent") do not apply; and

(2) Rule 30(c)(2) ("Objections") applies, but counsel participating in the foreign action may object in the manner required to preserve objections in the jurisdiction where the action is pending, if those requirements differ from Rule 30(c)(2)'s requirements.

(e) Objections; Motion to Quash or Modify; Seeking Protective Order.

(1) ***Objections.*** Rule 45 governs the time and manner for objecting to subpoenas issued under this rule. Objections to a subpoena commanding attendance at a deposition must be made by timely motion under Rule 45(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rules 45 or 45.1, a person who is properly served with a deposition subpoena must attend and testify at the date, time and place specified in the subpoena.

(2) ***Motions to Quash, Modify, Compel or for Protective Order.*** Motions to compel, or for a protective order, or to quash or modify a subpoena issued under this rule:

(A) must comply with Rule 45 and other applicable Arizona rules and statutes;

(B) must be filed with the court clerk in the county where the discovery is to be conducted; and

(C) must be filed as a separate civil action bearing the same caption as appears on the subpoena. The following phrase must appear below the case number of the newly filed action: "Motion or Application Related to a Subpoena Issued Under Ariz. R. Civ. P. 45.1." Any later motion or application relating to the same subpoena must be filed in the same action.

Rule 46. Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary to preserve a claim of error. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who has no opportunity to object when the ruling or order is made.

Rule 47. Jury Selection; Juror Information; Voir Dire; Challenges

(a) Jury Selection. If an action is to be tried by jury, the initial jury panel for the action will consist of persons summoned for jury service who have appeared. The clerk will randomly select—either manually or by electronic means—a sufficient number of persons from this group for consideration as jurors in the action. The clerk will then prepare a list of these prospective jurors' names in random order, and deliver it to the court. The clerk will read the names of prospective jurors in the order in which they appear on the list until a jury is fully selected or the names on the list are exhausted. If the names on the list are exhausted before a jury is fully selected, the clerk will prepare an additional list of prospective jurors in the same manner as provided in this rule.

(b) Juror Information.

(1) ***Personal Information.*** Before jury selection and voir dire examination starts, the clerk must provide the parties with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury experience, and felony conviction status. The clerk must keep all prospective jurors' home, business and telephone numbers confidential and may not disclose them unless good cause is shown.

(2) ***Questionnaires.*** The court may order prospective jurors to complete a written questionnaire prepared by the parties and submitted to the court for approval before trial. Unless the court orders otherwise, the clerk must provide copies of any such juror questionnaire and answers to the parties and their respective counsel. Any party or counsel receiving a copy of the questionnaire and answers must keep the information strictly confidential and must not disclose the information to any other person. When jury selection is done, each recipient must return all copies of the juror questionnaires and answers to the clerk.

(c) Voir Dire Oath and Procedure.

(1) ***Voir Dire Oath.*** The prospective jurors must take an oath administered by the clerk before they are examined about their qualifications. The oath's substance must be as follows: "You do solemnly swear (or affirm) that you will truthfully answer all questions about your qualifications to serve as a trial juror in this action, so help you God." If a prospective juror elects to affirm rather than swear the oath, the clause "so help you God" must be omitted.

(2) ***Brief Opening Statements.*** Before voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.

(3) ***Extent of Voir Dire.***

(A) *Questioning by Court and Parties.* The court must thoroughly question the jury panel to ensure that prospective jurors are qualified and are fair and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limitations on the questioning. Written questions also may be used as provided in Rule 47(b)(2).

(B) *Extent of Questioning.* Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a peremptory challenge.

(d) Challenges for Cause.

(1) ***Grounds.*** A party may challenge a prospective juror for cause on one or more of the following grounds:

(A) The prospective juror lacks one or more of the required statutory qualifications specified in A.R.S. § 21-211.

(B) The prospective juror is a party's:

(i) family member;

(ii) guardian or ward;

(iii) master or servant;

(iv) employer or employee;

(v) principal or agent;

(vi) business partner; or

(vii) surety or obligee on a bond or obligation.

(C) The prospective juror was a witness or served as a juror in a previous trial between the same parties in the same action.

(D) The prospective juror has—by words or actions—shown bias or prejudice for or against any party or otherwise demonstrated that he or she is unfit to serve as a juror.

(2) ***Procedure.*** The court must rule on challenges for cause. A prospective juror who is challenged for cause may be examined under oath by the court or, with the court's permission, by a party.

(e) Peremptory Challenges.

(1) ***Procedure.*** When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.

(2) ***Number.*** Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action—whether a single action or two or more actions consolidated for trial—must be treated as having only two sides. If it appears that two or more parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.

(f) Alternate Jurors.

(1) ***Generally.*** The court may order that up to 6 additional jurors be called and impaneled in the same manner as other jurors under this rule, to allow the court to later designate some of the jurors as alternates.

(2) ***Instructions.*** The court should explain to the jury why alternate jurors are needed and how they will be selected at the end of trial.

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Comment [1]: Suggest change "should" to "must." Alternatively, there should be some explanation in notes to rules generally regarding the significance of use of "should" versus "must," "may" and "shall."

(3) ***Selecting and Excusing an Alternate Juror.*** The court will determine the identities of the alternate jurors by a drawing held in open court after closing arguments and final jury instructions are given but before deliberations begin. If an alternate juror is excused, the court must instruct him or her to continue to observe the juror admonitions until a verdict is returned or the jury is discharged.

(4) ***Substituting an Alternate Juror.*** If a deliberating juror is disqualified or unable to perform the required duties, the court may substitute an alternate juror in the juror's place. If an alternate juror joins the deliberations, the court must instruct the jury to start over in its deliberations.

(5) ***Additional Peremptory Challenges.*** In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.

Rule 48. Stipulations on Jury Size and Verdict

(a) Jury Size. The parties may stipulate to a jury of fewer than 8 but not fewer than 3 members, exclusive of any alternate jurors who are permitted to deliberate.

(b) Verdict. The parties may stipulate that a verdict or a finding of a stated number of jurors be taken as the verdict or finding of the jury.

Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict

(a) Special Verdict.

(1) ***Generally.*** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) ***Instructions.*** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) ***Issues Not Submitted.*** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General Verdict With Answers to Written Questions.

Hardy Smith 11/12/2015 12:23 PM
Comment [2]: Generally, prepositions are not capitalized in the headings throughout the rules.

(1) ***Generally.*** The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) ***Verdict and Answers Consistent.*** If the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) ***Answers Inconsistent With the Verdict.*** If the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) ***Answers Inconsistent With Each Other and the Verdict.*** If the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

(c) Written Questions in Actions Seeking Equitable Relief. If a jury is demanded in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.

(d) Return of Verdict.

(1) ***Number of Jurors Who Must Agree.*** Subject to any stipulation of the parties under Rule 48, if a jury has 8 members, 6 or more members must agree on the verdict.

(2) ***Return of Verdict.*** If the jurors unanimously agree on a verdict, it must be signed by the foreman and returned to the court. If the jurors do not unanimously agree on a verdict, but a sufficient number agree to support the verdict, those jurors who agree must each sign the verdict and return it to the court.

(e) Proceedings on Return of Verdict.

(1) ***Generally.*** The following procedures apply once a verdict is returned:

(A) the clerk must read the verdict and inquire of the jury, or jurors agreeing, if it is their verdict;

(B) if any juror disagrees that it is their verdict, the jury must retire to consider the case further; and

(C) if no juror disagrees, and subject to reformation under Rule 49(f), the court should receive the verdict and order it to be entered in the minutes, and discharge the jury.

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Comment [3]: Generally, prepositions are not capitalized in the headings throughout the rules.

Hardy Smith 11/12/2015 12:25 PM
Comment [4]: Generally, prepositions are not capitalized in the headings throughout the rules.

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Comment [5]: Suggest "must" instead of "should."

(2) ***Polling the Jury.*** After the jury returns a verdict but before the court discharges the jury, the court must on a party's request, or may on its own, poll the jurors individually. The court must not identify the individual jurors by name during polling, but should use other methods or form of identification as is appropriate to ensure that the poll is accurate and to accommodate the jurors' privacy. If the poll reveals a lack of unanimity or lack of assent by the required number of jurors, the court may direct the jury to deliberate further or may order a new trial.

(f) Form of Verdict.

(1) ***Defective, Informal, or Nonresponsive Verdict.*** On request of a party or on its own, the court may order that an informal or defective verdict be reformed. Any such reformation of the verdict should take place before the jury is discharged and with their assent. If the verdict is not responsive to the issue submitted to the jury, the court should inform the jury of the issue and require further deliberations.

(2) ***No Special Form of Verdict Required.*** No special form of verdict is required. If the jury's verdict is in substantial compliance with the law, the court should enter judgment thereon, notwithstanding a defect in form.

(3) ***Fixing Net Recovery Amount.*** If two opposing parties have claims against each other for the recovery of money, and each of those parties obtains a jury verdict awarding money, the jury must separately find the amount of recovery on each claim. The court may enter judgment for the party who has the greater recovery, in an amount reflecting the difference in the amounts awarded to the two parties.

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Comment [6]: Suggest "must" instead of "should."

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Comment [7]: Suggest "must" instead of "should."

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Comment [8]: Suggest "must" instead of "should."

Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling

(a) Judgment as a Matter of Law.

(1) ***Generally.*** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) ***Motion.*** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court submits the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 15 days after the entry of judgment—or if the trial ends without a verdict or with an incomplete verdict that does not decide an issue raised by the motion, no later than 15 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law.

(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.

(1) ***Generally.*** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial.

(2) ***Effect of a Conditional Ruling.*** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.

(d) Time for a Losing Party's New-Trial Motion. A party against whom the court enters judgment as a matter of law must file any motion for a new trial under Rule 59 no later than 15 days after the entry of the judgment.

(e) Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal. If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

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Comment [9]: Generally, prepositions are not capitalized in the headings throughout the rules.

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Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error

(a) Requests.

(1) ***Before or at the Close of the Evidence.*** Before trial and, as the court permits, during trial, a party may file written requests for the jury instructions it wants the court to give.

(2) ***After the Close of the Evidence.*** After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by any earlier filing deadline ordered by the court; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions.

(1) ***Generally.*** Jury instructions should be as readily understandable as possible by individuals unfamiliar with the legal system. Each juror must be provided with a copy of the court's preliminary and final instructions on the law before they are read to the jury and before the jury retires to deliberate.

(2) ***Preliminary Instructions.*** After the jury is sworn, the court must instruct the jury on:

(A) its duties and conduct;

(B) the order of proceedings;

(C) the procedure for submitting written questions to witnesses or to the court;

(D) the procedure for note-taking;

(E) the nature of the evidence and its evaluation;

(F) any issues to be addressed; and

(G) the legal principles that will govern the trial.

(3) ***Final Instructions.*** The court:

(A) may give an instruction as proposed, refuse to give the instruction, or modify the instruction, indicating on the record the modifications made;

(B) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

(C) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered;

(D) may instruct the jury at any time before the jury is discharged; and

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Comment [10]: Should implies optional. Why leave this optional? Is it to avoid trying to establish failure to so instruct as a basis for appeal?

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(E) must make a record of its rulings.

(c) Objections.

(1) ***How to Make.*** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.

(2) ***When to Make.*** An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(3)(C); or

(B) a party was not informed of an instruction or action on a request before having an opportunity to object under Rule 51(b)(3)(C), and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Fundamental Error.

(1) ***Assigning Error.*** A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) ***Fundamental Error.*** A court may consider a fundamental error as allowed by law, even if the error was not preserved.

(e) Record.

(1) ***Jury Communications.*** All communications between the court and members of the jury panel must be in writing or on the record.

(2) ***Preliminary and Final Instructions.*** The court's preliminary and final instructions on the law must be in writing and filed.

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

(a) Findings and Conclusions.

(1) ***Generally.*** In an action tried on the facts without a jury or with an advisory jury, if requested before trial, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion, minute entry or

memorandum of decision filed by the court. Judgment must be entered under Rule 58.

(2) ***For an Interlocutory Injunction.*** In granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its action as provided in Rule 52(a)(1).

(3) ***For a Motion.*** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) ***Effect of a Master's Findings.*** A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) ***Questioning the Evidentiary Support.*** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) ***Setting Aside the Findings.*** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses.

(b) Amended or Additional Findings. On a party's motion filed no later than 15 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) Judgment on Partial Findings. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against that party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law if requested as required by Rule 52(a).

(d) Submission on Agreed Statement of Facts. The parties may submit a matter in controversy to the court on an agreed statement of facts, signed by them and filed with the clerk. The court must render its decision based on the agreed statement unless it finds the statement to be insufficient.

Rule 53. Masters

(a) Appointment.

(1) ***Scope.*** Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact and conclusions of law on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be effectively and timely addressed by an available superior court judge in the county in which the court sits.

(2) ***Disqualification; Affidavit.***

(A) A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under Rule 81 of the Rules of the Supreme Court of Arizona, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(B) Promptly on receiving notice of an appointment or a prospective appointment, and before accepting the appointment, the prospective appointee must file an affidavit disclosing whether there is any ground for disqualification under Rule 53(a)(2)(A).

(3) ***Possible Expense or Delay.*** In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) ***Notice.*** Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) ***Objection.*** If one or more parties object to the appointment of a master or to a proposed appointee, the court may:

(A) decline to make the appointment; or

(B) appoint a master based on a finding on the record stating the reasons that:

(i) one or more of the circumstances for the appointment specified in Rule 53(a)(1) are present;

(ii) the benefit to the parties and the court outweighs the likely expense; and

(iii) the appointment is warranted after considering the parties' respective abilities to pay the likely expense.

(3) ***Contents.*** The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(4) ***Amending.*** The order may be amended at any time after notice to the parties and an opportunity to be heard.

(5) ***Providing Master With Copy of Order.*** When a master is appointed, the clerk must provide the master with a copy of the appointing order in a timely manner.

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Comment [11]: Generally, prepositions are not capitalized in the headings throughout the rules.

(c) Master's Authority.

(1) ***Generally.*** Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) ***Sanctions.*** The master may by order impose on a party any noncontempt sanction provided in Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(3) ***Meetings.*** Unless the court orders otherwise, on receiving the appointing order the master must promptly set a time and place for the first meeting of the parties or their attorneys. The first meeting should be held within 20 days after the date of the appointing order. If a party fails to appear at the scheduled meeting, the master may proceed ex parte or, in the master's discretion, reschedule the meeting with notice to the parties.

(4) ***Master to Proceed With Reasonable Diligence.*** The master must proceed with reasonable diligence. Either party, after notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and, if applicable, make the report.

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(d) Master's Orders. A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) Master's Reports. A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) Action on the Master's Order, Report, or Recommendations.

(1) ***Opportunity to Object; Action Generally.*** In acting on a master's final order, report, or recommendations, the court:

(A) must consider and rule on any objections and motions filed by the parties; and

(B) may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) ***Time to Object or Move to Adopt or Modify.*** A party may file objections to—or a motion to adopt or modify—the master's final order, report, or recommendations no later than 10 days after the master's final order, report, or recommendations are served, unless the court sets a different time.

(3) ***Reviewing Factual Findings.*** The court must decide all objections to findings of fact made or recommended by a master under the clearly erroneous standard, unless the parties stipulate with the court's consent that:

(A) the master's findings will be reviewed de novo; or

(B) the findings of a master will be final.

(4) ***Reviewing Legal Conclusions.*** The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) ***Reviewing Procedural Matters.*** Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) ***Fixing Compensation.*** Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) ***Payment.*** The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) ***Allocating Payment.*** If a master's compensation is to be paid by a party or the parties, the court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master, and any other factor the court deems relevant. An interim allocation may be amended by the court to reflect a decision on the merits after providing notice to the parties and an opportunity to be heard.

VII. JUDGMENT

Rule 54. Judgment; Costs; Attorney's Fees

(a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of earlier proceedings.

(b) Judgment on Multiple Claims or Involving Multiple Parties. If an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or if multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. If there is no such express determination, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final judgment as to any of the claims or parties, and that order or decision may be revised at any time before entry of a final Rule 54(c) judgment. If a final judgment is entered under this rule and a timely motion is filed under Rule 54(g), the court retains jurisdiction to award attorney's fees with respect to that judgment.

(c) Judgment as to All Claims and Parties. A judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c).

(d) Demand for Judgment; Relief to Be Granted. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(e) Entry of Judgment After Party's Death. Judgment may be entered on a verdict or decision after a party's death on an issue of fact rendered while the party was alive.

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Comment [13]: Generally, prepositions are not capitalized in the headings throughout the rules.

(f) Costs.

(1) ***Statement of Costs.*** A party claiming costs must file a statement of costs within 10 days after judgment is entered, unless the court extends the time for good cause. An opposing party may file objections within 5 days after the statement of costs is served. The court must rule on any objections and may order corrections to the statement of costs as appropriate.

(2) ***Expert Witness Fees as Costs.*** In medical malpractice actions only, a party may claim as a taxable cost under A.R.S. § 12-332(a)(1) the reasonable fees paid to expert witnesses for testifying at trial.

(g) Attorney's Fees.

(1) ***Generally.*** A claim for attorney's fees must be made in the pleadings or in a Rule 12 motion filed before the movant's responsive pleading.

(2) ***Time for Filing Motion—Rule 54(c) Judgments.*** If a decision adjudicates all claims or rights of all of the parties and judgment is to be entered under Rule 54(c), any motion for attorney's fees must be filed within 20 days after the decision is filed.

(3) ***Time for Filing Motion—Rule 54(b) Decisions or Judgments.***

(A) If a decision adjudicates all claims or rights pertaining to a party or parties and a party either moves for entry of a final judgment under Rule 54(b) or includes Rule 54(b) language in a proposed form of judgment:

(i) a motion seeking fees must be filed within 20 days after service of the motion or proposed form of judgment seeking Rule 54(b) treatment, or by such other date as the court may order; and

(ii) if the court does not include Rule 54(b) language in the judgment, a motion for attorney's fees may be brought at any time permitted under Rule 54(g)(3)(B).

(B) For any other decision or judgment under Rule 54(b), a prevailing party may move for attorney's fees at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

(4) ***Motion and Proceedings.*** Unless a statute or court order provides otherwise, a motion for attorney's fees must be supported by affidavit and is governed by Rule 7.2. If the court so orders, the movant must disclose the terms of any agreement about fees for the services for which the claim is made.

(5) ***Scope.*** Rules 54(g)(1) through (4) do not apply to claims for fees and expenses that may be awarded as sanctions under a statute or rule, or if the substantive law requires fees to be proved at trial as an element of damages.

Rule 55. Default; Default Judgment

(a) Entering a Default.

(1) ***Generally.*** If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, the clerk must enter the party's default in accordance with the procedures set forth below.

(2) ***Application for Default.*** A party must request entry of default by written application to the court clerk. The filing of the application for default constitutes the entry of default. An application for default must:

(A) identify the party against whom default is sought;

(B) state that the party has failed to plead or otherwise defend within the time allowed by these Rules;

(C) provide a current mailing address for the party claimed to be in default or, if none is known, so state;

(D) identify any attorney known to represent the party claimed to be in default in the action in which default is sought or in a related matter, or state that no such attorney is known; and

(E) attach a copy of the Rule 4(g) proof of service, establishing the date and manner of service on the party claimed to be in default.

(3) ***Notice.*** For any default entered under Rule 55(a)(1), notice must be provided as follows:

(A) *To the Party.* If the party requesting the entry of default knows the whereabouts of the party claimed to be in default, a copy of the application for entry of default must be mailed or otherwise delivered to the party claimed to be in default, even if the party is represented by an attorney who has entered an appearance in the action.

(B) *To the Attorney for a Represented Party.* If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is sought or in a related matter, a copy of the application also must be mailed or otherwise delivered to the attorney, whether or not that attorney has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party claimed to be in default.

(C) *Location of Unrepresented Party Unknown.* If the party requesting the entry of default does not know the whereabouts of a party claimed to be in default or the identity of that party's attorney, then the application for entry of default must so state.

(D) *To Other Parties.* An application for entry of default must be served on all other parties who have appeared in the action, as provided in Rule 5(a).

(4) ***A Default's Effective Date.*** The clerk's entry of default is effective 10 days after the application for entry of default is filed.

(5) ***Effect of Responsive Pleading.*** A default will not become effective if the party claimed to be in default pleads or otherwise defends as provided in these rules within 10 days after the application for entry of default is filed.

(b) Default Judgment.

(1) ***Default Judgment by Motion Without Hearing.***

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Comment [14]: Generally, prepositions are not capitalized in the headings throughout the rules.

(A) *Generally.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the court—on the plaintiff's motion, with an affidavit showing the amount due and without a hearing—may enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(B) *Fee Award—Specific Amount Stated.* A default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees if the claim states

a specific sum of attorney's fees that will be sought if judgment is rendered by default, and:

(i) the amount of the award is supported by affidavit;

(ii) the award is allowed by law; and

(iii) the award does not exceed the amount demanded in the claim.

(C) *Fee Award—No Specific Amount Stated.* If the claim requests an award of attorney's fees, but does not specify the amount of fees that will be sought if judgment is rendered by default, a default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees only if:

(i) an affidavit establishes the reasonable amount of the fee award;

(ii) the defendant has not entered an appearance in the action; and

(iii) the award is allowed by law.

(2) ***Default Judgment* by *Hearing.***

(A) *Generally.* If Rule 55(b)(1) does not apply, the party must apply to the court for a default judgment.

(B) *Default Against a Minor or an Incompetent Person.* A default judgment may be entered against a minor or incompetent person only if the person is represented by a general guardian, conservator, or other like fiduciary who has appeared.

(C) *Notice.* If the party against whom default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 3 days before the hearing.

(D) *Hearings and Referrals.* The court may conduct hearings or make referrals—preserving any right to a jury trial—when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

(ii) determine the amount of damages;

(iii) establish the truth of any allegation by evidence; or

(iv) investigate any other matter.

(3) ***Conformity With the Demand.*** A judgment by default must not be different in kind from, or exceed in amount, that prayed for in a pleading's demand for judgment.

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Comment [15]: Generally, prepositions are not capitalized in the headings throughout the rules.

(c) Setting Aside a Default or a Final Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(c).

(d) Judgment Against the State. A default judgment may be entered against the State of Arizona, a state officer, or a state agency only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfies the court.

(e) Plaintiffs, Counterclaimants and Cross-claimants. The provisions of Rule 55 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court must grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court must state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion.

(1) ***Claimant.*** A claimant may move for summary judgment only after:

(A) the date when a responsive pleading is due from the party against whom summary judgment is sought; or

(B) the filing of a Rule 12(b)(6) motion to dismiss or a summary judgment motion by the party against whom summary judgment is sought.

(2) ***Other Parties.*** Any other party may move for summary judgment at any time after the action is commenced.

(3) ***Filing Deadline.*** A summary judgment motion may not be filed later than the dispositive motion deadline set by the court or local rule, or absent such a deadline, 90 days before the date set for trial.

(c) Procedures.

(1) ***Hearings.*** On timely request by any party, the court must hold a hearing on the motion, unless it determines that the motion should be denied or the motion is uncontested. The court may hold a hearing on the motion even if no party requests one.

Hardy Smith 11/12/2015 12:33 PM
Comment [16]: Generally, prepositions are not capitalized in the headings throughout the rules.

Hardy Smith 11/9/2015 9:38 PM
Comment [17]: New form omits former 55(f) re judgment where service was by publication.

Hardy Smith 11/9/2015 8:22 PM
Deleted: shall

Hardy Smith 11/9/2015 8:22 PM
Comment [18]: Should is in original.

Hardy Smith 11/9/2015 8:17 PM
Deleted: should

(2) ***Opposition and Reply.*** An opposing party must file its response and any supporting materials within 30 days after the motion is served. The moving party must serve any reply memorandum and supporting materials 15 days after the response is served. These time periods may be shortened or enlarged as provided in Rule 7.1(g).

(3) ***Supporting and Opposing Statements of Fact.***

(A) *Moving Party's Statement.* The moving party must set forth, in a statement separate from the supporting memorandum, the specific facts relied on in support of the motion. The facts must be stated in concise, numbered paragraphs. The statement must cite the specific portion of the record where support for each fact may be found.

(B) *Opposing Party's Statement.* An opposing party must file a statement in the form prescribed by Rule 56(c)(3)(A), specifying:

(i) the numbered paragraphs in the moving party's statement that are disputed; and

(ii) those facts which establish a genuine dispute or otherwise preclude summary judgment in favor of the moving party.

(C) *Joint Statement.* In addition or as an alternative to submitting separate statements under Rule 56(c)(3)(A) and (B), the moving and opposing parties may file a joint statement in the form prescribed by this Rule, setting forth those facts that are undisputed. The joint statement may provide that any stipulation of fact is not binding for any purpose other than the summary judgment motion.

(4) ***Objections to Evidence.*** Rule 7.1(f)(2) governs objections to the admissibility of evidence on summary judgment motions, except that an objection may be included in a party's response to another party's separate statement of facts in lieu of, or in addition to, including it in the party's responsive memorandum. Any objection presented in the party's response to the separate statement of facts must be stated concisely.

(5) ***Affidavits.*** An affidavit used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If an affidavit refers to a document or part of a document, a properly authenticated copy must be attached to or served with the affidavit.

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Comment [19]: Should refer to preceding subpart.

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(6) ***Other Materials.*** Affidavits may be supplemented or opposed by deposition excerpts, interrogatory responses, admissions, additional affidavits, or other materials that would be admissible in evidence.

(d) When Facts Are Unavailable to the Opposing Party; Request for Rule 56(d) Relief; Expedited Hearing.

(1) ***Requirements.*** If an opposing party cannot present evidence essential to justify its opposition, it may file a request for relief and expedited hearing. The request must be titled: "Request for Rule 56(d) Relief and for Expedited Hearing." The request must be accompanied by:

Hardy Smith 11/9/2015 8:41 PM
Deleted: under Rule 56(d).

(A) a supporting affidavit establishing specific and adequate grounds for the request and addressing, if applicable, the following:

(i) the particular evidence beyond the party's control;

(ii) the location of the evidence;

(iii) what the party believes the evidence will reveal;

(iv) the methods to be used to obtain it; and

(v) an estimate of the amount of time the additional discovery will require.

(B) a certification of the party's efforts to resolve the matter as required by Rule 7.2(h).

(2) ***Effect.*** Unless the court orders otherwise, a request for relief under Rule 56(d)(1) does not by itself extend the date for an opposing party to file its responsive memorandum and separate statement of facts under Rule 56(c).

(3) ***Responses to Request.*** Unless the court orders otherwise, the party moving for summary judgment is not required to respond to a Rule 56(d) request for relief. If such a party elects to file a response, it must be filed no later than 2 days before any hearing scheduled to consider the requested relief.

(4) ***Expedited Hearing.*** The court must hold an expedited hearing, in person or by telephone, within 7 days after a request is filed in compliance with Rule 56(d)(1). If the court's calendar does not allow a hearing within 7 days, the court should set a hearing date at the earliest available time allowed by the court's calendar.

Hardy Smith 11/9/2015 8:46 PM
Comment [20]: "Should" may be appropriate here.

(5) ***Relief.*** When a request is filed in compliance with Rule 56(d)(1), the court may, after holding a hearing:

(A) defer considering the summary judgment motion and allow time to obtain affidavits or to take discovery before a response to the motion is required;

(B) deny the requested relief and require a response to the summary judgment motion by a date certain; or

(C) issue any other appropriate order.

(e) Failing to Properly Oppose a Motion. When a summary judgment motion is made and supported as provided in this rule, an opposing party may not rely merely on allegations or denials of its own pleading. The opposing party must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, must be entered against that party.

Hardy Smith 11/9/2015 8:50 PM
Comment [21]: Should "shall" be replaced with "must." What is distinction between "shall" and "must" in this context?

Hardy Smith 11/9/2015 8:50 PM
Deleted: shall

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmoving party, if the grounds for doing so are the same as those underlying the court's grant of summary judgment to another party;

(2) grant summary judgment on grounds not raised by a party; or

(3) consider granting summary judgment after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, or if judgment is not rendered on the whole case under Rule 56(f), the court may enter an order identifying any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit Submitted in Bad Faith. If a Rule 56 affidavit is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result, or may impose other appropriate sanctions.

Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory judgment action.

Rule 57.1. Declaration of Factual Innocence

(a) Scope of Rule. This rule governs the determination of factual innocence of a person who claims under A.R.S. § 12-771 that the personôs personal identifying information was taken, and, as a result, the personôs name was used by another person who was arrested, cited, or charged with a criminal offense, or the personôs name was later entered as of record in a judgment of guilt in a criminal action.

(b) Filing. A petition brought under this rule must be filed in the superior court in the county in which the other person was arrested for, or cited or charged with, a criminal offense. The petition must be assigned a civil case number. If applicable, the petition should state the specific court location where the underlying charge was filed, or the judgment of guilt was entered, and the case number of that prior filing. The petition must identify, as applicable, the names and mailing addresses of all persons and entities entitled under A.R.S. § 12-771(H) to notice of a finding of factual innocence. The petition should be captioned: In re: (name of petitioner).

(c) Service. The petitioner must serve the petition on the individuals and entities identified in A.R.S. § 12-771(D) and (E). Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d) Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying information such as the personôs birth date, social security number, or financial account numbers, be filed or retained in redacted form or under seal.

(e) Transmission of Records. If the petition is related to a charge filed in a justice of the peace court or a municipal court, the clerk of the superior court must request the justice of the peace or presiding officer of the municipal court to transmit a copy of the file to the clerk.

(f) Discovery and Disclosure. Discovery may be conducted and disclosure under Rule 26.1 may be required only by stipulation of the parties, or by court order.

(g) Evidence. The petitioner must establish factual innocence by clear and convincing evidence.

(h) Hearing and Determination.

(1) The court may hold a hearing to determine the petitionerôs factual innocence.

(2) The court may enter an order under this rule on submission of proof by affidavit.

(3) At any hearing, the victim of the offense identified in a judgment of guilt, or committed by the person arrested for, or cited or charged with, a criminal offense, has a right to be present and to be heard at the hearing.

(i) Order. On a finding of factual innocence related to an arrest, citation, or charge, the court must notify the following, if applicable: the petitioner; the prosecuting agency that filed the charge; the law enforcement agency that made the arrest or issued the citation; and the defense attorney.

Rule 57.2. Declaration of Factual Improper Party Status

(a) Scope of Rule. This rule governs petitions alleging factual improper party status under A.R.S. § 12-772, if as a result of a personôs personal identifying information being taken, the personôs name was entered as of record in a civil action or judgment.

(b) Filing. A petition brought under this rule must be filed in the superior court for the county in which the petitionerôs name was entered as of record in a civil action or judgment because of alleged improper use of the petitionerôs personal identifying information. The petition must be assigned a civil case number. The petition must state the specific court location where the underlying action was filed, and the case number of the prior filing. The petition should be captioned: In re: (name of petitioner).

(c) Service. The petitioner must serve the petition on all parties in the civil action in which the petitionerôs identity was allegedly used. Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d) Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying informationð such as the personôs birth date, social security number, or financial account numbersð be filed in redacted form or be filed under seal.

(e) Transmission of Records. If the petition is related to an action filed in a justice of the peace court, the clerk of the superior court must request the justice of the peace to transmit a copy of the file to the clerkôs office.

(f) Discovery and Disclosure. Discovery proceedings may be conducted and disclosure under Rule 26.1 may be required only by stipulation of the interested parties, or by court order.

(g) Evidence. The petitioner must establish improper party status by clear and convincing evidence.

(h) Hearing and Determination.

(1) The court may hold a hearing on the petition.

(2) The court may enter an order under this rule upon submission of proof by affidavit.

(i) Order. The court must provide notice of the courtôs findings to the petitioner and to all parties in the civil action in which the petitionerôs identity was allegedly used.

Rule 58. Entering Judgment; Minute Entries

(a) Form of Judgment; Objections to Form.

(1) ***Proposed Forms of Judgment.*** Proposed forms of judgment must be served on all parties and must comply with Rule 5(j)(1).

(2) ***Objections to Form.***

(A) A judgment may not be entered until 5 days after the proposed form of judgment is served, unless:

(i) the opposing party endorses on the judgment its approval as to the judgmentôs form; or

(ii) the court waives or shortens the 5-day notice requirement for good cause; or

(iii) the judgment is against a party in default.

(B) An opposing party not in default may file an objection to the proposed form of judgment within 5 days after it is served. If an objection is made:

(i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and

(ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

(1) ***Written Document.*** Except as provided in Rule 58(b)(2)(B) regarding habeas corpus proceedings, all judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so.

(2) ***Time and Manner of Entry.***

(A) *Generally.* A judgment is not effective before entry, except that a court may direct the entry of a judgment nunc pro tunc in such circumstances and on such notice as justice requires, stating the reasons on the record. A judgment,

Rule 58. Entering Judgment; Minute Entries

(a) Form of Judgment; Objections to Form.

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(i) the opposing party endorses on the judgment its approval as to the judgment's form; or

(ii) the court waives or shortens the 5-day notice requirement for good cause; or

(iii) the judgment is against a party in default.

(B) An opposing party not in default may file an objection to the proposed form of judgment within 5 days after it is served. If an objection is made:

(i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and

(ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

(1) ***Written Document.*** Except as provided in Rule 58(b)(2)(B) regarding habeas corpus proceedings, all judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so.

(2) ***Time and Manner of Entry.***

(A) *Generally.* A judgment is not effective before entry, ~~except that~~ until a court ~~may~~ directs the entry of a judgment nunc pro tunc with ~~in such circumstances and on~~ such notice as justice requires, stating the reasons on the record; or~~.~~ ~~A judgment, including~~ the clerk files a judgment in the form of a minute entry~~, is entered when the clerk files it~~.

(B) *In Habeas Corpus Proceedings.* A ~~-~~judgment in habeas corpus proceedings need not be signed, and is final when set forth in a filed minute entry ~~that is filed~~.

(3) ***Cost or Fee Awards.***

(A) *Fees.* Except as permitted by Rule 54(g)(3):

(i) a judgment may not be entered until claims for attorney's fees have been resolved and are addressed in the judgment; and

(ii) the judgment must include a blank in the form of judgment to allow the court to include an attorney's fees award.

(B) *Costs.* Entry of judgment must not be delayed nor the time for appeal extended to tax costs.

(c) Notice of Entry of Judgment.

(1) ***Manner of Notice.***

(A) *By the Clerk.* Immediately upon the entry of a judgment, or the entry of a minute entry constituting a judgment, the clerk must:

(i) distribute notice, in the form required by Rule 58(c)(2), either electronically, by U.S. mail, or attorney drop box, to every party not in default for failing to appear; and

(ii) make a record of the distribution.

(B) *By Any Party.* In addition to the clerk's notice under Rule 58(c)(1)(A), any party may serve notice of entry of judgment in the manner provided in Rule 5.

(2) ***Form of Notice.*** Notice of entry of judgment must be in the following form:

(A) a written notice of the entry of judgment;

(B) a minute entry; or

(C) a conformed copy of the file-stamped judgment.

(3) ***Lack of Notice.*** Lack of notice of the entry of judgment by the clerk does not affect the time to appeal or relieve, or authorize the court to relieve, a party ~~for~~ from the failure to appeal within the allowed time, except as provided in Rule 9(f), Arizona Rules of Civil Appellate Procedure.

(d) Remittitur.

(1) ***Procedure.*** A party in whose favor a verdict or judgment has been rendered may, in open court, or in a writing filed with the court, remit any part of the verdict or judgment. A remittitur announced in open court must be set forth in a minute entry.

(2) ***Effect on Execution.*** After remitting a portion of a judgment or verdict, a party may execute on a judgment only for the balance of the judgment or verdict after deducting the amount remitted.

(3) ***Effect of Right of Appeal.*** The remittitur does not affect the rights of the opposing party to appeal from the judgment, and for purposes of appeal the amount of the original judgment must be considered the amount in controversy.

(e) Clerk's Distribution of Minute Entries. The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties.

Rule 59. New Trial; Altering or Amending a Judgment

(a) Generally. This rule governs motions for a new trial or to alter or amend a judgment, following a trial, the grant of summary judgment, or other proceeding that results in a final judgment.

(1) ***Grounds for New Trial.*** The court may, on motion, grant a new trial on all or some of the issues—and to any party—on any of the following grounds materially affecting that party's rights:

(A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that could not reasonably have been prevented;

(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;

(E) excessive or insufficient damages;

(F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;

(G) the verdict is the result of passion or prejudice; or

(H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

(2) ***Further Action After a Nonjury Trial.*** After a nonjury trial, the court may, on motion for a new trial, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) Time to File a Motion; Response and Reply.

(1) ***Motion.*** A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. The motion may be amended at any time before the court rules on it.

(2) ***Response and Reply.*** Rule 7.2 governs responses and replies to a motion for new trial.

(c) New Trial on the Court's Initiative or for Reasons Not in the Motion. No later than 15 days after the entry of judgment, the court, on its own, may order a new trial for any reason set forth in Rule 59(a). After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(d) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 15 days after the entry of the judgment.

(e) Scope of New Trial. A new trial, if granted, must be limited to the question or questions found to be in error, if separable. If a new trial is ordered solely because the damages are excessive or inadequate, and if the issue of damages is separable from all other issues in the action, the verdict may be set aside only on damages~~,~~ and must stand in all other respects.

(f) Motion on Ground of Excessive or Inadequate Damages.

(1) ***Conditional Grant of New Trial.***

(A) *Generally.* When a motion for new trial is based on the ground that the awarded damages are either excessive or insufficient, the court may grant the new trial conditionally if, within the time the court sets~~set by the court~~, the party adversely affected by the reduction or increase in damages files a statement accepting the amount of damages the court designates~~ as designated by the court~~.

(B) *Effect on Grant or Denial of New Trial.* If the party adversely affected by the reduction or increase in damages files a statement as provided in Rule 59(g~~f~~)(1)(A), the motion for new trial is deemed denied as of the date the statement is filed. If the party adversely affected does not file a statement, the motion for new trial is deemed granted as of the deadline the court specifies~~d by the court~~ for filing the statement. No further written order is required to make an order granting or denying the new trial~~ final~~. If the court's conditional order ~~of the court~~ requires a reduction of or increase in damages, then the new trial may be granted only as to damages, and the verdict must stand in all other respects.

Commented [HB1]: The Ad Hoc Committee discussed whether we need to mention anywhere in the Rules that the Court may do something on its own because the Court has inherent authority to act. Maybe the only time the ability to act on its own needs to be mentioned is when procedure is different because the Court acted on its own rather than upon a party's Motion.

Commented [HB2]: "the entry of the judgment" is wordy. Perhaps we can say after "judgment entry." This could be used here and in the above Rules.

Commented [HB3]: Passive voice

(2) ***Effect on Appeal.*** If a statement of acceptance is filed by the party adversely affected by reduction or increase of damages, and the other party later files an appeal, the party filing such statement may cross-appeal and, at its election, seek review of the superior court's ruling that the awarded damages are either excessive or insufficient. If the court's ruling on damages is affirmed, the party's prior acceptance will remain in effect, unless the appeal's final disposition requires otherwise.

(g) Motion for New Trial After Service by Publication.

(1) ***Generally.*** When judgment has been rendered on service by publication, and the defendant has not appeared, the court may grant a new trial if the defendant—within one year after entry of judgment—files an application establishing good cause for a new trial.

(2) ***Bond Required to Stay Execution.*** Execution of judgment ~~should~~ must not be stayed unless the defendant posts a bond in double the amount of the judgment or the value of the property that is the subject of the judgment. The bond must be conditioned on the defendant's prosecution of the application for new trial and on satisfaction of the judgment in full should the court deny the application.

(h) Number of New Trials. No more than two new trials may be granted to a party in the same action, except on the grounds of jury misconduct or errors of law.

(i) Order Specifying Grounds. Any order granting a new trial or altering or amending a judgment must specify with particularity the ground or grounds for the court's order.

Rule 60. Relief from Judgment or Order

(a) Corrections Based on Clerical Mistakes; Oversights; and Omissions. A court may correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(d);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason justifying relief.

(c) Timing and Effect of the Motion.

(1) ***Timing*****.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later.

(2) ***Effect on Finality.*** The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief to a defendant served by publication as provided in Rule 59(~~j~~g); or

(3) set aside a judgment for fraud upon the court.

(e) Correction of Error in Record of Judgment.

(1) After a mistake in a judgment is corrected as provided in Rule 60(a), execution must conform to the corrected judgment.

(2) On motion and after notice, the court must correct a judgment if there is a mistake, miscalculation, or misrecital of a sum of money, or a mistake about, or a misspelling of, a name.

(f) Reversed Judgment of Foreign State. If a judgment was rendered on a foreign judgment from another state or country and the court of such state or country reverses or sets aside the foreign judgment, the Arizona court that rendered judgment must set aside, vacate, and annul its judgment.

Rule 61. Harmless Error

Unless justice requires otherwise, an error in admitting or excluding evidence—or any other error by the court or a party—is not grounds for granting a new trial; for setting aside a verdict; or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) No Automatic Stay. Except as provided in Rule 7 of the Arizona Rules of Civil Appellate Procedure or otherwise provided by court order, an interlocutory or final judgment—including in an action for an injunction or a receivership—is not stayed after being entered, even if an appeal is taken.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment;

(4) under Rule 60(a) and (~~e~~b), for relief from a judgment or order; or

(5) when justice so requires in other instances until such time as the court may fix.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond, security or other conditions that preserve the opposing party's rights.

(d) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.

(1) ***Judgment Directing Execution of Instrument.*** If a party is appealing a judgment or order directing the execution of a conveyance or other instrument, the judgment or order may not be stayed unless and until the conveyance or other instrument is executed and deposited with the clerk pending the appeal's outcome.

(2) ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property may not be stayed

pending appeal, but the proceeds of the sale must be deposited with the clerk pending the outcome of the appeal.

(e) Stay of a Judgment Against the State or Its Agencies or Political Subdivisions.

(1) ***Money Judgments.*** If a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, the judgment is automatically stayed upon the filing of an appeal.

(2) ***Non-Money Judgments.*** If a judgment entered against the State of Arizona or one of its agencies or political subdivisions and the judgment is other than a money judgment, the judgment is not automatically stayed upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation or other security.

(f) Stay of Judgment Entered Under Rule 54(b). A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(g) Stay of a Judgment in Rem. If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until 15 days after its entry, and no execution or other process may issue on the judgment during that time.

Rule 63. Judge's Inability to Proceed

If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed with the hearing or trial upon certifying familiarity with the record and determining that the action may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge also may recall any other witness.

VIII. PROVISIONAL AND FINAL REMEDIES; SPECIAL PROCEEDINGS

Rule 64. Seizing a Person or Property

(a) Remedies—Generally. At the commencement of and throughout an action, every remedy authorized by law is available for the seizure of a person or property to secure satisfaction of a potential judgment.

(b) Specific Kinds of Remedies. The remedies available under this rule include the following—however designated and regardless of whether the remedy is ancillary to the action or requires an independent action:

(1) arrest;

(2) attachment;

(3) garnishment;

(4) replevin;

(5) sequestration; and

(6) other corresponding or equivalent remedies.

Rule 64.1. Civil Arrest Warrant

(a) Nature of Rule; Illustrative Uses. This rule does not create a substantive basis for the power of arrest. Rather, it sets forth the procedure for how a court may exercise its inherent power to command the attendance in court of persons who disobeyed a prior order to appear in a civil action. The procedure described in this rule can be used, for example, if a witness ignores a subpoena, a juror disobeys an order to report for jury duty, a judgment debtor fails to appear for supplemental proceedings, a person disobeys an order to appear for a deposition, or a person is in contempt of an order to report to jail as directed.

(b) Defined. A "civil arrest warrant" is a court order in a non-criminal matter, directed to any peace officer in the state, to arrest the individual named in the order and to bring such person before the issuing court.

(c) When Issued. The court may, on motion or on its own, issue a civil arrest warrant if it finds that the person for whom the warrant is sought has failed to appear:

(1) after the court ordered the person to appear at a specific time and location, and after the person received actual notice of such order, including a warning that failure to appear might result in the issuance of a civil arrest warrant; or

(2) after the person was served personally with a subpoena to appear in person, at a specific time and location, which contained a warning that failure to appear might result in the issuance of a civil arrest warrant.

(d) Content of Warrant.

(1) ***Identification of the Person to Be Arrested.*** The warrant must contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty.

(2) ***Command to Appear.*** The warrant must command that the person named be brought before the issuing judge or, if the judge is absent or unable to act, the nearest or most accessible judge in the same county.

(3) ***Bond.*** The warrant must set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or an order that the arrested person be held without bond until they are seen by a judge.

(e) Time and Manner of Execution. A civil arrest warrant is executed by the arrest of the person named in it. The arrested person must be brought before the issuing judge, or the nearest available judge, within 24 hours after the warrant is executed or sooner if practicable.

(f) Duty of Court After Execution of Warrant. The judge must advise the arrested person of the nature of the proceedings, release the arrested person on the least onerous terms and conditions that reasonably guarantee the required appearance, and set the date of the next court appearance.

(g) Forfeiture of Bond. The procedure for the forfeiture of bonds in criminal actions applies.

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction or Temporary Restraining Order.

(1) ***Notice.*** Except as provided in Rule 65(b), the court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.

(2) ***Consolidating the Hearing With the Trial on the Merits.***

(A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.

(B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.

(C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(3) ***Motion to Dissolve or Modify.*** After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction with notice to the opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are ~~not~~ insufficient grounds for the injunction, or that it is overbroad, the court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

(1) ***Issuing Without Notice.*** The court may issue a temporary restraining order without written or oral notice to the adverse party only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will likely result to the movant before the adverse party can be heard in opposition; ~~,~~ or ~~that~~ prior notice will likely cause the ~~defendant~~ adverse party to take action resulting in such injury, loss or damage; and

(B) the movant's attorney certifies in writing any efforts made to give notice or the reasons why it should not be required.

(2) ***Contents.*** Every temporary restraining order issued without notice must:

(A) state the date and hour it was issued;

(B) describe the injury and state why it is irreparable;

(C) state why the order was issued without notice; and

(D) be promptly filed in the clerk's office and entered in the record.

(3) ***Expiration.*** A temporary restraining order issued without notice expires at the time after entry—not to exceed 10 days—that the court sets, unless before ~~that~~ expiration of that time the court, for good cause, extends ~~it~~ the time for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.

(4) ***Expediting the Preliminary Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion~~;~~. ~~I~~if the party does not, the court must dissolve the order.

(5) ***Motion to Dissolve.*** On two days' notice to the party obtaining the order without notice—or on shorter notice set by the court—the adverse party may move to dissolve or modify the order. The court must hear and decide any such motion as promptly as justice requires.

(c) Security.

(1) ***Generally; On Issuance.*** The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in such amount as the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. The State of Arizona and its agencies, counties, municipalities, and other governmental entities—and their respective officers—are not required to give security. The provisions of Rule 65.1 apply to a surety on a bond or undertaking under this rule.

(2) ***Injunction Restraining Collection of Money.***

(A) *On Dissolution Pending Trial.* On dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court must require the defendant to give security payable to the plaintiff:

(i) in the amount previously enjoined and any additional amount ordered by the court; and

(ii) conditioned on refunding to the plaintiff the amount of money, interest and costs that the plaintiff may ~~be~~ collect~~ed by the plaintiff~~ if a permanent injunction is ordered on final hearing.

(B) *Injunction Made Permanent.* If a permanent injunction is ordered on final hearing, on the plaintiff's motion, the court must enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

(d) Contents and Scope of Injunction or Restraining Order.

(1) ***Contents.*** Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

(e) Venue of a Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment. A motion or application seeking an injunction or order to stay an action, or to stay execution of judgment, must be filed in the court where the action is pending or the judgment was rendered.

(f) Procedure for Obtaining Sanctions; Order to Show Cause.

(1) ***Generally.*** The court may issue sanctions for civil contempt, or for criminal contempt as allowed by law, against a party or person who violates an injunction.

(2) ***Application; Affidavit.*** A party alleging that any party or person has violated an injunction may file an application for an order to show cause. ~~The application must be accompanied by a~~A supporting affidavit describing the acts that violate the injunction must accompany the application.

(3) ***Order to Show Cause.*** The court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:

(A) may set a date for any written response to the application, and

(B) before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the court.

(4) ***Service.*** No later than 10 days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading 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 5.1.

(5) ***Hearing.*** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(~~i~~f). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party charged with criminal contempt may be entitled to a jury trial as provided by law.

(6) ***Sanctions—Generally.*** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal

contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as the court otherwise orders~~ed by the court~~.

(7) ***Sanctions for Failing to Appear.*** The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:

(A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party or person's appearance at any future hearing; and

(B) if the party or person charged with contempt is a corporation, the court may attach and sequester assets of the corporation pending further court order.

Rule 65.1. Proceedings Against Surety

When these rules (including Rule 65 and any other relating to security) require or allow a party to give security, and security is given through a bond or other undertaking with one or more sureties, each surety submits to the court's jurisdiction and irrevocably appoints the clerk as its agent for receiving service of any papers that affect its liability on the bond or undertaking. The surety's liability may be enforced on motion without an independent action. The motion and any notice that the court orders ~~may~~ must be served on the clerk, who must promptly mail or otherwise distribute a copy of each to every surety whose address is known.

Rule 65.2. Action Under A.R.S. § 23-212 or § 23-212.01

(a) Commencement of Action. The county attorney may bring an action under A.R.S. § 23-212 or § 23-212.01 by filing a verified complaint with the clerk. The attorney signing the complaint must verify that he or she believes the assertions in the complaint to be true based on a reasonably diligent inquiry.

(b) Contents of Complaint. The complaint must include the following:

(1) The employer's name and address(es);

(2) The employer's business licenses subject to suspension or revocation, and the licensing agency(ies)' identity and address, including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service;

(3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;

(4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and

(5) If the action is for a second violation, the first action's case number and the date of the order or judgment. The complaint must also attach a copy of the court's order or judgment finding a first violation.

(c) Nature of Proceedings. The action must be denominated as a civil action and assigned a specific sub-category code for case tracking ~~purposes~~. It must be heard and decided by the court sitting without a jury, except as otherwise permitted under Rule 39(c~~m~~).

(d) Venue. Venue is proper in any county in which the employee is or was employed by the employer.

(e) Expedited Proceedings. The court must expedite the proceedings.

(f) Scheduling Conference. At the same time the complaint is filed, the county attorney must file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order must be served on the employer and may be served with the complaint. At the scheduling conference, the court may address Rule 16(d) matters and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer must file and serve a written disclosure identifying all business licenses that it holds in Arizona.

(g) Evidentiary Hearing; Summary Judgment. The court may not suspend or revoke a license without first affording the parties the opportunity for an evidentiary hearing unless all parties waive the hearing. Rule 56 does not apply to these proceedings unless all parties agree.

(h) Standard of Proof. The court must determine all required factual issues by a preponderance of the evidence.

(i) Applicability of Rules of Evidence. Except as provided in A.R.S. § 23-212(H) and § 23-212.01(H), the Arizona Rules of Evidence apply to these proceedings.

(j) Enforcement of Court Orders.

(1) ***Application for Order to Show Cause.*** After an order finding a first violation under A.R.S. § 23-212(F)(1) or § 23-212.01(F)(1), if the employer fails to timely file a ~~timely~~ sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d), the county attorney must file an application for an order to show

cause as to why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. ~~The application must be accompanied by a~~An affidavit or other proof demonstrating that the employer failed to file the required sworn affidavit must accompany the application and must set forth the appropriate licensing agency's identity and address, including the identity and mailing address of the agency official authorized to accept service under this rule.

(2) ***Opposition.*** Within 5 days after service of an order to show cause application, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that it has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If an opposition is timely filed, the court must hold a hearing and may not order any further license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court must order the appropriate licensing agencies to suspend indefinitely all applicable licenses the employer held ~~by the employer~~.

(3) ***Relief from License Suspension.*** After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, on motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or § 23-212.01(F)(1)(c), the court must enter an order terminating any further license suspension.

(4) ***Distribution of Order.*** The clerk must distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.

(k) Action for Second Violation. An action alleging a second violation under A.R.S. § 23-212(F)(2) or § 23-212.01(F)(2) must be filed and served as a new action.

(l) Requirement of Electronic or Facsimile Service. After a party has appeared in a proceeding brought under this rule, any papers served on that party by mail under Rule 5(c) also must be served at the same time by electronic mail or by facsimile, or as agreed to by the parties, or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service must be made as otherwise provided in Rule 5(c).

(m) Fees. The court must assess such fees as may be prescribed under A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

Rule 66. Receivers

(a) Application; Service; Notice; Restraining Order.

(1) ***Application, Response, and Hearing.*** A party seeking the appointment of a receiver must file an application for the receiver's appointment, accompanied by an affidavit attesting to the facts supporting the application. Within 10 days after being served, the adverse party may file a response accompanied by one or more counter-affidavits attesting to facts relevant to the application. Except as provided in Rule 66(a)(3), the court must hold a hearing on the application. At the hearing, it may consider testimony and other evidence presented by the parties.

(2) ***Service.*** Service must be made on the adverse party in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable. The court may not consider an application that has not been served on the adverse party unless:

(A) at least 10 days after filing the application, the applicant files a sworn affidavit showing that all reasonable efforts have been made to serve the adverse party, and that personal service on the party cannot be made within Arizona or by direct service outside of Arizona; or

(B) the applicant shows that substantial cause exists for appointing a receiver before the adverse party is served.

(3) ***Appointment Without Notice.*** If a party applies for appointment of a receiver without notice, the court may either grant the application or, if the adverse party is available to be served, order the applicant to serve the adverse party and set a hearing on the application to be held no later than 10 days after the order's entry.

(4) ***Bond.*** If the court grants an application for appointment of a receiver without notice, it must require and the applicant must file a bond in an amount the court fixes, with such surety as the court approves. The bond must be conditioned to indemnify the adverse party for costs, and damages occasioned by the seizure, taking and detention of the adverse party's property.

(5) ***Rule 65's Applicability.*** The court may not consider an application for a receivership under this rule if Rule 65 applies.

(b) Appointment; Oath; Bond; Certificate.

(1) ***Appointment.*** Except as stated in this rule, the court may not appoint as receiver a party, an officer or employee of a party, an attorney for a party, or a person interested in the action. The court, however, may appoint as receiver an employee of a party, an officer of a corporate party, or a person otherwise interested in the action, if:

(A) the court finds that the property has been abandoned or that the receiver's duties will consist chiefly of physically preserving the property, collecting rents, or maturing, harvesting and disposing of crops growing on it;

(B) notice is provided in a manner the court finds ~~is~~ adequate; and

(C) no party objects.

(2) ***Bond, Oath and Certificate of Appointment.*** Before performing the prescribed duties, the receiver must file a bond for the court to approve. The bond must be in the amount set forth in the receiver's order of appointment, and must be conditioned on the receiver faithfully discharging his or her duties in the action and obeying the court's orders. The receiver must make an oath to the same effect, which must be endorsed on the bond. Upon the court's approval of the bond and the receiver making the required oath, the clerk must deliver a certificate of appointment to the receiver. The certificate must contain a description of the property involved in the action.

(c) Powers; Removal and Termination; Governing Law.

(1) ***Powers.*** The receiver may commence and defend actions, subject to the court's control and supervision. The receiver may take and keep possession of the property, receive rents, collect debts and perform such other duties respecting the property as the court orders.

(2) ***Suspension and Removal.*** The court may suspend a receiver at any time and may, after providing reasonable notice, remove a receiver and appoint another.

(3) ***Termination.*** Any party may move to terminate a receivership. Unless the parties stipulate otherwise, the court must hold a hearing on the motion but it may not be held sooner than 10 days after the motion's service. In scheduling the hearing, the court may order the receiver to file and serve a final account and report, and may require any objecting party to file and serve written objections. At the hearing, the court may take evidence as is appropriate and may enter orders as are just concerning the receivership's termination, including orders regarding the receiver's fees and costs.

(4) ***Equitable Principles Govern.*** If applicable, principles of equity govern all matters relating to the appointment of receivers, their powers, duties and liabilities, and the court's power.

(d) Procedure. An action in which the court has appointed a receiver may not be dismissed except by court order.

Rule 67. Deposit into Court

(a) By Leave of Court. If any part of the relief sought in an action is a money judgment or the disposition of a sum of money or some other deliverable thing, a party—upon affording notice to every other party and by leave of court—may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

(b) By Court Order. A court may order that money or any other deliverable property be deposited with the court if it is the subject of an action and if a party admits to control or possession of the money or property. The court also may order that the money or property be delivered to the party claiming it on conditions that the court finds just.

(c) Clerk's Duties. If any money or other property is deposited with the court, the clerk must deposit it in a safe or in a bank, subject to the court's control. If money is deposited, the court may order the clerk to deposit it with the county treasurer, who must receive and hold it subject to further court order. The clerk must file a statement in the action identifying each item the court received ~~by the court~~ and its disposition.

Rule 68. Offer of Judgment

(a) Time for Making; Procedure. Any party may serve on any other party an offer to allow judgment to be entered in the action.

(1) ***Trial.*** An offer of judgment must be made more than 30 days before trial begins.

(2) ***Arbitration*****.** In actions assigned to arbitration, no offer of judgment may be made during the time period beginning 25 days before the arbitration hearing and ending when a Rule 77(a) notice of appeal is filed.

(b) Contents of Offer.

(1) ***Money Judgment.*** An offer that includes a money judgment must specifically state the sum of money to be awarded, inclusive of all damages, taxable court costs, interest, and may include attorney's fees, if any, sought in the action.

(2) ***Attorney's Fees.*** If specifically stated, attorney's fees may be excluded from an offer. If an offer that excludes attorney's fees is accepted and attorney's fees are allowed by statute, contract, or otherwise, either party may seek an award of attorney's fees.

(3) ***Apportionment.*** The offer need not be apportioned by claim.

(**c**) **Acceptance of Offer; Entry of Judgment.** To accept an offer, the offeree must serve written notice—during the effective time period—that the offer is accepted. After either party files the offer and proof of acceptance, the court must enter judgment in accordance with Rule 58(a).

(d) Rejection of Offer; Waiver of Objections.

(1) ***Rejection of Offer.*** An unaccepted offer is considered rejected. Evidence of an unaccepted offer is not admissible except in a proceeding to determine sanctions under this rule.

(2) ***Objections to Offer.*** An offeree who objects to the validity of an offer must—within 10 days after the offer is served—serve on the offeror written notice of the objections. The failure to serve timely objections waives the right to object to the offer's validity in any proceeding to determine sanctions under this rule.

(e) Multiple Offerors. Multiple parties may make a joint unapportioned offer of judgment to a single offeree.

(f) Multiple Offerees.

(1) ***Unapportioned Offers.*** Unapportioned offers may not be made to multiple offerees.

(2) ***Apportioned Offers.*** One or more parties may make an apportioned offer to multiple offerees conditioned on acceptance by all of the offerees. Each offeree may serve a separate written notice of acceptance of the offer. If fewer than all offerees accept, the offeror may enforce any of the acceptances if:

(A) the offer discloses that the offeror may exercise this option; and

(B) the offeror serves written notice of final acceptance no later than 10 days after the offer expires.

The sanctions provided in this rule apply to each offeree who did not accept the apportioned offer.

(g) Sanctions.

(1) ***Amount.*** A party who rejects an offer, but does not obtain a more favorable judgment, must pay as a sanction:

(A) the offeror's reasonable expert witness fees and double the taxable costs, as defined in A.R.S. § 12-332, incurred after the offer date; and

(B) prejudgment interest on unliquidated claims accruing from the offer date.

(2) ***Taxable Costs and Attorney's Fees.*** To determine if a judgment that includes an award of taxable costs or attorney's fees is more favorable than the offer, the court must consider only those taxable costs and attorney's fees that were reasonably incurred as of the offer date.

(3) ***Arbitration.*** To determine whether to impose a sanction after an arbitration hearing, the court must compare the offer to the final judgment entered either on the award under Rule 76(be~~)~~(4) or after appeal under Rule 77.

(h) Effective Period of Offers; Later Offers; Offers on Damages.

(1) ***Effective Date.*** An offer of judgment must remain effective for 30 days after it is served but:

(A) an offer made within 60 days after service of the summons and complaint must remain effective for 60 days after the offer is served;

(B) an offer made within 45 days of trial must remain effective for 15 days after it is served; and

(C) in an action subject to arbitration, a pending and unexpired offer will automatically expire at 5:00 p.m. on the fifth day before the arbitration hearing.

If the court enlarges the effective period, the offeror may withdraw the offer at any time after the initial effective period expires and before the offer is accepted.

(2) ***Later Offers.*** A rejected offer does not preclude a later offer.

(3) ***Offers on Damages.*** When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, any party may make an offer of judgment. It must be served within a reasonable time—but at least 10 days—before the date set for a hearing to determine the extent of liability.

Rule 69. Execution

(a) Generally. A money judgment is enforced by a writ of execution, unless the court orders otherwise. A party may execute on a judgment—and seek relief in proceedings supplementary to and in aid of judgment or execution—as provided in these rules, statutory remedies, and other applicable law.

(b) Special Writ. If a judgment is for personal property, and the court finds that the property has a special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.

(c) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears from the record may obtain discovery from any person—including the judgment debtor—as provided in these rules and other applicable law.

Rule 70. Enforcing a Judgment for a Specific Act

(a) A Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done—at the disobedient party's expense—by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within Arizona, the court—instead of ordering a conveyance—may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) Holding in Contempt. The court also may hold the disobedient party in contempt.

Rule 70.1. Application to Transfer Structured Settlement Payment Rights

A party who files an Application for Approval of Transfer of Structured Settlement Rights under A.R.S. § 12-2901 *et seq*., must include the following:

(a) Payee's Declaration. A payee, as defined by A.R.S. § 12-2901, must submit a Declaration in Support of Application that is signed under oath and contains the following information:

(1) The payee's name, address and age.

(2) The payee's marital status, and, if married or separated, the name of the payee's spouse.

(3) The names, ages, and place(s) of residence of the payee's minor children and other dependents, if any.

(4) The payee's monthly income and sources of income, and, if presently married, the monthly income and sources of income of the payee's spouse.

(5) Whether the payee is subject to any child support or spousal maintenance orders, and, if so, for each such order:

(A) The amount of the obligation;

(B) To whom it is payable;

(C) Whether there are arrearages, and, if so, the amount;

(D) The jurisdiction and name of the court that entered the order;

(E) The case number of the action in which the order was entered;

(F) The parties to such action; and

(G) The date when the order was entered.

(6) Whether the payee is subject to any orders in any civil, probate, or criminal action that requires the payee to pay money to any person, and, if so, for each such order:

(A) The amount of the obligation;

(B) To whom it is payable;

(C) Whether there are arrearages, and, if so, the amount;

(D) The jurisdiction and name of the court that entered the order;

(E) The case number of the action in which the order was entered;

(F) The parties to such action; and

(G) The date when the order was entered.

(7) Whether there has been any previous application to any court or responsible administrative authority to approve a transfer of payment rights under the structured settlement that is the subject of the application, and, if so, for each such application:

(A) The jurisdiction and name of the court or responsible administrative authority that considered the application;

(B) The case number of the action in which the application was submitted;

(C) The parties to such action;

(D) The date when the application was filed;

(E) Whether the application was approved or disapproved;

(F) The date of the order approving or disapproving the transfer, and, if approved:

(i) The name of the transferee;

(ii) The payment amount(s);

(iii) The due dates of the payments involved in the transfer;

(iv) The amount of money the payee received from the transferee for the transfer, if any; and

(v) The manner in which the money was used.

(8) Whether the payee has ever transferred payment rights under the structured settlement without court approval or the approval of a responsible administrative authority, and, if so, for each such transfer:

(A) The name of the transferee;

(B) The payment amount(s);

(C) The due dates of the payments involved in the transfer;

(D) The amount of money the payee received from the transferee for the transfer, if any; and

(E) The manner in which the money was used.

(9) The payee's reasons for the proposed transfer of payment rights and the payee's plans for using the proceeds from the transfer.

(10) Whether the payee intends to use the proceeds from the proposed transfer to pay debts, and, if so:

(A) The amount of each such debt;

(B) The name and address of the creditor to whom it is owed; and

(C) If applicable, the rate at which interest is accruing on such debt.

(b) Transferee's Declaration. A transferee, as defined by A.R.S. § 12-2901, must submit a Transferee's Declaration in Support of Application that is signed under oath and states the following:

(1) After making reasonable inquiry, the transferee is not aware of any prior transfers of structured settlement rights by the payee other than those disclosed in Payee's Declaration in Support of Application;

(2) The transferee has complied with its obligations under A.R.S. § 12-2901, *et seq.*; and

(3) To the best of the transferee's knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, or the order of any court or other government authority.

Rule 71. Enforcing Relief For or Against a Nonparty

When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.

IX. COMPULSORY ARBITRATION

Rule 72. Suitability for Arbitration

(a) Decision to Require Compulsory Arbitration. Rules 72 through 77 apply if the superior court in a county, by a majority vote of the judges in that county, decides to require arbitration of certain claims and establishes jurisdictional limits by local rule under A.R.S. § 12-133. Such a decision must be incorporated into a superior court order that is filed with the Supreme Court clerk, with a copy filed with the clerk in that county. Except when a rule is inconsistent with a specific provision in Rules 72 through 77, the Arizona Rules of Civil Procedure apply to all actions in arbitration.

(b) Compulsory Arbitration.

(1) ***Generally.*** Civil actions, except appeals from municipal or justice courts, must be submitted to arbitration in accordance with A.R.S. § 12-133 if:

(A) No party seeks affirmative relief other than a money judgment; and

(B) No party seeks an award in excess of the jurisdictional limit for arbitration set by applicable local rule of the superior court.

(2) ***Definitions.*** For this rule's purposes, "award" and "affirmative relief" include punitive damages, but do not include interest, attorney's fees or costs.

(3) ***Exception.*** The court may waive the arbitration requirement if all parties stipulate to the waiver and show good cause for not arbitrating the action.

(c) Arbitration by Agreement of Reference. Whether or not an action is filed, all parties or their counsel may at any time sign an Agreement of Reference to refer any claim ~~may be referred~~ to arbitration. ~~at any time by an Agreement of Reference signed by all parties or their counsel~~. If an action has not been filed, the Agreement of Reference must define the issues involved for determination in the arbitration proceedings and may contain stipulations with respect to agreed facts, issues or defenses. In such instances, the Agreement of Reference takes the place of the pleadings in the action and must be filed and assigned a civil case number. Filing an Agreement of Reference does not relieve any party from paying a required filing fee. Filing ~~of~~ an Agreement of Reference has the same effect on the running of the statute of limitations as the filing of a civil complaint.

(d) Alternative Dispute Resolution. Before a hearing is held under Rule 75, the parties or their counsel may confer regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including private mediation or binding arbitration. The court may waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method the parties select~~ed by the parties~~. The stipulation must identify the specific method selected for alternative dispute resolution. If the alternative dispute resolution method selected under this rule fails, the action will proceed under the case management rules in Rule 16 and will not be subject to compulsory arbitration.

(e) Procedure for Determining Suitability for Arbitration.

(1) ***Certificate on Compulsory Arbitration.*** When a complaint is filed, the plaintiff must also file with the clerk a separate certificate on compulsory arbitration in substantially the following form:

"The undersigned certifies that he or she knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this action (is) (is not) subject to compulsory arbitration, as provided in Rules 72 through 77 of the Arizona Rules of Civil Procedure."

The certificate must be served on the defendant when the complaint is served.

(2) ***Controverting Certificate.*** If the defendant disagrees with the plaintiff's assertion as to arbitrability, the defendant must file a controverting certificate that specifies

the particular reason for the defendant's disagreement. The defendant's controverting certificate must be filed with the defendant's answer and a copy must be served under Rule 5 on the plaintiff and all other parties that have appeared in the action.

(3) ***Signing and Certification.*** The certificate and controverting certificate must be signed by the party or its counsel, and constitutes the signer's ~~a~~ certification ~~by the signer~~ that:

(A) the signer has considered the applicability of the local rules governing arbitration and Rules 72 through 77;

(B) the signer has read the certificate or controverting certificate on compulsory arbitration;

(C) after reasonable inquiry, the statements in the certificate or controverting certificate are accurate to the best of the signer's knowledge, information and belief; and

(D) the allegation as to arbitrability is not set forth for any improper purpose.

(4) ***Conflicting Certificates.*** If conflicting certificates are filed, the matter must be referred to the judge assigned to the action to decide whether the action is subject to compulsory arbitration.

(5) ***Amendment of Certificate.*** A party and its counsel are under a duty to seasonably amend a prior certificate or controverting certificate on compulsory arbitration if the party or counsel obtains information that establishes that the certificate was incorrect when filed or is no longer accurate.

(6) ***Motions.*** At any time after the close of the pleadings, the court may, on its own or on motion, determine that an action is subject to compulsory arbitration and may order that it proceed to arbitration as provided in these rules.

(7) ***Sanctions.*** If, on its own or on motion, the court finds that a party or its counsel has made an allegation as to arbitrability that was not made in good faith or failed to seasonably amend a prior certificate on compulsory arbitration, the court may make such orders with regard to such conduct as are just, including an order under Rule 11(a).

Rule 73. Appointment of an Arbitrator

(a) Mutually Agreed on Arbitrator. If the parties agree on a person to serve as the arbitrator and the proposed arbitrator consents, the clerk or court administrator must

assign the action to the arbitrator upon the filing of a written stipulation requesting the person's appointment. The stipulation must include the written consent of the proposed arbitrator, and a conformed copy must be delivered to the court administrator.

(b) Appointment of Arbitrator. Unless the parties stipulate to the assignment of an arbitrator under Rule 73(a), the clerk or court administrator must appoint the arbitrator from a list of eligible arbitrators as provided in local rule. The clerk or court administrator must randomly select and then assign to each action one arbitrator from the list.

(c) List of Eligible Arbitrators. The clerk or court administrator, under the supervision of the presiding superior court judge in the county or that judge's designee, must prepare a list of arbitrators who may be designated by their area of concentration, specialty or expertise. The list of eligible persons must include the following:

(1) all county residents who have been active members for the State Bar of Arizona for at least 4 years;

(2) all other members of the State Bar of Arizona residing in other counties who have agreed to serve as arbitrators in the county where the court is located; and

(3) all members of any other federal court or state bar who have agreed to serve as arbitrators in the county where the court is located.

On written motion showing good cause, the presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.

(d) Timing of Appointment. The clerk or court administrator must appoint an arbitrator to an action no later than 120 days after an answer is filed.

(e) Notice of Appointment. The clerk or court administrator must promptly distribute written notice of the arbitrator's appointment to the parties and the arbitrator. The written notice must advise the parties of the deadline specified in Rule 38.1(d~~f~~) for placing an action on the Dismissal Calendar.

(f) Change of Arbitrator as of Right. In any action, each side is entitled as a matter of right to a change of one arbitrator. Each action, even if consolidated with another action, must be treated as having only two sides. A party waives the right to change of arbitrator if the right is not exercised within 10 days after the date of the written notice of appointment. If a party enters an appearance after the arbitrator is appointed, that party waives the right to change of arbitrator if it is not exercised within 10 days after that party's appearance. A motion for recusal or motion to strike for cause tolls the time to exercise a change of arbitrator as of right.

Commented [HB4]: I understand that the Rules Committee has already decised not to expand this time period, but I implore the Committee to reconsider. The Cosper decision makes the 120-day timeline almost impossible for defendants. I recommend moving this deadline to at least 180 days.

(g) Disqualifying or Excusing an Arbitrator.

(1) ***Disqualifying an Arbitrator.*** On motion, the court may disqualify an appointed arbitrator from serving in a particular action. The motion must be in writing and establish that the arbitrator has an ethical conflict of interest or that other good cause exists under A.R.S. § 12-409 or A.R.S. § 21-211. The motion must be submitted in accordance with the procedures provided in Rule 42(f)(2). The judge assigned to the action must hold a hearing on the motion.

(2) ***Excusing an Arbitrator.*** The presiding superior court judge in a county or that judge's designee may excuse an arbitrator from serving in a particular action on the arbitrator's showing that he or she has completed contested hearings and ruled as an arbitrator under these rules in two or more actions assigned during the current calendar year.

(3) ***Replacement.*** If the court disqualifies or excuses an arbitrator, the clerk or court administrator must appoint a new arbitrator consistent with these rules.

Commented [HB5]: I do not agree that a hearing on this is needed and would be a waste of judicial resources. We should not add this language. Either that or change the "must" to "may."

Rule 74. General Proceedings and Pre-Hearing Procedures

(a) An Arbitrator's Powers. The arbitrator has the power to administer oaths or affirmations to witnesses, determine the admissibility of evidence, and decide the law and the facts in an action.

(b) Scheduling an Arbitration Hearing. The arbitrator must set a hearing date not earlier than 60 days nor later than 120 days after the arbitrator's appointment. If good cause exists, an arbitrator may set a hearing date that is before or after this time period, or reschedule a noticed hearing date for a date later than 120 days after the arbitrator is appointed. The arbitrator must provide at least 30 days' written notice of the hearing's time and place, unless waived by the parties. Unless the parties agree otherwise, no hearings may be held on Saturdays, Sundays, legal holidays, or evenings.

Commented [HB6]: Again, I think this needs to be extended to at least 180 days.

(c) Rulings by Arbitrator.

(1) ***Authorized Rulings.*** After an action has been assigned to an arbitrator, the arbitrator will make all legal rulings, including rulings on motions, except on:

(A) motions to continue on the Dismissal Calendar or otherwise extend time allowed under Rule 38.1;

(B) motions to consolidate actions under Rule 42;

(C) motions to dismiss;

(D) motions to withdraw as attorney of record under Rule 5.1;

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party; and

(F) motions for sanctions under Rule 68.

(2) ***Procedure.*** The parties must deliver to the arbitrator copies of all documents requiring the arbitrator's consideration. The arbitrator may hear motions and testimony by telephone.

(3) ***Discovery Motions.*** In ruling on discovery motions, the arbitrator ~~should~~ must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of small claims, and may limit discovery when appropriate to accomplish this purpose.

(4) ***Interlocutory Appeal of Discovery Ruling.*** If an arbitrator makes a discovery ruling requiring the disclosure of matters that a party claims are privileged or otherwise protected from disclosure, the party may appeal the ruling by filing a motion with the judge assigned to the action within 10 days after the arbitrator transmits the ruling to the parties. No party need respond to the motion unless the court so orders, but no such motion may be granted without the court providing an opportunity for response. The arbitrator's ruling is subject to *de novo* review by the court. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court must impose sanctions on the party filing the motion, including an award of reasonable attorney's fees incurred in responding to the motion. The time for conducting an arbitration hearing is tolled while such motion is pending.

(d) Time for Filing Summary Judgment Motion. A motion for summary judgment must be filed at least 20 days before the date for hearing. A copy of the motion must be delivered to the arbitrator and judge assigned to the action. The time for conducting an arbitration hearing is tolled while any such motion is pending. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, it must impose sanctions on the party filing the motion, including an award of reasonable attorney's fees incurred in responding to the motion.

(e) Receipt of Court File. If the arbitrator believes the court file contains materials needed to conduct the arbitration hearing, the arbitrator may, within 4 days before the hearing, sign for and receive the original superior court file from the clerk, if the file exists in paper form. If the clerk maintains an electronic court record, the arbitrator must have access to the original or to a certified paper or electronic copy of the file. The clerk may deliver the documents electronically to any arbitrator who files a consent in a form

acceptable to the clerk. Alternatively, the arbitrator may order the parties to provide the arbitrator those pleadings and other documents the arbitrator deems necessary.

(f) Settlement of Actions Assigned to Arbitration. If the parties settle an action assigned to arbitration, they must file with the court an appropriate stipulation for the entry of final judgment or a dismissal order, and must mail or otherwise deliver a copy to the arbitrator. The arbitration terminates on entry of the judgment or order.

(g) Offer of Judgment. A party to an action subject to arbitration may serve an offer of judgment under Rule 68.

Rule 75. Hearing Procedures

(a) Issuing Subpoenas. Subpoenas may be issued, served and enforced as provided by these rules or other law.

(b) Initial Disclosure. Unless the parties agree or the arbitrator orders otherwise, the parties must make their initial disclosures required under Rule 26.1 by no later than the deadline provided in Rule 26.1(d~~b~~).

(c) Pre-Hearing Statement.

(1) ***Requirement.*** No later than 10 days before the hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written pre-hearing statement. In preparing this pre-hearing statement, the parties and their counsel must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive resolution of claims and the parties are encouraged to agree on facts and issues.

(2) ***Content.*** The statement must contain the following:

(A) a brief statement of the nature of each party's claims or defenses;

(B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;

(C) an exhibit list; and

(D) the estimated time required for the arbitration hearing.

(3) ***Evidence Exclusion.*** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.

(d) Evidence. The Arizona Rules of Evidence apply to arbitration hearings, except as provided in Rule 74(e). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.

(e) Documentary Evidence. The arbitrator must admit into evidence—and give them the weight to which the arbitrator deems they are entitled—the following documents without further proof, if relevant, and if listed in the pre-hearing statement, unless the document is not what it appears to be and an objection is stated in the pre-hearing statement:

(1) hospital bills, if on the hospital's official letterhead or billhead, dated, and itemized;

(2) bills of doctors and dentists, if dated and stating the date of each visit and the incurred charges;

(3) bills of registered nurses, licensed practical nurses, or physical therapists, if dated and stating the date and hours of service, and the incurred charges;

(4) bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, if dated and itemized;

(5) property repair bills or estimates setting forth the costs or estimates for labor and material if dated, itemized, and stating whether the property was, or is estimated to be, repaired in full or in part;

(6) a witness's deposition testimony, whether or not the witness is available to appear in person;

(7) an expert's sworn written statement, other than a doctor's medical report, whether or not the expert is available to appear in person, but only if:

(A) the statement is signed by the expert and summarizes the expert's qualifications; and

(B) the statement contains the expert's opinions, and the facts on which each opinion is based;

(8) in a personal injury action, a doctor's medical report, but only if a copy of the report was disclosed at least 20 days before the hearing, unless the offering party shows good cause;

(9) records of regularly conducted business activity qualified under Rule 803(6) of the Arizona Rules of Evidence; and

(10) a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, but only if listed in the pre-hearing statement.

(f) Assessing Damages Against Defaulted Parties. In actions involving multiple defendants, if default has been entered against one or more, but fewer than all, of the defendants before the arbitration hearing, the arbitrator must refer all further proceedings involving the defaulted defendant(s) to the judge assigned to the action. The arbitrator must continue to serve and proceed with the arbitration for the remaining parties.

(g) Record of Proceedings. The arbitrator is not required to make a record of the hearing. If any party wants a court reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.

(h) Failure to Appear or Participate in Good Faith at a Hearing. Absent good cause, a party waives the right to appeal if the party fails to appear or to participate in good faith at a hearing that has been set under Rule 74(b).

Rule 76. Post-Hearing Procedures

(a) Decision of Arbitrator. Within 10 days after completing the hearing, the arbitrator must:

(1) make a decision;

(2) if the original paper file was obtained from the superior court, return it to the clerk by messenger or certified mail;

(3) notify the parties that their exhibits are available for retrieval;

(4) notify the parties or their counsel of the decision in writing; and

(5) file a notice of decision with the court.

(b) Arbitrator's Award.

(1) ***Submission of Proposed Award.*** Within 10 days after the notice of decision is filed, either party may submit a proposed form of award to the arbitrator. The proposed award may include a blank for requested amounts for attorney's fees and costs.

(2) ***Award Exceeding Limit.*** If an arbitrator finds that the appropriate award in an action exceeds the limit for compulsory arbitration set by local rule or statute, the arbitrator must render an award for the full amount.

(3) ***Objections to Proposed Award.*** Within 5 days of receiving the proposed form of award, an opposing party may file objections.

(4) ***Final Award.*** Within 10 days of receiving the objections, the arbitrator must rule on the objections and file one signed original award with the clerk. On the same day the arbitrator must mail or otherwise deliver copies of it to all parties or their counsel.

(c) Failure of Arbitrator to File Award. If an award or stipulation for entry of another form of relief is not filed with the court within 50 days after the notice of decision is filed, the notice of decision will constitute the arbitrator's award.

(d) Judgment. If no appeal is filed by the deadline for filing an appeal under Rule 77(b), any party may file a motion to enter judgment on the award.

(e) Referral of an Action to the Assigned Judge. If the arbitrator does not file an award with the clerk within the later of 145 days after the arbitrator's appointment or 30 days after a noticed hearing, the clerk or the court administrator must refer the matter to the judge assigned to the action for appropriate action.

(f) Compensation of Arbitrator. An arbitrator assigned to an action under these rules is entitled to receive as compensation for services a fee not to exceed the amount allowed by A.R.S. § 12-133(G) per day for each day, or part of a day, necessarily expended in hearing the action. For this rule's purposes, "hearing" means any fact-finding proceeding or oral argument resulting in the filing of an award, or at which the parties agree to settle and stipulate to the action's dismissal. The fee to be paid in each county must be decided by a majority vote of the judges in that county. The amount must be incorporated into a superior court order that is filed with the Supreme Court clerk, with a copy filed with the clerk in that county. When more than one action arising out of the same transaction is heard at the same hearing or hearings, it will be considered as one action for purposes of compensating the arbitrator.

(g) Payment of Compensation. The arbitrator is not entitled to receive compensation under Rule 76(f) until after an award is filed with the clerk, or, if the parties agree to settle and stipulate to dismiss the action at a proceeding before the arbitrator, until after the action is dismissed.

Rule 77. Appeal

(a) Filing a Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal an arbitrator's award by filing a notice of appeal with the clerk. The notice of appeal must be entitled "Appeal from Arbitration and Motion for Trial Setting." It must request that the action be set for trial in the superior court, and must state whether a jury trial is demanded and the estimated length of trial.

(b) Time for Filing a Notice of Appeal. To appeal an award, a party must file a notice of appeal no later than 20 days after (1) the award is filed or (2) the date on which the notice of decision becomes an award under Rule 76(b), whichever occurs first.

(c) Deposit on Appeal. At the time of filing the notice of appeal, the appellant must deposit with the clerk a sum equal to one hearing day's compensation of the arbitrator or 10 percent of the amount in controversy, whichever is less. The court may waive the deposit only on a showing that the appellant is financially unable to make such a deposit.

(d) Appeal *De Novo*. Although the proceeding is denominated as an "appeal," the parties are entitled to a trial on all issues determined by the arbitrator. The arbitrator's legal rulings and factual findings are not binding on the court or the parties. If, however, the court finds that further proceedings before the arbitrator are appropriate, it may remand the action to the assigned arbitrator.

(e) Waiver of Right to Appeal. At any time before the entry of an award by the arbitrator, the parties may stipulate in writing that the award so entered is binding on the parties. If the parties enter such as stipulation, no party may appeal or collaterally attack the award except as allowed by A.R.S. § 12-1501, *et seq*.

(f) Discovery and Listing of Witnesses and Exhibits on Appeal. Any discovery conducted while the action was assigned to arbitration may be used on appeal. Additionally:

(1) Simultaneous with the filing of the notice of appeal, the appellant may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with the requirements of Rule 26.1.

(2) No later than 20 days after the Notice of Appeal is served, the appellee may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with the requirements of Rule 26.1.

(3) If any party does not serve a timely "List of Witnesses and Exhibits Intended to be Used at Trial," that party's trial witnesses and exhibits will be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted under Rule 75(c).

(4) The parties have 80 days after the filing of the notice of appeal to complete discovery under Rules 26 through 37.

(5) For good cause, the court may extend the time to conduct discovery or to serve a supplemental list of witnesses and exhibits.

(g) Refund of Deposit on Appeal. The clerk must refund the deposit on appeal to the appellant if:

(1) the judgment on the trial *de novo* is at least 23 percent more favorable than the monetary relief or other type of relief granted by the arbitration award; or

(2) there is no order from the court for the disposition of the deposit on appeal upon action's final disposition.

(h) Forfeiture of Deposit on Appeal; Sanctions on Appeal. If the judgment on the trial *de novo* is not at least 23 percent more favorable than the monetary relief or other type of relief granted by the arbitration award, the court must order that the deposit on appeal be used to pay the following costs and fees:

(1) to the county, the compensation actually paid to the arbitrator;

(2) to the appellee, those costs taxable in civil actions together with reasonable attorney's fees as determined by the trial judge for services necessitated by the appeal; and

(3) reasonable expert witness fees incurred by the appellee in connection with the appeal.

If the deposit is insufficient to pay those costs and fees, the court must order that the appellant pay them, unless the court finds on motion that the imposition of the costs and fees would create a substantial economic hardship that is not in the interests of justice.

(i) Contact by Court. A court may contact an arbitrator regarding the arbitration award or other matters relating to the arbitration.

Commented [HB7]: I think we really need to take this opportunity to make the comparable arbitration and trial award EXCLUDE costs. This will reduce the gamesmanship surrounding arbitration appeals.

X. GENERAL PROVISIONS

Rule 78. [Reserved]

Rule 79. [Reserved]

Rule 80. General Provisions

(a) Conduct in Trial. Trials must be conducted in an orderly, courteous, and dignified manner. Counsel must address arguments and remarks to the court, but with the court's permission, counsel may properly inquire or ask questions of opposing counsel.

(b) Excluding Minors from Trial. When trying an action or proceeding of a scandalous or obscene nature, the court or referee may exclude minors from the courtroom if their presence—as parties or witnesses—is not necessary.

(c) Agreement or Consent of Counsel or Parties. If disputed, no agreement or consent between parties or attorneys in any matter is binding, unless:

(1) it is in writing; or

(2) it is made orally in open court and entered in the minutes.

(d) Attorney or Officer of Court as Surety. No attorney or court officer who is involved in an action or other judicial proceeding may be, or act on behalf of, a surety in the action or proceeding.

(e) Unsworn Declarations Under Penalty of Perjury. When these rules require or allow a matter to be supported, evidenced, established, or proved by a sworn written declaration, verification, certificate, statement, oath, or affidavit, the same may be unsworn—and have the same force and effect—if it is:

(1) signed by the person as true under penalty of perjury;

(2) dated; and

(3) in substantially the following form:

> "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)."

This rule does not apply to a deposition, oath of office, or an oath required to be taken before a specified official other than a notary public.

(f) Lost or Destroyed Records.

(1) ***Motion to Substitute.*** If a court record is lost or destroyed, any party may file a motion to supply the court with an accurate copy of the record. The motion must identify the lost or destroyed record, be accompanied by an accurate copy of the record, and offer proof that the copy is accurate.

(2) ***Order and Further Proceedings.*** If the court finds that the copy is accurate, the court must order the copy substituted for the lost or destroyed record. If the court finds that the copy may not be accurate, it may take further evidence and direct the parties to prepare an accurate copy of the record based on that evidence.

(3) ***Filing and Effect.*** If the court enters an order substituting a copy for a lost or destroyed record, the moving party must file the copy with the clerk. Upon filing,

the copy will constitute a part of the record in the action and will have the force and effect of the original record.

(g) Verified Pleadings. If a rule or statute requires a pleading to be verified, the pleading must be accompanied by an affidavit by the party—or a person acting on the party's behalf who is acquainted with the facts—attesting under oath that, to the best of the party's or person's knowledge, the facts set forth in the pleading are true and accurate.

Rule 81. Effective Dates; Applicability

(a) Effective Date. These rules and any amendments take effect at the time specified by the Supreme Court.

(b) Applicability. Upon the effective date, a rule or amendment, governs:

(1) proceedings in an action commenced after its effective date; and

(2) proceedings after that date in a pending action unless:

(A) the Supreme Court specifies otherwise in its order adopting the rule or amendment; or

(B) the court determines that applying the rule or amendment in a particular action would be infeasible or work an injustice, in which event the former rule or procedure applies.

Rule 81.1. Juvenile Emancipation

These rules apply to juvenile emancipation proceedings except as provided in Part V, Rules of Procedure for Juvenile Court.

Rule 82. Jurisdiction and Venue Unaffected

These rules do not extend or limit the jurisdiction of the superior courts or the venue of actions in those courts.

Rule 83. Superior Court Local Rules

(a) Promulgation. The presiding superior court judge of a county may promulgate local rules with the approval of a majority of the superior court judges in the county.

(b) Approval. Local rules must be consistent with these rules, and must be approved by the Chief Justice of the Supreme Court.

(c) Publication. Local rules must be published.

Rule 84. Forms

The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity these rules contemplate.

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