# APPENDIX B

# Rules of Civil Procedure
# for the Superior Courts of Arizona

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# Rules of Civil Procedure
# for the Superior Courts of Arizona

## Prefatory Comment to the 2017 Amendments

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

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

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

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

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

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

## I. SCOPE OF RULES—ONE FORM OF ACTION

### Rule 1. Scope and Purpose

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

### Rule 2. One Form of Action

There is one form of action—the civil action.

## II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS; DUTIES OF COUNSEL

### Rule 3. Commencing an Action

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

### Rule 4. Summons

**(a) Issuance; Service.**

**(1)** ***Pleading Defined.*** As used in this rule, Rule 4.1, and Rule 4.2, "pleading" means any of the pleadings authorized by Rule 7 that bring a party into an action—a complaint, third-party complaint, counterclaim, or crossclaim.

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

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

**(b) Contents; Replacement Summons.**

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

**(A)** name the court and the parties;

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

**(C)** state the name and address of the attorney of the party serving the summons or—if unrepresented—the party's name and address;

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

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

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

**(G)** be signed by the clerk; and

**(H)** bear the court's seal.

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

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

**(d) Who May Serve Process.**

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

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

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

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

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

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

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

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

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

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

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

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

**(g) Return; Proof of Service.**

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

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

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

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

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

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

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

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

**(h) Amending Process or Proof of Service.** The court may permit process or proof of service to be amended.

**(i) Time Limit for Service.** If a defendant is not served with process within 120 days after the complaint is filed, the court—on motion, or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This Rule 4(i) does not apply to service in a foreign country under Rules 4.2(i), (j), (k), and (*l*).

## Rule 4.1. Service of Process Within Arizona

**(a) Territorial Limits of Effective Service.** All process—including a summons—may be served anywhere within Arizona.

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

**(c) Waiving Service.**

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

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

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

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

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

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

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

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

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

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

**(B)** the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

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

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

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

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

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

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

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

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

**(1)** to the minor's parent or guardian, if any of them reside or may be found within Arizona; or

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

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

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

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

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

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

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

**(4)** for service on any other governmental entity:

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

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

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

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

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

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

**(3)** ***Commission's Responsibilities.*** The Arizona Corporation Commission must retain one of the copies of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the corporation or

any of the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation, other Corporation Commission records, or any other source.

**(k) Alternative Means of Service.**

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

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

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

**(*l*) Service by Publication.**

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

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

**(i)** the serving party, despite reasonably diligent efforts, has been unable to ascertain the person's current address; or

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

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

**(2)** ***Procedure.***

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

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

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

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

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

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

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

**(4)** ***Return.***

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

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

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

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

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

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

**State Bar Committee Note**

**1991 Amendments to Rule 4.1(*l*) and 4.1(m)**

Even where the conditions specified in the Rule are present, service by publication must also satisfy due process standards of being the best means of notice practicable under the circumstances and reasonably calculated to apprise interested parties of the institution

and/or pendency of the proceedings. *Mullane v. Central Hanover Bank & Trust Company*, 339 U.S. 306, 94 L. Ed. 865 (1950). The party who elects to make service by publication is at risk that the service will be subject to a subsequent successful constitutional challenge. Where the last-known address of the person to be served by publication is outside Arizona, the procedures set forth in [] Rule 4.2[f] are to be followed. The provision requiring a supplementary mailing of a copy of the summons and of the pleading being served where the person's address is known has been retained, but it is stressed that service by publication on a person whose current address is known is only to be employed where it can be shown that that person is attempting to evade service. While the new Rule retains the provision that only the summons need be published, it adds the requirement that the publication contain a statement as to the manner in which a copy of the pleading being served may be obtained.

[Rule 4.1(m), formerly Rule 4(f)] is former Rule 5(f), the specific provision authorizing service of process by publication upon the unknown heirs of a decedent in certain actions involving real property. The Rule is included here because it deals with service of process at the initiation of the action rather than the service of pleadings and other papers generated during the course of the action. Because, by definition, both the identities and the residences of these heirs, if any, will be unknown, publication under this Rule need only be made in the county where the action is pending.

## Rule 4.2. Service of Process Outside Arizona

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

**(b) Direct Service.**

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

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

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

**(c) Service by Mail.**

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

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

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

**(B)** the serving party mailed the summons and a copy of the pleading or other request for relief to the person by any form of mail described in Rule 4.2(c)(1);

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

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

**(d) Waiver of Service.**

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

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

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

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

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

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

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

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

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

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

**(B)** the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

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

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

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

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

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

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

**(A)** the filing of the defendant's return receipt and the serving party's affidavit of compliance, as provided in A.R.S. § 28-2327(A)(1); or

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

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

**(f) Service by Publication.**

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

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

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

**(ii)** the person has intentionally avoided service of process; and

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

**(2)** ***Procedure.***

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

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

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

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

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

**(4)** ***Return.***

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

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

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

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

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

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

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

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

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

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

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

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

**(C)** unless prohibited by the foreign country's law, by:

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

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

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

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

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

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

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

**Court Comment**

**1994 Amendment to Rule 4.2(f)**

In adopting the amendment deleting the out-of-state publication requirement, the Court is aware that in a small category of cases out-of-state publication might yield the best practicable notice under the circumstances. However, the Court acted out of concern for the unnecessary expense in the vast majority of cases in which out-of-state publication is ineffective as a means of providing notice. Counsel should always consider whether, in a given case, out-of-state publication may nevertheless be indicated.

**State Bar Committee Note**

**1992 Promulgation of Rules 4.2(f) and 4.2(i)**
**[Formerly Rules 4.2(e) and 4.2(g)]**

[Rule 4.2(f), formerly Rule 4.2(e)] is based on former Rule 4(e)(3) and is similar to [Rule 4.1(*l*), formerly Rule 4.1(e)], but applies where the present location of the person to be served cannot be ascertained but the last known residence address of that person was outside the state, or a person outside the state is attempting to avoid service. In that instance, publication must occur not only in the county where the action is pending but also in the county of the person's last known residence address. A copy of the summons and pleading being served must also be mailed to the last known address. Once again, service by publication must still satisfy the constitutional standard as being the best means practicable under the circumstances for providing notice. See Committee Note to [] Rule 4.1[*l*]. In addition, the publication must contain a statement as to the manner in which a copy of the pleading being served may be obtained.

[Rule 4.2(i), formerly Rule 4.2(g)], dealing with service of process in a foreign country, is adapted from a preliminary draft of proposed amendments to provisions of the Federal Rules of Civil Procedure on the same subject. The principal purpose of these amendments is to call attention to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, which entered into force for the United States on February 10, 1969. The procedures for foreign service specified in the Convention must be employed where they are available and where service requires the transmittal of documents for service abroad. See *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 100 L. Ed. 2d 722 (1988).

## Rule 5. Serving Pleadings and Other Documents

**(a) Service Generally.**

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

**(2)** ***When Required.*** Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in Rule 5(c):

**(A)** an order stating that service is required;

**(B)** a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(d) because there are numerous defendants;

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

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

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

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

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

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

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

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

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

**(A)** handing it to the person;

**(B)** leaving it:

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

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

**(C)** mailing it by U.S. mail to the person's last-known address—in which event service is complete upon mailing;

**(D)** delivering it by any other means, including electronic means other than that described in Rule 5(c)(2)(E), if the recipient consents in writing to that method of

service or if the court orders service in that manner—in which event service is complete upon transmission; or

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

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

*A copy has been or will be mailed/emailed/hand-delivered [select one]*

*on [insert date] to:*

*[Name of opposing party or attorney]*

*[Address of opposing party or attorney]*

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

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

**(d) Serving Numerous Defendants.**

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

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

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

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

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

**State Bar Committee Note**

**2006 Amendment to Rule 5(c)**

Like the former Rule 124(e), the amended rule authorizes service by electronic means if the recipient consents to such service in writing. As with other methods of service, an electronically served document must be in final form, which may be signified by the serving party's signature or by a notation or action that is deemed by agreement, [court rule], local rule or court order as being the equivalent of the serving party's signature. The consent to electronic service must be express, and may not be implied from conduct. For example, an attorney's listing of his or her e-mail address on court filings, correspondence or on a website does not constitute "consent" within the meaning of this rule. Consent may be communicated by electronic means. The amended rule eliminates the provision in former Rule 124(e) requiring the consent to be filed with the court. The amended rule also authorizes service by "other means" if the recipient consents to such service in writing. "Other means" includes facsimile transmission and transmission by an overnight delivery service. Again, consent must be express, and may not be implied from conduct.

Parties are encouraged to specify the scope and duration of the consent to electronic service and service by "other means." The specification should include at least the names of the persons to whom service should be made, the appropriate address or location for such service (such as the e-mail address or facsimile machine number), and the format to be used for attachments.

Service by electronic means or by "other means" is complete upon transmission, which occurs when the sender does the last act that must be performed by the sender. For example, electronic service is complete when the sender executes the "send" command on a computer to transmit the document to the recipient. Similarly, facsimile service is complete when transmission of the document on a facsimile machine is completed. Likewise, service by an overnight delivery service is complete when the sender makes delivery to the service designated to make the overnight delivery to the recipient. As with other modes of service, evidence that the intended recipient did not receive a document served by these methods may defeat the presumption that service has been effected.

## Rule 5.1. Filing Pleadings and Other Documents

**(a) Filing with the Court Defined.** The filing of documents with the court is accomplished by filing them with the clerk. If a judge permits, a party may submit a document directly to a judge, who must transmit it to the clerk for filing and notify the clerk of the date of its receipt.

**(b) Effective Date of Filing.**

**(1)** ***Generally.*** Except for documents submitted directly to a judge under Rule 5.1(a), a document is deemed filed on the date the clerk receives and accepts it. If a document is filed electronically, it is deemed filed on the date and time the clerk receives it as is shown on the email notification from the court's electronic filing portal or as is displayed within the portal, unless a required filing fee is not paid or the clerk later rejects the document based on a deficiency in the filing. If a filing is rejected because of a deficiency, the clerk must promptly provide the filing party with an explanation for the rejection.

**(2)** ***Documents Submitted Directly to a Judge.*** If a document is submitted directly to a judge under Rule 5.1(a) and is later transmitted to the clerk for filing, the document is deemed filed on the date the judge receives it.

**(3)** ***Late Filing Because of an Interruption in Service.*** If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

**(4)** ***Incarcerated Parties.*** If a party is incarcerated and another party contends that the incarcerated party did not timely file a document, the court must treat the document as filed on the date it was delivered to prison authorities to deposit in the mail.

**(c) Service with Filing and Documents Not to Be Filed.**

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

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

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

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

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

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

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

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

**(3)** ***Attachments to Judge*.** Except for proposed orders and proposed judgments, a party may attach copies of documents described in Rule 5.1(c)(2) to a copy of a motion, response, or reply delivered to the judge to whom the action has been assigned. Any such documents provided to the judge must also be provided to all other parties.

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

**(d) Proposed Orders; Proposed Judgments.**

**(1)** ***Required Format.*** A proposed order or proposed judgment must be prepared and submitted as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 5.2. On the signature page, there must be at least two lines of text above the signature.

**(2)** ***Service and Filing.*** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed order or proposed judgment. The clerk must accept electronically-submitted proposed orders and proposed judgments; however, these electronically-submitted documents must not be included in the publicly-displayed court record. A party may file an unsigned proposed order or proposed judgment as an attachment or exhibit to a notice of lodging or other filing if directed by the court, required by rule, or done to preserve the record on appeal.

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

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

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

**(e) Sensitive Data.**

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

**(A)** *Social Security Numbers*. If an individual's social security number must be included in a document, only the last 4 digits of that number may be used.

**(B)** *Financial Account Numbers*. If financial account numbers are relevant or set forth in a document, only the last 4 digits of these numbers may be used.

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

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

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

## Rule 5.2. Form of Documents

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

**(1)** to the left of the center of the page starting at line 1:

**(A)** the filing attorney's or self-represented litigant's name, address, telephone number, and email address; and

**(B)** if an attorney, the attorney's State Bar of Arizona attorney identification number; and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third-party plaintiff);

**(2)** centered on or below line 6 of the page, the title of the court;

**(3)** below the title of the court and to the left of the center of the page, the title of the action or proceeding;

**(4)** opposite the title, in the space to the right of the center of the page, the case number of the action or proceeding;

**(5)** immediately below the case number, a brief description of the nature of the document; and

**(6)** below the document description, the judge to whom the case is assigned (if known).

**(b) Document Format.**

**(1)** ***Generally.*** Unless the court orders otherwise, all filed documents—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:

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

**(B)** *Type Size and Font.* Every typed document must use at least a 13-point type size. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in at least a 13-point type size and must not appear in the space required for the bottom margin.

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

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

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

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

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

page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

**(E)** *Handwritten Documents*. Handwritten documents are discouraged but if a document is handwritten, the text must be legibly printed and not include cursive writing or script.

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

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

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

**(I)** *Originals*. Unless filing electronically, only originals may be filed. If it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

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

**(c) Electronically Filed Documents.**

**(1)** ***Format.***

**(A)** *File Type.* A document filed electronically that contains text, other than a scanned document image that is submitted under this rule, must be in a text-searchable .pdf, .odt, or .docx format or other format permitted by Administrative Order. A text-searchable .pdf format is preferred. A proposed order must be in a format that permits it to be modified, such as .odt or .docx or other format permitted by Administrative Order, and must not be password protected.

**(B)** *File Size.* A document may not exceed the file size limits allowed by the court's electronic filing portal, but it may be broken up into multiple files to accommodate such a limit.

**(2)** ***Formats of Attachments.***

**(A)** *Generally.* An exhibit and other attachment to an electronically filed document also may be filed electronically if it is attached to the same submission as either a scanned image or an electronic copy using an approved file type and format.

**(B)** *Official Records.* A scanned copy of an official record of a court or government body may be filed electronically if it contains the court's or body's official seal of authority or its equivalent.

**(C)** *Notarized Documents.* A scanned copy of a notarized document may be filed electronically if it contains the notary's signature and stamp or seal.

**(D)** *Certified Mail, Return Receipt Card.* When establishing proof of service by a form of mail that requires a signed and returned receipt, the return receipt may be filed electronically if both sides of the return receipt card are scanned and filed.

**(E)** *National Courier Service.* When establishing proof of service by a national courier service, the receipt for such service may be filed electronically by scanning and filing the receipt.

**(3)** ***Bookmarks and Hyperlinks.***

**(A)** *Bookmarks.* A bookmark is a linked reference to another page within the same document. An electronically filed document may include bookmarks. A document that is incapable of bookmarking may be made accessible by a hyperlink. The use of bookmarks is encouraged.

**(B)** *Hyperlinks.* A hyperlink is an electronic link in a document to another document or to a website. An electronically filed document may include hyperlinks. Material that is not in the official court record does not become part of the official record merely because it is made accessible by a hyperlink. The use of hyperlinks is encouraged.

**(4)** ***Originals.*** An electronically filed document (or a scanned copy of a document filed in hard copy) constitutes an "original" under Arizona Rule of Evidence 1002.

## Rule 5.3. Duties of Counsel and Parties

### (a) Attorney of Record; Withdrawal and Substitution of Counsel.

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

**(A)** *Appearance Required.* An attorney may appear as attorney of record by filing a document—including a notice of appearance, complaint, answer, motion to

quash, notice of association of counsel, or notice of substitution of counsel—that identifies the attorney as the attorney of record for a party. No attorney may file anything in any action or act on behalf of a party in open court without appearing as attorney of record.

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

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

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

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

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

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

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

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

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

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

**(c) Limited Scope Representation.**

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

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

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

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

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

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

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

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

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

**(i)** If no objection is filed within 10 days after the motion is served on the client, the court must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney must serve a copy of the order on the client. The withdrawing attorney also must promptly serve a written notice of the entry of such order, together with the client's name, last-known address, and telephone number, on all other parties.

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

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

## Rule 6. Computing and Extending Time

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

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

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

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

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

**(b) Extending Time.**

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

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

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

**(2)** ***Exceptions.*** A court may extend the time to act under Rules 50(b), 52(b), 59(b)(1), (c) and (d), and 60(c) as those rules allow, or alternatively, may also extend the time to act under those rules for 10 days after the entry of the order extending the time, if:

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

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

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

**(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E).** When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the specified period would otherwise expire under Rule 6(a). This rule does not apply to the clerk's distribution of notices—including notice of entry of judgment under Rule 58(c)—minute entries, or other court-generated documents.

**(d) Minute Entries and Other Court-Generated Documents.** Notices, minute entries, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time after the order is entered, the date the order is filed is "the day of the act, event or default" under Rule 6(a)(1).

**Comment**

**2011 Amendment to Rule 6(c)**
**[Formerly Rule 6(e)]**

[Rule 6(c), formerly Rule 6(e)] is amended to remove any doubt as to the method for extending the time to respond after service by mail or other means, including electronic means, if consented to in writing by the recipient or ordered by the court. Five days are added after the prescribed period otherwise expires under Rule 6(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added five days. If the fifth day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 6(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 6(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 6(a) the period expires on Tuesday. Five calendar days are then added—Wednesday, Thursday, Friday, Saturday and Sunday. As the fifth and final day falls on a Sunday, by operation of Rule 6(a), the fifth and final day to act is the following Monday. If Monday is a legal holiday, the next day that is not a legal holiday is the fifth and final day to act. If the period prescribed expires on a Wednesday, the five added calendar days are Thursday, Friday, Saturday, Sunday, and Monday, which is the fifth and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the fifth and final day to act.

Application of Rule 6[c] to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Wednesday. If 10 days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 6(a). If there is no legal holiday, the period expires on the Wednesday two weeks after the paper was mailed. The five added Rule 6[c] days are Thursday, Friday, Saturday, Sunday, and Monday, which is the fifth and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

## III. PLEADINGS AND MOTIONS; PRETRIAL PROCEDURES

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

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

## Rule 7.1. Motions

**(a) Requirements.**

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

**(2)** ***Supporting Memorandum.*** All motions must be accompanied by a memorandum setting forth the reasons for granting the motion, along with citations to the specific parts or pages of supporting authorities and evidence. Unless the court orders otherwise, a motion and supporting memorandum may not exceed 17 pages, exclusive of attachments and any required statement of facts.

**(3)** ***Responsive and Reply Memoranda.*** Unless a specific rule states otherwise, an opposing party must file any responsive memorandum within 10 days after the motion and supporting memorandum are served; and, within 5 days after a responsive memorandum is served, the moving party may file a reply memorandum, which may address only those matters raised in the responsive memorandum. Unless the court orders otherwise, a responsive memorandum may not exceed 17 pages, exclusive of attachments and any required statement of facts, and a reply memorandum may not exceed 11 pages, exclusive of attachments.

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

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

**(b) Effect of Noncompliance or Waiver.** The court may summarily grant or deny a motion if:

**(1)** the motion, supporting memorandum, or responsive memorandum does not substantially comply with Rule 7.1(a);

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

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

**(c) Rulings on Motions.**

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

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

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

**(d) Oral Argument.** The court by local rule or order may limit the length of oral argument, which may not be exceeded without prior court approval. Subject to Rule 56(c)(1), the court may decide motions without oral argument, even if oral argument is requested.

**(e) Motions for Reconsideration.**

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

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

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

**(f) Limits on Motions to Strike.**

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

**(2)** ***Procedure.*** Unless the motion to strike permitted by Rule 7.1(f)(1) is expressly authorized by rule or statute:

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

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

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

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

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

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

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

**(g) Agreed Extensions of Time for Filing Memoranda.**

**(1)** ***Generally.*** Subject to the court's power to reject any such agreement, parties may agree to extend the dates on which response and reply memoranda are due if the extension does not otherwise conflict with other deadlines set by the court or these rules.

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

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

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

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

## Rule 7.2. Motions in Limine

**(a) Obligation to Confer.** Within sufficient time to comply with Rule 7.2(b), the parties must confer to identify any disputed evidentiary issue that they anticipate will be the subject of a motion in limine.

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

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

**(d) Pretrial Rulings.** All motions in limine submitted in accordance with Rule 7.2(b) must be ruled on before trial unless the court determines the particular issue of admissibility is better considered at trial. The court's denial of a motion in limine preserves the moving party's objection to the evidence for purposes of appeal.

**(e) Effect of Noncompliance.** Motions in limine not filed in accordance with Rule 7.2(b) will be deemed untimely and will not be ruled on before trial unless good cause is shown. The failure to file a motion in limine in compliance with this rule does not operate as a waiver of the right to object to evidence at trial.

### Comment

"In limine" means "on or at the threshold; at the very beginning; preliminary." The purpose of a motion in limine is to obtain a pretrial ruling on evidentiary disputes and to avoid the admission of unduly prejudicial evidence to a jury. *State ex rel. Berger v. Superior Ct.*, 108 Ariz. 396, 499, P.2d 152 (1972). Where a sufficiently specific motion in limine is made and ruled upon on the merits, the objection raised in that motion is preserved for appeal, without the need for specific objection at trial. *State v. Burton*, 144 Ariz. 248, 697 P.2d 331 (1985).

Subsection (a) of the rule imposes a requirement that parties meet and confer about evidentiary issues likely to arise at trial. One of the purposes of this requirement is to eliminate motions in limine that are directed to evidence the opponent does not intend to offer or are otherwise unnecessary. It is anticipated that the parties will provide the court with a written report of agreements reached at the conference so that the court can enforce such agreements at trial.

A response to a motion in limine should be filed in accordance with Rule 7.1. No leave of court is necessary to file a motion in limine more than 30 days before either the date of trial or a final pretrial conference, whichever is earlier. Parties are encouraged to do so, particularly if an early ruling on admissibility would advance settlement.

## Rule 7.3. Orders to Show Cause

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

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

## Rule 7.4. Joint Filings

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

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

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

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

**(4)** assure that the document is timely filed.

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

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

**(d) Sanctions.** A court may sanction any party who violates any of its duties under this rule.

## Rule 8. General Rules of Pleading

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

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

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

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

**(b) Defenses; Admissions and Denials.**

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

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

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

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

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

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

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

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

**(c) Affirmative Defenses.**

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

**(A)** accord and satisfaction;

**(B)** arbitration and award;

**(C)** assumption of risk;

**(D)** contributory negligence;

**(E)** duress;

**(F)** estoppel;

**(G)** failure of consideration;

**(H)** fraud;

**(I)** illegality;

**(J)** laches;

**(K)** license;

**(L)** payment;

**(M)** release;

**(N)** res judicata;

**(O)** statute of frauds;

**(P)** statute of limitations; and

**(Q)** waiver.

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

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

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

**(2)** ***Alternative Statements of a Claim or Defense.*** A party may set out two or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

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

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

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

**(g) Civil Cover Sheets.**

**(1)** ***Generally.***

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

**(B)** The Civil Cover Sheet must contain:

**(i)** the plaintiff's correct name and mailing address;

**(ii)** the plaintiff's attorney's name and bar number;

**(iii)** the defendant's name(s);

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

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

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

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

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

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

**(A)** federal exemption;

**(B)** enforce order of support;

**(C)** enforce order of bankruptcy;

**(D)** enforce collection of taxes; or

**(E)** non-earnings.

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

**(h) Complex Civil Litigation Program Designation.**

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

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

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

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

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

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

**(E)** substantial postjudgment judicial supervision;

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

**(G)** inherently complex legal issues;

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

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

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

**(A)** *Designation by Plaintiff.* When filing its initial complaint, a plaintiff may designate an action as a complex civil action by filing a motion and separate certificate of complexity identifying the case attributes in Rule 8(h)(2) justifying the designation. The certification must be in a form approved by the Supreme Court as set forth in Rule 8(h)(8) and must be served on the defendant along with the motion when the complaint is served.

**(B)** *Designation by Defendant.* If the plaintiff has not done so and if the court has not already ruled on whether the action is complex, a defendant may designate an action as complex by filing a motion and certificate of complexity as described in Rule 8(h)(3)(A) with or before the filing of defendant's first responsive pleading.

**(C)** *Joint Designation.* The parties may jointly designate an action as complex by filing a joint motion and certificate of complexity with or before the filing of any defendant's first responsive pleading.

**(4)** ***Procedure for Opposing Designation.*** If a party has certified that an action is complex, the court has not previously declared the action to be a complex civil action, and another party disagrees with the designating party's certificate, the opposing party must file—no later than when that party files its first responsive pleading—a response to the designating party's motion and a controverting certificate that specifies the particular reason for the opposing party's disagreement with the designating party's certificate.

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

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

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

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

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

**(C)** *Sanctions.* If the court finds that the certificate of a party or its counsel designating an action as complex was not made in good faith, the court may—on motion or on its own—make such orders as are just, including, among others, any action authorized under Rule 11(c).

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

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

**(i) Verification.** Unless a rule or statute specifically states otherwise, a pleading need not be verified or supported by an affidavit. 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.

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

## Experimental Rule 8.1. Assignment and Management of Commercial Cases

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

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

**(1)** A "commercial case" is one in which:

**(A)** at least one plaintiff and one defendant are "business organizations";

**(B)** the primary issues of law and fact concern a "business organization"; or

**(C)** the primary issues of law and fact concern a "business contract or transaction."

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

**(3)** A "business contract or transaction" is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations. The term "business contract or transaction" excludes a "consumer contract or transaction."

**(4)** A "consumer contract or transaction" is one that is primarily for personal, family, or household purposes.

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

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

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

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

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

**(5)** is a shareholder or member derivative action;

**(6)** arises from a commercial real estate transaction;

**(7)** arises from a relationship between a franchisor and a franchisee;

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

**(9)** concerns a claim under state antitrust law.

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

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

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

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

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

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

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

**(1)** evictions;

**(2)** eminent domain or condemnation;

**(3)** civil rights;

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

**(5)** administrative appeals;

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

**(7)** wrongful termination of employment.

**(e) Assignment of Cases to Commercial Courts.**

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

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

**(3)** ***Motion to Reconsider Assignment to Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, on motion or on its own, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through (d). Any party filing a motion under this rule must do so no later than 20 days after the defendant files an answer or a motion

under Rule 12, or within 20 days after that party's appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.

**(4)** ***Motion to Transfer to Commercial Court.*** On motion filed under Rule 8.1(e)(3), or on its own, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through (d).

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

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

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

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

**(A)** requirements and limits on disclosure and production of electronically stored information;

**(B)** the form or formats in which the electronically stored information will be disclosed or produced; and

**(C)** if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing electronically stored information.

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

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

**(B)** whether the parties reached agreements under Arizona Rule of Evidence 502;

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

**(D)** whether there are any issues concerning claims of privilege or protection of trial-preparation materials under Rules 26(b)(6) and 26.1(f).

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

## Rule 9. Pleading Special Matters

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

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

**(A)** a party's capacity to sue or be sued;

**(B)** a party's authority to sue or be sued in a representative capacity; or

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

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

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

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

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

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

**(f) Time and Place.** An allegation of time or place is material when testing a pleading's sufficiency.

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

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

## Rule 10. Form of Pleadings

**(a) Caption; Names of Parties.** Every pleading must have a caption in the form prescribed by Rule 5.2(a), along with the pleading's designation under Rule 7. The title of the complaint must name all the parties; the title of other pleadings and documents, after naming the first party on each side, may refer generally to other parties by the designation "*et al.*"

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

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

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

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

**(a) Signature.**

**(1)** ***Generally.*** Every pleading, written motion, and other document filed with the court or served must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The court must strike an unsigned document unless the omission is promptly corrected after being called to the filer's attention.

**(2)** ***Electronic Filings.*** A person may sign an electronically filed document by placing the symbol "/s/" on the signature line above the person's name. An electronic signature has the same force and effect as a signature on a document that is not filed electronically. The court may treat a document that was filed using a person's electronic filing registration information as a filing that was made or authorized by that person.

**(3)** ***Filings by Multiple Parties.*** A person filing a document containing more than one place for a signature—such as a stipulation—may sign on behalf of another party only if the person has actual authority to do so. The person may indicate such authority either by attaching a document confirming that authority and containing the signatures of the other persons who have authority to consent for such parties, or, after obtaining a party's consent, by inserting "/s/ [the other party's or person's name] with permission" as any non-filing party's signature.

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

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

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

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

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

**(c) Sanctions.**

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

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

**(A)** attempt to resolve the matter by good faith consultation as provided in Rule 7.1(h); and

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

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

**(A)** be made separately from any other motion;

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

**(C)** be accompanied by a Rule 7.1(h) good faith consultation certificate; and

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

**(d) Assisting Filing by Self-Represented Person.** An attorney may help draft a pleading, motion, or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which case the attorney must make an independent reasonable inquiry into the facts.

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

**(a) Time to Serve a Responsive Pleading.**

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

**(A)** A defendant or third-party defendant must serve an answer or other responsive pleading:

**(i)** within 20 days after being served with the summons and complaint, except as otherwise provided in Rules 4.2(d)(3) and (m); or

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

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

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

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

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

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

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

**(1)** lack of subject-matter jurisdiction;

**(2)** lack of personal jurisdiction;

**(3)** improper venue;

**(4)** insufficient process;

**(5)** insufficient service of process;

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

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

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

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

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

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

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

**(1)** on its own; or

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

**(g) Joining Motions.**

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

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

**(h) Waiving and Preserving Certain Defenses.**

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

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

**(B)** failing to either:

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

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

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

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

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

**(C)** at trial.

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

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

**State Bar Committee Note**

**1966 Amendment to Rule 12(h)**

The first paragraph of this subdivision is not in the amended federal rule. Under the previous rule, numerous federal court decisions had divided on whether, when the party sees fit to offer a defensive motion, he may thereafter allege the defenses mentioned in this rule in his answer when he has not included them in his motion. The revised rule adopts the holding of those cases concluding that the defense is waived in such circumstances. The rule states that lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process are waived if (a) a party offers a motion and (b) does not include them. This re-emphasizes the policy of avoiding piecemeal decisions.

This does not mean that the party must make a motion. He may leave these defenses to his answer if he wishes; the requirement of the rule is merely that if he does make a motion, he must include them all at once. However, the rule further provides that the same defenses are waived unless included in either a motion or an answer, subject only to amendments as a matter of course.

This waiver rule applies only to the defenses specified, some defenses being regarded as too important to be subject to such waiver. These are the defenses of failure to state a claim upon which relief can be granted; failure to join party who is indispensable under Rule 19; failure to state a legal defense; and want of jurisdiction over the subject matter. Each can be subsequently raised.

The amendment does not alter the results of existing Arizona decisions and is in accord for example with *Baxter v. Harrison*, 83 Ariz. 354, 321 P.2d 1019 (1958).

## Rule 13. Counterclaim and Crossclaim

### (a) Compulsory Counterclaim.

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

**(A)** arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

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

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

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

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

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

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

**(d) Counterclaim Against the State.** These rules do not expand the right to assert a counterclaim—or to claim a credit—against the State of Arizona or one of its officers or agencies.

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

**(f) Crossclaim Against a Coparty.**

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

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

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

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

## Rule 14. Third-Party Practice

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

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

**(2)** ***Third-Party Defendant's Claims and Defenses.*** The person served with the summons and third-party complaint—the "third-party defendant":

**(A)** must defend against the third-party plaintiff's claim under Rules 8 and 12;

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

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

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

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

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

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

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

## Rule 15. Amended and Supplemental Pleadings

**(a) Amendments Before Trial.**

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

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

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

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

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

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

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

**(b) Amendments During and After Trial.**

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

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

**(c) Relation Back of Amendments.**

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

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

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

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

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

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

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

**(d) Supplemental Pleadings.** On motion and reasonable notice, the court may permit a party to file a supplemental pleading setting forth any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. A court may permit supplementation even though the original pleading is defective in stating a claim for relief or defense. The court may order the opposing party to answer or otherwise respond to the supplemental pleading within a specified time.

**Supplemental State Bar Committee Note**

**Amendment to Rule 15(c)**

In *Ritchie v. Grand Canyon Scenic Rides*, 165 Ariz. 460, 799 P.2d 801 (1990), the Arizona Supreme Court held that the "period provided by law for commencing the action" referred to in the second sentence of Rule 15(c) includes the time allowed for service of process. Accordingly, when a party files a claim prior to the expiration of the statute of limitations, an amendment to the pleadings that adds a party, or changes the party, against whom the claim is asserted will relate back under Rule 15(c), if the new party is served within the time prescribed by the applicable statute of limitations plus the time allowed for service of process under Rule 4(i), and if the claim asserted in the amended pleading arose out of the same occurrence set forth in the original pleading.

**State Bar Committee Note**

**1966 Amendment to Rule 15(c)**

The amendment to this rule provides for relation back of pleading amendments in cases in which a complainant makes a mistake in designating against whom his claim is asserted. The amendment applies primarily but not exclusively to public officials, as where a party may mistakenly suppose that a particular person occupies an office when in fact by change of circumstances it is occupied by someone else; and it also covers cases in which a suit names an agency when it should name an individual. For example, a plaintiff might sue the "State Treasury Department" instead of the "State Treasurer." While this problem has not been substantial in Arizona, it has been substantial in the federal system, and the amendment is therefore adopted in the interest of conformity.

## Rule 16. Scheduling and Management of Actions

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

**(1)** expediting a just disposition of the action;

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

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

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

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

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

**(7)** conserving parties' resources;

**(8)** managing the court's calendar to eliminate unnecessary trial settings and continuances; and

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

**(b) Joint Report and Proposed Scheduling Order.**

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

**(A)** medical malpractice actions;

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

**(C)** actions designated complex under Rule 8(h); and

**(D)** actions seeking the following relief:

**(i)** change of name;

**(ii)** forcible entry and detainer;

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

**(iv)** an order pertaining to a subpoena sought under Rule 45.1(e)(2);

**(v)** restoration of civil rights;

**(vi)** injunction against harassment or workplace harassment;

**(vii)** delayed birth certificate;

**(viii)** amendment of birth certificate or marriage license;

**(ix)** civil forfeiture;

**(x)** distribution of excess proceeds;

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

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

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

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

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

**(B)** identifying areas of expert testimony;

**(C)** identifying and disclosing expert witnesses and their opinions under Rule 26.1(a)(6);

**(D)** propounding written discovery;

**(E)** disclosing nonexpert witnesses;

**(F)** completing depositions;

**(G)** completing all discovery other than depositions;

**(H)** final supplementation of Rule 26.1 disclosures;

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

**(J)** filing dispositive motions;

**(K)** a proposed trial date; and

**(L)** the anticipated number of days for trial.

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

participating in the conference, for attempting in good faith to agree on a Proposed Scheduling Order, and for filing the Joint Report and the Proposed Scheduling Order with the court.

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

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

**(i)** every party, except any defaulted parties, has filed an answer;

**(ii)** there are no third-party claims;

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

**(iv)** each party intends to call no more than 4 lay witnesses at trial.

**(B)** *Standard.* The parties must use Forms 12(a) and (b) (Standard Case) if the action is ineligible for management as an Expedited Case or Complex Case.

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

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

**(c) Scheduling Orders.**

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

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

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

**(d) Scheduling Conferences in Non-Medical Malpractice Actions.** Except in medical malpractice actions, on a party's written request the court must—or on its own the court may—set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

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

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

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

**(A)** setting forth any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced and, if appropriate, the sharing or shifting of costs incurred by the parties in producing the information;

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

**(C)** adopting any agreements the parties reach for asserting claims of privilege or of protection for work-product materials after production;

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

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

**(6)** determine a date for disclosing nonexpert witnesses and the order of their disclosure;

**(7)** determine a deadline for filing dispositive motions;

**(8)** resolve any discovery disputes;

**(9)** eliminate nonmeritorious claims or defenses;

**(10)** permit amendment of the pleadings;

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

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

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

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

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

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

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

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

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

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

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

**(e) Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Actions.** This Rule 16(e) applies in medical malpractice actions. Within 5 days after receiving answers or motions from all served defendants, a plaintiff must notify the court so that it can set a Comprehensive Pretrial Conference. Within 60 days after receiving the notice, the court must conduct a Comprehensive Pretrial Conference. At that conference, the court and the parties must:

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

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

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

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

**(5)** determine whether additional nonuniform interrogatories and/or requests for admission or production are necessary and, if so, the number permitted;

**(6)** resolve any discovery disputes;

**(7)** discuss alternative dispute resolution, including mediation, and binding and nonbinding arbitration;

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

**(9)** set a date for a mandatory settlement conference;

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

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

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

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

**(f) Trial-Setting Conference.**

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

court must schedule another Trial-Setting Conference as soon as practicable for the setting of a trial date.

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

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

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

**(C)** imposing time limits on trial proceedings;

**(D)** using juror questionnaires;

**(E)** using juror notebooks;

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

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

**(H)** other matters that the court deems appropriate.

**(g) Joint Pretrial Statement; Trial Management Conference.**

**(1)** ***Preparation of Joint Pretrial Statement.*** Counsel or the unrepresented parties who will try the action and who are authorized to make binding stipulations must confer and prepare a written Joint Pretrial Statement, signed by each counsel or unrepresented party. The parties must file the Joint Pretrial Statement no later than 10 days before the date of the Trial Management Conference, or if no conference is scheduled, no later than 10 days before trial. A plaintiff must deliver its part of the Joint Pretrial Statement to all other parties no later than 20 days before the date the Statement must be filed. All other parties must deliver their part of the Joint Pretrial Statement to all other parties no later than 15 days before the date the Statement must be filed.

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

**(A)** stipulations of material fact and applicable law;

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

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

**(D)** a list of witnesses each party intends to call to testify at trial, identifying those witnesses whose testimony will be presented solely by deposition. Each party

must list any objection to a witness and the basis for that objection. Unless the court orders otherwise for good cause, no witness may testify at trial other than those listed;

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

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

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

**(H)** requested technical equipment;

**(I)** requested interpreters;

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

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

**(L)** a brief description of settlement efforts; and

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

**(3)** ***Delivery of Exhibits.*** A plaintiff must deliver copies of all its exhibits to all other parties no later than 10 days before the date the Joint Pretrial Statement must be filed. All other parties must deliver copies of all their exhibits to all other parties no later than 5 days before the date the Joint Pretrial Statement must be filed. Any

exhibit that cannot be reproduced must be made available for inspection to all other parties on or before these deadlines.

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

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

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

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

**(8)** ***Modifications.*** Rule 16(g)'s provisions may be modified by court order.

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

**(i) Sanctions.**

**(1)** ***Generally.*** Except on a showing of good cause, the court—on motion or on its own—must enter such orders as are just, including, among others, any of the orders in Rule 37(b)(2)(A)(ii) through (vii), if a party or attorney:

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

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

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

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

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

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

**(A)** another party's reasonable expenses, including attorney's fees, incurred as a result of the conduct;

**(B)** an assessment to the clerk; or

**(C)** both.

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

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

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

**State Bar Committee Note**

**2008 Amendment to Rule 16(d)**
**[Formerly Rule 16(b)]**

[Rule 16(d) (formerly Rule 16(b))] was amended to clarify that a court has the power under Rule 16 to enter orders governing the disclosure and discovery of electronically stored information, the preservation of discoverable documents and electronically stored information, and the enforcement of party agreements regarding post-production assertions of privilege or work product protection. Because these issues typically arise at the beginning of a case, a court need not wait until the parties are ready to address other issues under Rule 16[d] before holding a hearing under this Rule on these and related subjects.

Orders regarding the disclosure or discovery of electronically stored information may specify the forms and manner in which such information shall be produced. The

court also may enter orders limiting (or imposing conditions upon) the disclosure of such information, and may take into account the relative accessibility of the electronically stored information at issue, the costs and burdens on parties in making such information available, the probative value of such information, and the amount of damages (or the type of relief) at issue in the case. *See* CONFERENCE OF CHIEF JUSTICES, GUIDELINES FOR STATE TRIAL COURTS REGARDING DISCOVERY OF ELECTRONICALLY-STORED INFORMATION 5 (approved August 2006) (noting that in determining discovery issues relating to electronically stored information, a court should consider these factors, among others).

Document retention and preservation issues are especially likely to arise with electronically stored information because the "ordinary operation of computers involves both the automatic creation and the automatic deletion or overwriting of certain information." Fed. R. Civ. P. 26(f), Advisory Committee Notes on 2006 Amendment. A court has the power under this Rule to incorporate into an order any agreement the parties might reach regarding preservation issues or, absent an agreement, to enter an order in appropriate circumstances imposing such requirements and limitations. In considering such an order, a court should take into account not only the need to preserve potentially relevant evidence, but also any adverse effects such an order may have on a party's on-going activities and computer operations. A preservation order entered over objections should be narrowly tailored to address specific evidentiary needs in a case, and ex parte preservation orders should issue only in exceptional circumstances. *Cf. id.* (stating that preservation orders should be narrowly tailored where objections are made and cautioning against "blanket" or ex parte preservation orders); CONFERENCE OF CHIEF JUSTICES, GUIDELINES FOR STATE TRIAL COURTS REGARDING DISCOVERY OF ELECTRONICALLY-STORED INFORMATION 10 (approved August 2006) ("When issuing an order to preserve electronically stored information, a judge should carefully tailor the order so that it is no broader than necessary to safeguard the information in question.").

If the amount of documents and electronic data to be disclosed is voluminous, an agreement among the parties minimizing the risks associated with the inadvertent production of privileged or otherwise protected material may be helpful in lessening discovery costs and expediting the litigation. As with its counterpart in the Federal Rules of Civil Procedure, this Rule does not provide the court with authority to enter such an order without party agreement, or limit the court's authority to act on motions to resolve privilege issues. *Cf.* Fed. R. Civ. P. 16(b), Advisory Committee Notes on 2006 Amendment (clarifying the rule's scope).

**Comment**

**2014 Amendment to Rule 16(c)**

A primary goal of civil case management is the creation of public confidence in a predictable court calendar. Courts should avoid overlapping trial settings that necessitate continuances when the court is unable to hold a trial on the date scheduled. Continuances of scheduled trial dates impose unnecessary costs and inconvenience when counsel, parties, witnesses, and courts are required to engage in redundant preparation. Although early trial settings may be appropriate, a court should employ a case management system that ensures it will be in a position to conduct each trial on the date it has been set.

**Comment**

**2017 Amendment to Rule 16(a)**

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

## Rule 16.1. Settlement Conferences

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

**(b) Deadlines and Scheduling.**

**(1)** ***Timing.***

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

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

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

**(c) Settlement Conference Memoranda.**

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

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

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

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

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

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

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

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

**(D)** the party's assessment of the likely outcome if the action proceeds to trial; and

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

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

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

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

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

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

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

## Rule 16.2. Good Faith Settlement Hearings

**(a) Motion.** If a settlement is entered in an action in which the plaintiff alleges that two or more defendants are joint tortfeasors, any party may file a motion asking the court to make a formal determination whether the settlement is made in good faith. If such a motion is made, the court must make the determination.

**(b) Evidence.** A motion must be accompanied by affidavits or other evidence relating to whether the settlement is made in good faith. If the motion is filed by one or more of the settling parties, it must be accompanied by an affidavit setting forth the settlement terms and the facts establishing the settlement's good faith.

**(c) Responsive and Reply Memoranda.** Responsive and reply memoranda may be filed as provided in Rule 7.1(a)(3). Any responsive memorandum must be accompanied by an affidavit or other evidence relating to whether the settlement is made in good faith.

**(d) Hearing.** On any party's timely request, the court must hold a hearing on the motion. If no request is made, the court may either hold a hearing or rule without a hearing.

## Rule 16.3. Initial Case Management Conference in Actions Assigned to the Complex Civil Litigation Program

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

**(1)** the status of parties and pleadings;

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

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

**(4)** scheduling class certification motions, if applicable;

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

**(6)** issuing protective orders;

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

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

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

**(10)** appointing liaison counsel and admission of nonresident counsel;

**(11)** scheduling settlement conferences;

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

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

**(14)** scheduling dispositive motions;

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

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

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

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

**(19)** scheduling further conferences as necessary;

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

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

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

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

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

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

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

**Comment**

**Promulgation of Rule 16.3**

*Justification for this Rule.* Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. Rule [16.3] should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

*Case Management Resources.* In considering procedures for management of a complex civil case, the court, in its discretion, may look for guidance to the Manual for Complex Litigation published by the Federal Judicial Center and to similar complex litigation manuals used by courts in other jurisdictions.

## IV. PARTIES

### Rule 17. Plaintiff and Defendant; Capacity; Public Officers

**(a) Real Party in Interest.**

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

**(A)** a personal representative or executor;

**(B)** an administrator;

**(C)** a guardian;

**(D)** a bailee;

**(E)** a trustee of an express trust;

**(F)** a party with whom or in whose name a contract has been made for another's benefit; and

**(G)** a party authorized by statute.

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

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

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

the judgment on the ground that it resulted from fraud or collusion by the executor, administrator, or guardian.

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

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

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

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

**(2)** the latter's residence is unknown and cannot be ascertained through reasonable diligence;

**(3)** the latter is dead; or

**(4)** the latter is insolvent.

**(f) Minor or Incompetent Person.**

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

**(A)** a general guardian;

**(B)** a conservator; or

**(C)** a similar fiduciary.

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

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

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

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

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

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

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

**State Bar Committee Note**

**1966 Amendment to Rule 17(a)(3)**

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, substitution, etc., is added simply in the interests of justice. In its origin the rule concerning the real party in interest was permissive in purpose: it was designed to allow an assignee to sue in his own name. That having been accomplished, the modern function of the rule in its negative aspect is simply to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.

The provision is intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made. It does not mean, for example, that, following an airplane crash in which all aboard were killed, an action may be filed in the name of John Doe (a fictitious person), as personal representative of Richard Roe (another fictitious person), in the hope that at a later time the attorney filing the action may substitute the real name of the real personal representative of a real victim, and have the benefit of suspension of the limitation period. It does not even mean, when an action is filed by the personal representative of John Smith, of Buffalo, in the good faith belief that he was aboard the flight, that upon discovery that Smith is alive and well, having missed the fatal flight, the representative of James Brown, of San Francisco, an actual victim, can be substituted to take advantage of the suspension of the limitation period. It is, in cases of this sort, intended to insure against forfeiture and injustice—in short, to codify in broad terms the salutary principle of *Levinson v. Deupree*, 73 S. Ct. 914, 345 U.S. 648, 97 L. Ed. 1319 (1953), and *Link Aviation, Inc. v. Downs*, 325 F.2d 613 (D.C. Cir. 1963).

The amendment does not alter the results of existing Arizona decisions.

## Rule 18. Joinder of Claims

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

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

## Rule 19. Required Joinder of Parties

**(a) Persons Required to Be Joined if Feasible.**

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

**(A)** in that person's absence, the court cannot accord complete relief among existing parties; or

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

**(i)** as a practical matter impair or impede the person's ability to protect the interest; or

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

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

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

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

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

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

**(A)** protective provisions in the judgment;

**(B)** shaping the relief; or

**(C)** other measures;

**(3)** whether a judgment rendered in the person's absence would be adequate; and

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

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

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

**(2)** the reasons for not joining that person.

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

**State Bar Committee Note**

**1966 Amendment to Rule 19**

The present rule, with its judicial gloss in terms of indispensable, necessary, and proper parties, has proved confusing and difficult to apply. The revision seeks to substitute practical procedures to deal with problems where otherwise desirable joinder is difficult. At the same time, it retains the basic principle that parties must be joined where this is required by "equity and good conscience." *Shields v. Barrow*, 58 U.S. 130, 17 How. 130, 15 L. Ed. 158 (1854); *Bolin v. Superior Ct.*, 85 Ariz. 131, 333 P.2d 295 (1958); *Smith v. Rabb*, 95 Ariz. 49, 386 P.2d 649 (1963); *State of Washington v. United States*, 87 F.2d 421 (9th Cir. 1936).

The description is not at variance with the settled authorities holding that a tortfeasor with the usual "joint-and-several" liability is merely a permissive party to an action against another with like liability. Joinder of these tortfeasors continues to be regulated by Rule 20; compare Rule 14 on third-party practice.

If a person as described in subdivision (a)(1)-(2) is amenable to service of process and his joinder would not deprive the court of jurisdiction in the sense of competence over the action, he should be joined as a party; and if he has not been joined, the court should order

him to be brought into the action. If a party joined has a valid objection to the venue and chooses to assert it, he will be dismissed from the action.

Under subdivision (b), when a person as described in subdivision (a)(1)-(2) cannot be made a party, the court is to determine whether in equity and good conscience the action should proceed among the parties already before it, or should be dismissed because the absent party is indispensable.

Subdivision (c) continues the requirement that a pleading asserting a claim for relief state the names of persons described in subdivision (c) who are not joined as parties and the reasons for their non-joinder.

The official comment of the federal advisory committee on civil rules on the change in Federal Rule 19 is comprehensive and should be consulted.

## Rule 20. Permissive Joinder of Parties

**(a) Persons Who May Join or Be Joined.**

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

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

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

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

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

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

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

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

## Rule 21. Improper Joinder and Nonjoinder of Parties; Severance

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

## Rule 22. Interpleader

**(a) Grounds.**

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

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

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

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

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

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

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

**(1)** the party's deposit in court of the money claimed; or

**(2)** the party's delivery of the property as the court directs.

**(c) Relation to Other Rules.** This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

## Rule 23. Class Actions

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

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

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

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

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

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

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

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

**(B)** adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede the other members' ability to protect their interests;

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

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

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

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

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

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

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

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

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

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

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

**(ii)** appoint class counsel under Rule 23(g);

**(iii)** set forth the court's reasons for maintaining the case as a class action; and

**(iv)** describe the evidence supporting the court's determination.

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

**(2)** ***Notice.***

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

**(B)** *For (b)(3) Classes.* For any class certified under Rule 23(b)(3), the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language:

**(i)** the nature of the action;

**(ii)** the definition of the class certified;

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

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

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

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

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

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

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

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

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

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

**(d) Conducting the Action.**

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

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

**(B)** require—to protect class members and to fairly conduct the action—appropriate notice to some or all class members of:

**(i)** any step in the action;

**(ii)** the proposed extent of the judgment; or

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

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

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

**(E)** deal with similar procedural matters.

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

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

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

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

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

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

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

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

**(g) Class Counsel.**

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

**(A)** must consider:

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

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

**(iii)** counsel's knowledge of the applicable law; and

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

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

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

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

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

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

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

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

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

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

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

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

## Rule 23.1. Derivative Actions

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

**(b) Pleading Requirements.** The complaint must:

**(1)** be verified;

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

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

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

## Rule 23.2. Actions Relating to Unincorporated Associations

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

## Rule 24. Intervention

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

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

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

**(b) Permissive Intervention.**

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

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

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

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

**(A)** a statute administered by the officer or agency; or

**(B)** any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency.

**(3)** ***Delay or Prejudice.*** In exercising its discretion over permissive intervention, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

**(c) Procedure.**

**(1)** ***Requirements of Motion.*** Anyone moving to intervene must:

**(A)** serve the motion on the parties as provided in Rule 5(c); and

**(B)** attach as an exhibit to the motion a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought.

**(2)** ***Filing and Serving Pleading in Intervention.*** Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene.

**(3)** ***Response to Pleading in Intervention.*** If the pleading in intervention is one to which a party must respond, that party must plead in response to the pleading in intervention within 20 days after it is served. If the pleading in intervention does not require a party to file a responsive pleading, that party may plead in response to the pleading in intervention within 20 days after it is served.

## Rule 25. Substitution of Parties

**(a) Death.**

**(1)** ***Substitution if the Claim Is Not Extinguished.*** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made within 90 days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

**(2)** ***Statement Noting Death.*** A party or the decedent's successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedent's successor or representative if one exists and is known

by the filing party. Anyone filing a statement noting death must serve the statement on the parties as provided in Rule 5(c) and on nonparties in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

**(3)** ***Service of Motion to Substitute.*** Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 5(c) and on the decedent's successor or representative—if a nonparty—in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

**(4)** ***Continuation Among the Remaining Parties.*** After a party's death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

**(b) Incompetency.** If a party becomes incompetent, the court may—on motion or on stipulation of the parties and the incompetent party's representative—permit the action to be continued by or against the party's representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5(c) and on the incompetent party's representative—if a nonparty—in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

**(c) Transfer of Interest.** If a party's interest is transferred, the action may be continued by or against that party, unless the court—on motion or on stipulation of the parties and the transferee—orders the transferee to be substituted in the action or joined with the original party. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5(c) and on the transferee—if a nonparty—in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable.

**(d) Public Officers; Death or Separation from Office.** An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. The public officer's counsel must file a notice of the substitution, and later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

**State Bar Committee Note**

**1963 Amendment to Rule 25(a)**

Present Rule 25(a)(1), together with present Rule 6(b), results in an inflexible requirement that an action be dismissed as to a deceased party if substitution is not carried

out within a fixed period measured from the time of the death. The hardships and inequities of this unyielding requirement plainly appear from the cases.

The amended rule establishes a time limit for the motion to substitute based not upon the time of the death, but rather upon the time information of the death is provided by means of a suggestion of death upon the record, i.e. service of a statement of the fact of the death. Cf. Ill.Ann.Stat., c. 110, section 54(2) (Smith-Hurd 1956). The motion may not be made later than 90 days after the service of the statement unless the period is extended pursuant to Rule 6(b), as amended.

A motion to substitute may be made by any party or by the representative of the deceased party without awaiting the suggestion of death. Indeed, the motion will usually be so made. If a party or the representative of the deceased party desires to limit the time within which another may make the motion, he may do so by suggesting the death upon the record.

A motion to substitute made within the prescribed time will ordinarily be granted, but under the permissive language of the first sentence of the amended rule ("the court may order") it may be denied by the court in the exercise of a sound discretion if made long after the death—as can occur if the suggestion of death is not made or is delayed—and circumstances have arisen rendering it unfair to allow substitution. Accordingly, a party interested in securing substitution under the amended rule should not assume that he can rest indefinitely awaiting the suggestion of death before he makes his motion to substitute.

Since the change eliminates the two-year provision and substitutes therefor the ninety-day period after the suggestion of death, it of course follows that the two-year cases are rendered obsolete. An example is *Shire v. Superior Court*, 63 Ariz. 420, 169 P.2d 909 (1945). The amendment will not affect such a case as *Jasper v. Batt*, 76 Ariz. 328, 264 P.2d 409 (1953), which requires substitution in tort cases, since this decision deals with the right of substitution and not with the timing or technique of it, and the latter matters are the only ones within the rule revision.

## V. DISCLOSURE AND DISCOVERY

### Rule 26. General Provisions Governing Discovery

**(a) Discovery Methods.** A party may obtain discovery by any of the following methods:

**(1)** depositions by oral examination or written questions under Rules 30 and 31, respectively;

**(2)** written interrogatories under Rule 33;

**(3)** requests for production of documents or things or permission to enter onto land or other property for inspection and other purposes, under Rule 34;

**(4)** physical and mental examinations under Rule 35;

**(5)** requests for admission under Rule 36; and

**(6)** subpoenas for production of documentary evidence or for inspection of premises under Rule 45(c).

**(b) Discovery Scope and Limits.** Unless the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

**(1)** ***Generally.***

**(A)** *Scope.* Parties may obtain discovery regarding any nonprivileged matter that is relevant to the subject matter of the pending action, including matters relevant to: (i) the claim or defense of any party; (ii) the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things; and (iii) the identity and location of persons having knowledge of any discoverable matter. If the information appears reasonably calculated to lead to the discovery of admissible evidence, it is not a ground for objection that the information, though relevant, would be inadmissible at trial.

**(B)** *Limits on Discovery.* Discovery is impermissible if it: (i) is unreasonably cumulative or duplicative; (ii) can be obtained from another source that is more convenient, less burdensome, or less expensive; (iii) seeks information that the party has had ample opportunity to obtain; or (iv) is unduly burdensome or expensive given the needs of the action, the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, and the parties' resources.

**(2)** ***Specific Limits on Discovery of Electronically Stored Information.*** A party need not provide discovery or disclosure of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 26(b)(1)(B). The court may specify conditions for the disclosure or discovery.

**(3)** ***Work Product and Witness Statements.***

**(A)** *Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial*. Ordinarily, a party may not discover documents and tangible things that

another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) prepared in anticipation of litigation or for trial. But, subject to Rule 26(b)(4)(B), a party may discover those materials if:

**(i)** the materials are otherwise discoverable under Rule 26(b)(1); and

**(ii)** the party shows that it has a substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

**(B)** *Protection Against Disclosure of Opinion Work Product.* If the court orders discovery of materials under Rule 26(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

**(C)** *Discovery of Own Statement.* On request and without the showing required under Rule 26(b)(3)(A), any party or other person may obtain his or her own previous statement about the action or its subject matter. If the request is refused, the party or other person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A statement discoverable under this rule is either:

**(i)** a written statement that the party or other person signed or otherwise adopted or approved; or

**(ii)** a contemporaneous stenographic, video, audio, or other recording—or a transcription of it—that recites substantially verbatim the party's or other person's oral statement.

**(4)** ***Expert Discovery.***

**(A)** *Deposition of an Expert Who May Testify.* A party may depose any person who has been disclosed as an expert witness under Rule 26.1(a)(6).

**(B)** *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial. A party may discover such facts or opinions only:

**(i)** as provided in Rule 35(d); or

**(ii)** on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

**(C)** *Payment.* Unless manifest injustice would result, the court must require that the party seeking discovery:

**(i)** pay the expert a reasonable fee for time spent in responding to discovery under Rule 26(b)(4)(A) or (B), including the time the expert spends testifying in a deposition; and

**(ii)** for discovery under Rule 26(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts and opinions, including—in the court's discretion—the time the expert reasonably spends preparing for deposition.

**(D)** *Number of Experts Per Issue.*

**(i)** *Generally.* Unless the parties agree or the court orders otherwise for good cause, each side is presumptively entitled to call only one retained or specially employed expert to testify on an issue. When there are multiple parties on a side and those parties cannot agree on which expert to call on an issue, the court may designate the expert to be called or, for good cause, allow more than one expert to be called.

**(ii)** *Standard-of-Care Experts in Medical Malpractice Actions.* Notwithstanding the limits of Rule 26(b)(4)(D)(i), a defendant in a medical malpractice action may—in addition to that defendant's standard-of-care expert witness—testify on the issue of that defendant's standard of care. In such an instance, the court is not required to allow the plaintiff an additional expert witness on the issue of the standard of care.

**(5)** ***Notice of Nonparty at Fault.*** No later than 150 days after filing its answer, a party must serve on all other parties—and should file with the court—a notice disclosing any person: (A) not currently or formerly named as a party in the action; and (B) whom the party alleges was wholly or partly at fault under A.R.S. § 12-2506(B). The notice must disclose the identity and location of the nonparty allegedly at fault, and the facts supporting the allegation of fault. A party who has served a notice of nonparty at fault must supplement or correct its notice if it learns that the notice was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties through the discovery process or in writing. A party must supplement or correct its notice of nonparty at fault under this rule in a timely manner, but in no event more than 30 days after it learns that the notice is materially incomplete or incorrect. The trier of fact may not allocate any percentage of fault to a nonparty who is not disclosed in accordance with this rule except on stipulation of all the

parties or on motion showing good cause, reasonable diligence, and lack of unfair prejudice to all other parties.

**(6)** ***Claims of Privilege or Protection of Work-Product Materials.***

**(A)** *Information, Documents, or Electronically Stored Information Withheld.* When a party withholds information, a document, or electronically stored information in response to a written discovery request on the claim that it is privileged or subject to protection as work product, the party must promptly identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that—without revealing information that is itself privileged or protected—will enable other parties to assess the claim.

**(B)** *Inadvertent Production.* If a party contends that a document or electronically stored information subject to a claim of privilege or of protection as work-product material has been inadvertently produced in discovery, the party making the claim may notify any party who received the document or electronically stored information of the claim and the basis for it. After being notified, a party: (i) must promptly return, sequester, or destroy the specified document or electronically stored information and any copies it has; (ii) must not use or disclose the document or electronically stored information until the claim is resolved; (iii) must take reasonable steps to retrieve the document or electronically stored information if the party disclosed it before being notified; and (iv) may promptly present the document or electronically stored information to the court under seal for a determination of the claim. The producing party must preserve the document or electronically stored information until the claim is resolved.

**(c) Protective Orders.**

**(1)** ***Generally.*** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending—or alternatively, on matters relating to a deposition, the court in the county where the deposition will be taken. Subject to Rule 26(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

**(A)** forbidding the discovery;

**(B)** specifying terms and conditions, including time and place, for the discovery;

**(C)** prescribing a discovery method other than the one selected by the party seeking discovery;

**(D)** forbidding inquiry into certain matters, or limiting the scope of discovery to certain matters;

**(E)** designating the persons who may be present while the discovery is conducted;

**(F)** requiring that a deposition be sealed and opened only on court order;

**(G)** requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

**(H)** requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

**(2)** ***Ordering Discovery.*** If a motion for a protective order is wholly or partly denied, the court may, on terms that are just, order that any party or person provide or permit discovery.

**(3)** ***Awarding Expenses.*** Rule 37(a)(5) applies to the award of expenses on a motion for a protective order.

**(4)** ***Confidentiality Orders.***

**(A)** *Burden of Proof.* Before the court may enter an order that limits a party or person from disclosing information or materials produced in the action to a person who is not a party to the action and before the court may deny an intervenor's request for access to such discovery materials: (i) the party seeking confidentiality must show why a confidentiality order should be entered or continued; and (ii) the party or intervenor opposing confidentiality must show why a confidentiality order should be denied in whole or in part, modified, or vacated. The burden of showing good cause for an order remains with the party seeking confidentiality.

**(B)** *Findings of Fact.* When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to: (i) any party's or person's need to maintain the confidentiality of such information or materials; (ii) any nonparty's or intervenor's need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal. No such findings of fact are needed if the parties have stipulated to such an order or if a motion to intervene and to obtain access to materials subject to a confidentiality order is unopposed. A party moving for entry of a confidentiality order must submit with its motion a proposed order containing proposed findings of fact.

**(C)** *Least Restrictive Means.* An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

**(d) Sequence of Discovery.** Unless the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice, or for other good cause:

**(1)** methods of discovery may be used in any sequence; and

**(2)** discovery by one party does not require any other party to delay its discovery.

**(e) Supplementing and Correcting Discovery Responses.** A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect.

**(f) Sanctions.** The court may impose an appropriate sanction—including any order under Rule 16(i)—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

**(g) Discovery and Disclosure Motions.** Any discovery or disclosure motion must attach a good faith consultation certificate complying with Rule 7.1(h).

**State Bar Committee Note**

**1984 Amendments to Rule 26(a) and (b)**

The 1984 amendments to Rule 26 are aimed at preventing both excess discovery and evasion of reasonable discovery devices. Deletion of "the frequency of use" from Rule 26(a) is intended to deal directly with the problems of duplicative and needless discovery. This change and others in Rule 26(b) should encourage judges to identify instances of unnecessary discovery and to limit the use of the various discovery devices accordingly.

New standards are added in Rule 26(b)(1) which courts will use in deciding whether to limit the frequency or extent of use of the various discovery methods. Subdivision (i) is intended to reduce redundancy in discovery and require counsel to be sensitive to the comparative costs of different methods of securing information. Subdivision (ii) also seeks to minimize repetitiveness and to oblige lawyers to think through their discovery activities in advance so that full utilization is made of each deposition, document request, or set of interrogatories. Subdivision (iii) addresses the problem of discovery that is

disproportionate to the individual lawsuit as measured by various factors, e.g., its nature and complexity, the importance of the issues at stake, the financial position of the parties, etc. These standards must be applied in an even-handed manner to prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether affluent or financially weak.

Acknowledging that discovery cannot always be self-regulating, the Rule contemplates earlier and greater judicial involvement in the discovery process. The court may act on motion or its own initiative.

**Committee Comment**

**1991 Amendment to Rule 26(b)(4)**

The amendment to Rule 26(b)(4) must be read in conjunction with the amendment to [former Rule 43(g)]. The purpose of these two rules is to avoid unnecessary costs inherent in the retention of multiple independent expert witnesses. The words "independent expert" in this rule refer to a person who will offer opinion evidence who is retained for testimonial purposes and who is not a witness to the facts giving rise to the action. As used in this rule, the word "presumptively" is intended to mean that an additional expert on an issue can be used only upon a showing of good cause. Where an issue cuts across several professional disciplines, the court should be liberal in allowing expansion of the limitation upon experts established in the rule.

[Former Rule 43(g)] is intended to reinforce Rule 403 of the Arizona Rules of Evidence which gives the court discretion to exclude relevant evidence which represents ... "needless presentation of cumulative evidence." By use of the word "shall" in [former Rule 43(g)] it is the intent of the Committee to strongly urge trial judges to exclude testimony from independent experts on both sides which is cumulative except in those circumstances where the cause of justice requires.

There is no intent to preclude witnesses who in addition to their opinion testimony are factual witnesses. Under [former Rule 43(g)], however, the court would exclude an independent expert witness whose opinion would simply duplicate that of the factual expert witness, except for good cause shown.

This amendment to Rule 26(b)(4) in combination with [former Rule 43(g)] and [Rules 16(d)(5) and 16(e)(4) (formerly Rule 16(c)(3))] is intended to discourage the unnecessary retention of multiple independent expert witnesses and the discovery costs associated with listing multiple cumulative independent experts as witnesses. The Committee does not intend any change in the present rule regarding specially retained experts.

**State Bar Committee Note**

**2000 Amendments to Rule 26(b) and (c)**

As part of the effort to consolidate formerly separate sets of procedural rules into either the Arizona Rules of Civil Procedure or the Rules of the Arizona Supreme Court, the Uniform Rules of Practice of the Superior Court were effectively transferred to one or the other of those existing sets of Rules. The provisions of former Rule V(a) of the Uniform Rules of Practice of the Superior Court, which required the filing, in certain counties, of a list of witnesses and exhibits as a predicate for submitting a Motion to Set and Certificate of Readiness, however, were not retained in that process. The Committee was of the view that this requirement had been rendered obsolete by the provisions of Rule 26.1, which requires the voluntary and seasonable disclosure of, *inter alia*, the identities of trial witnesses and exhibits. This necessitated the amendment of Rule 26(b)(5) to eliminate the former reference to Rule V(a) and to substitute in its place a reference to new Rule 38.1(b)(2) of the Arizona Rules of Civil Procedure.

Rule 26(b)(4) was amended to incorporate, as a new separate paragraph, the provisions of former Rule 1(D)(4) of the Uniform Rules of Practice for Medical Malpractice Cases. The Comment to that former Rule had observed that, if a medical malpractice case involved issues of nursing care, anesthesia, and general surgery, the plaintiff should be entitled to three standard-of- care experts and, similarly, if the hospital employed the nurse, anesthesiologist and surgeon and was the sole defendant, it would also be entitled to three standard-of-care experts. The addition of the phrase "except upon a showing of good cause" merely incorporates the standards of former Rule 43(g), which addressed the same subject and was abrogated as unnecessary. Finally, the provisions of Rule 26(e) were amended to reflect prior amendments to Rules 26.1 and 37 which require the disclosure of such information by no later than sixty (60) days prior to trial, without leave of court.

**Comment**

**2002 Amendment to Rule 26(c)**

The amendment to Rule 26(c) does not limit the discretion of trial judges to issue confidentiality orders in the appropriate case. Trial judges should look to federal case law to determine what factors, including the three listed in the rule, should be weighed in deciding whether to grant or modify a confidentiality order where parties contest the need for such an order. Trial judges also should look to federal case law to determine whether to permit nonparties to intervene and obtain access to information protected by such orders.

## Rule 26.1. Prompt Disclosure of Information

**(a) Duty to Disclose; Disclosure Categories.** Within the times set forth in Rule 26.1(d) or in a Scheduling Order or Case Management Order, each party must disclose in writing and serve on all other parties a disclosure statement setting forth:

**(1)** the factual basis of each of the disclosing party's claims or defenses;

**(2)** the legal theory on which each of the disclosing party's claims or defenses is based, including—if necessary for a reasonable understanding of the claim or defense—citations to relevant legal authorities;

**(3)** the name, address, and telephone number of each witness whom the disclosing party expects to call at trial, and a description of the substance—and not merely the subject matter—of the testimony sufficient to fairly inform the other parties of each witness' expected testimony;

**(4)** the name and address of each person whom the disclosing party believes may have knowledge or information relevant to the subject matter of the action, and a fair description of the nature of the knowledge or information each such person is believed to possess;

**(5)** the name and address of each person who has given a statement—as defined in Rule 26(b)(3)(C)(i) and (ii)—relevant to the subject matter of the action, and the custodian of each of those statements;

**(6)** the name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the expert's qualifications, and the name and address of the custodian of copies of any reports prepared by the expert;

**(7)** a computation and measure of each category of damages alleged by the disclosing party, the documents or testimony on which such computation and measure are based, and the name, address, and telephone number of each witness whom the disclosing party expects to call at trial to testify on damages;

**(8)** the existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party plans to use at trial, including any material to be used for impeachment;

**(9)** the existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that may be relevant to the subject matter of the action; and

**(10)** for any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment: (A) a copy—or if no copy is available, the existence and substance—of the insurance policy, indemnity agreement, or suretyship agreement; (B) a copy—or if no copy is available, the existence and basis—of any disclaimer, limitation, or denial of coverage or reservation of rights under the insurance policy, indemnity agreement, or suretyship agreement; and (C) the remaining dollar limits of coverage under the insurance policy, indemnity agreement, or suretyship agreement. A party need only supplement its disclosure regarding the remaining dollar limits of coverage upon another party's written request made within 30 days before a settlement conference or mediation or within 30 days before trial. Within 10 days after such a request is served, a party must supplement its disclosure of the remaining dollar limits of coverage. For purposes of this rule, an insurance policy means a contract of or agreement for or effecting insurance, or the certificate memorializing it—by whatever name it is called—and includes all clauses, riders, endorsements, and papers attached to, or a part of, it, but does not include an application for insurance. Information concerning an insurance policy, indemnity agreement, or suretyship agreement is not admissible in evidence merely because it is disclosed under this rule.

**(b) Disclosure of Hard-Copy Documents and Electronically Stored Information.**

**(1)** ***Hard-Copy Documents.*** Subject to the limits of Rule 26(b)(1)(B) or other good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule 26.1(a)(8), (9), and (10). If a party withholds any such hard-copy document from production, it must in its disclosure identify the document along with the name, telephone number, and address of the document's custodian. A party who produces hard-copy documents for inspection must produce them as they are kept in the usual course of business.

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

**(A)** *Duty to Confer*. When the existence of electronically stored information is disclosed or discovered, the parties must promptly confer and attempt to agree on matters relating to its disclosure and production, including:

**(i)** requirements and limits on the disclosure and production of electronically stored information;

**(ii)** the form in which the information will be produced; and

**(iii)** if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

**(B)** *Resolution of Disputes.* If the parties are unable to satisfactorily resolve any dispute regarding electronically stored information and seek a resolution from the court, they must present the dispute in a single joint motion. The joint motion must include the parties' positions and the separate certification from all counsel required under Rule 26(g). In resolving any dispute regarding electronically stored information, the court may shift costs, if appropriate.

**(C)** *Production of Electronically Stored Information.* Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule 26.1(a)(8) and (9). Absent good cause, no party need produce the same electronically stored information in more than one form.

**(D)** *Presumptive Form of Production.* Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

**(E)** *Limits on Disclosure of Electronically Stored Information.* Rule 26(b)(2) applies to the disclosure of electronically stored information.

**(c) Purpose; Scope.**

**(1)** ***Purpose.*** The purpose of the disclosure requirements of this Rule 26.1 is to ensure that all parties are fairly informed of the facts, legal theories, witnesses, documents, and other information relevant to the action.

**(2)** ***Scope.*** A party must include in its disclosures information and data in its possession, custody, and control as well as that which it can ascertain, learn, or acquire by reasonable inquiry and investigation.

**(d) Time for Disclosure; Continuing Duty.**

**(1)** ***Initial Disclosures.*** Unless the parties agree or the court orders otherwise, a party seeking affirmative relief must serve its initial disclosure of information under Rule 26.1(a) as fully as then reasonably possible no later than 40 days after the filing of the first responsive pleading to the complaint, counterclaim, crossclaim, or third-party complaint that sets forth the party's claim for affirmative relief. Unless

the parties agree or the court orders otherwise, a party filing a responsive pleading must serve its initial disclosure of information under Rule 26.1(a) as fully as then reasonably possible no later than 40 days after it files its responsive pleading.

**(2)** ***Additional or Amended Disclosures.*** The duty of disclosure prescribed in Rule 26.1(a) is a continuing duty, and each party must serve additional or amended disclosures when new or additional information is discovered or revealed. A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is revealed to or discovered by the disclosing party. If a party obtains or discovers information that it knows or reasonably should know is relevant to a hearing or deposition scheduled to occur in less than 30 days, the party must disclose such information reasonably in advance of the hearing or deposition. If the information is disclosed in a written discovery response or a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement. A party seeking to use information that it first disclosed later than the deadline set in a Scheduling Order or Case Management Order—or in the absence of such a deadline, later than 60 days before trial—must obtain leave of court to extend the time for disclosure as provided in Rule 37(c)(4) or (5).

**(e) Signature Under Oath.** Each disclosure must be in writing and signed under oath by the disclosing party.

**(f) Claims of Privilege or Protection of Work-Product Materials.**

**(1)** ***Information Withheld.*** When a party withholds information, a document, or electronically stored information from disclosure on a claim that it is privileged or subject to protection as work product, the party must promptly comply with Rule 26(b)(6)(A).

**(2)** ***Inadvertent Production.*** If a party contends that a document or electronically stored information subject to a claim of privilege or protection as work-product material has been inadvertently disclosed, the producing and receiving parties must comply with Rule 26(b)(6)(B).

## Rule 26.2. Exchange of Records and Discovery Limits in Medical Malpractice Actions

**(a) Exchange of Medical Records.**

**(1)** ***By Plaintiff.*** Within 5 days after a plaintiff notifies the court under Rule 16(e) that all served defendants have either answered or filed motions, the plaintiff must serve

on defendants copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

**(2)** ***By Defendants.*** Within 10 days after the plaintiff serves medical records under Rule 26.2(a)(1), each defendant must serve on the plaintiff copies of all of the plaintiff's available medical records relevant to the condition that is the subject matter of the action.

**(3)** ***By Request.*** In place of serving copies of the above-described medical records, counsel may—before the deadline for service of the records—inquire of opposing counsel concerning the records that opposing counsel wishes produced and may then serve by the deadline copies of only those records specifically requested.

**(b) Discovery Limits Before Comprehensive Pretrial Conference.**

**(1)** ***Generally.*** Unless the parties agree or the court orders otherwise for good cause, the parties are limited to the following discovery before the Comprehensive Pretrial Conference under Rule 16(e) is held:

**(A)** service of the uniform interrogatories set forth in Rule 84, Form 4;

**(B)** service of 10 additional nonuniform interrogatories under Rule 33, with any subpart to a nonuniform interrogatory counting as a separate interrogatory;

**(C)** service of a request for production of documents under Rule 34, limited to the following items:

**(i)** a party's wage information if relevant;

**(ii)** written or recorded statements by any party or witness, including reports or statements of experts;

**(iii)** any exhibits the party intends to use at trial; and

**(iv)** incident reports; and

**(D)** depositions of the parties and any known liability experts.

**(2)** ***Stipulations for Additional Discovery.*** A party may not unreasonably withhold a stipulation for additional discovery under Rule 26.2(b)(1). A party or counsel who unreasonably withholds a stipulation for additional discovery is subject to sanctions under Rule 26(f).

## Rule 27. Discovery Before an Action Is Filed or Pending an Appeal

### (a) Before an Action Is Filed.

**(1)** ***Petition.*** A person who wants to perpetuate testimony—including his or her own—or to obtain discovery to preserve evidence about any matter cognizable in any court within the United States may file a verified petition in the superior court in the county where any expected adverse party resides. The petition must be titled in the petitioner's name and must:

**(A)** show that the petitioner expects to be a party to an action cognizable in any court within the United States but cannot presently bring it or cause it to be brought;

**(B)** identify the subject matter of the expected action and the petitioner's interest;

**(C)** show the facts that the petitioner desires to establish by the proposed discovery and the reasons for perpetuating it in advance of the expected action;

**(D)** identify the name or a description of each person whom the petitioner expects to be an adverse party and the person's address to the extent known;

**(E)** identify the name and address of each person from whom discovery is sought—who may but need not be a person identified as an expected adverse party under Rule 27(a)(1)(D)—and the evidence the petitioner expects to obtain from the discovery; and

**(F)** ask for an order: (i) directing the clerk to issue a subpoena under Rule 45 at the petitioner's request to obtain testimony or other evidence from each named person in order to preserve the testimony or other evidence; (ii) under Rule 35 for a physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; or (iii) permitting the petitioner's deposition under Rule 30 to preserve his or her testimony.

**(2)** ***Hearing Required.*** Unless the petitioner and all expected adverse parties file a stipulation agreeing to the discovery requested in the petition, or unless the court orders otherwise for good cause, the court must hold a hearing on the relief that the petition seeks.

**(3)** ***Notice and Service.*** Unless the court orders otherwise for good cause, the petitioner must serve each expected adverse party with a copy of the petition and a notice stating the time and place of the hearing at least 20 days before the hearing date. If an expected adverse party is a minor or incompetent, Rule 17(f) applies. The petition and notice may be served either inside or outside Arizona in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as

applicable. If the petition seeks an order under Rule 35 for a physical or mental examination, the petition and notice must be served on the expected adverse party whose examination is sought or who has custody or legal control of the person whose examination is sought. In all other instances, if service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise.

**(4)** ***Opposition and Reply.*** Unless the court orders otherwise, any expected adverse party may file an opposition to the petition at least 5 days before the hearing date. The opposition must be served on the petitioner and each other expected adverse party using any of the methods described in Rule 5(c). Unless the court orders otherwise, the petitioner may not file a reply memorandum.

**(5)** ***Order and Effect.***

**(A)** *Order*. If satisfied that perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, the court must enter an order that: (i) identifies each person who may be served with a subpoena under Rule 45 to obtain testimony or for the inspection of documents or premises and specifies the subject matter of the permitted examination; (ii) permits the physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; or (iii) permits the deposition of the petitioning party.

**(B)** *Effect and Use*. Discovery authorized by the court must be conducted, and may be used, as provided in these rules. A reference in these rules to the court where an action is pending means, for this rule's purposes, the court where the petition for the discovery was filed. A deposition to perpetuate testimony taken under these rules may be used under Rule 32(a) in any later-filed action in an Arizona state court involving the same subject matter. Subpoena recipients have the rights of nonparties under Rule 45 regardless of whether they are identified as an expected adverse party under Rule 27(a)(1)(D).

**(C)** *Appointment of Counsel*. If a court authorizes a deposition, but an expected adverse party is not served in the same manner that a summons and pleading are served under Rule 4, 4.1, or 4.2, as applicable, and is otherwise unrepresented by counsel, the court must appoint an attorney to represent that expected adverse party and to cross-examine the deponent. The petitioner must pay for an appointed attorney's services in an amount fixed by the court.

**(b) Pending Appeal.**

**(1)** ***Generally.*** The superior court that rendered judgment may, if an appeal has been taken or may still be taken, permit a party to conduct discovery under the rules to preserve evidence for use in any later superior court proceedings in that action.

**(2)** ***Motion.*** A party who seeks to perpetuate testimony or preserve evidence under the rules may move for leave to conduct discovery. The moving party must provide the same notice and serve the motion in the same manner as if the action was still pending in superior court. The motion must:

**(A)** identify the name and address of each person to be deposed or from whom discovery under the rules is sought, and the expected substance of the testimony or other discovery; and

**(B)** show the reasons for perpetuating the testimony or other discovery.

**(3)** ***Order and Effect.*** If satisfied that perpetuating the testimony or preserving the other evidence may prevent a failure or delay of justice, the court may order the requested discovery. Discovery authorized by the court must be conducted, and may be used, as provided in these rules.

## Rule 28. Persons Before Whom Depositions May Be Taken; Depositions in Foreign Countries; Letters of Request and Commissions

**(a) Deposition in the United States.**

**(1)** ***Generally.*** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

**(A)** an officer authorized to administer oaths by federal law, Arizona law, or the law of the place of examination;

**(B)** a person appointed by the court where the action is pending to administer oaths and take testimony; or

**(C)** any certified reporter designated by the parties under Rule 29.

**(2)** ***Definition of "Officer."*** The term "officer" as used in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29.

**(b) Deposition in a Foreign Country.**

**(1)** ***Generally.*** A deposition may be taken in a foreign country:

**(A)** under an applicable treaty or convention;

**(B)** under a letter of request, whether or not captioned a "letter rogatory";

**(C)** on notice, before a person authorized to administer oaths by federal law, Arizona law, or the law of the place of examination; or

**(D)** before a person commissioned by the court where the action is pending to administer any necessary oath and take testimony.

**(2)** ***Form of a Request, Notice, or Commission.*** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in [name of country]." A deposition notice or commission must designate by name or descriptive title the person before whom the deposition is to be taken.

**(3)** ***Letter of Request—Admitting Evidence.*** Evidence obtained in response to a letter of request need not be excluded because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

**(c) Letters of Request and Commissions.**

**(1)** ***Not Required.*** A deposition in a pending superior court action may be taken anywhere upon notice prescribed by these rules without a letter of request, commission, or other like writ.

**(2)** ***Issuing Letter of Request or Commission.*** The clerk may issue a letter of request—whether or not captioned a "letter rogatory"—a commission, or both:

**(A)** on appropriate terms after an application and one full-day's notice to the other parties; and

**(B)** without a showing that taking the deposition in another manner is impracticable or inconvenient.

**(3)** ***Objections; Waiver.*** A party waives any error in the form of a letter of request or commission if it does not file a written objection before the clerk issues the letter of request or commission. The court must rule on any timely filed objection before the clerk may issue a letter of request or commission.

**(d) Disqualification.** A deposition may not be taken before a person who is:

**(1)** any party's relative, employee, or attorney;

**(2)** related to or employed by any party's attorney; or

**(3)** financially interested in the action.

## Rule 29. Modifying Discovery and Disclosure Procedures and Deadlines

**(a) By Written Agreement.**

**(1)** ***Generally.*** Unless the court orders otherwise, the parties may agree in writing to:

**(A)** take a deposition before any certified reporter, at any time or place, on any notice, and in any manner specified, in which event it may be used in the same way as any other deposition; and

**(B)** modify other procedures in these rules governing or limiting discovery or disclosure.

**(2)** ***Court Order.*** Unless it interferes with court-ordered deadlines, the time set for a hearing, or the time set for trial, a written agreement under Rule 29(a)(1) is effective without court order.

**(b) By Motion.** A party may move to modify any procedure governing or limiting discovery or disclosure. The motion must:

**(1)** set forth the modification sought;

**(2)** show good cause for the modification; and

**(3)** comply with Rule 26(g).

## Rule 30. Depositions by Oral Examination

**(a) When a Deposition May Be Taken.**

**(1)** ***Depositions Permitted.*** A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.

**(2)** ***Depositions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.*** A plaintiff must obtain leave of court to take a deposition earlier than 30 days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

**(3)** ***Incarcerated Deponents.*** Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.

**(4)** ***Compelling Attendance of Deponent.*** A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party—or an officer, director, or managing agent of a party—need not serve a subpoena under Rule 45.

**(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements.**

**(1)** ***Notice Generally.*** Unless all parties agree or the court orders otherwise, a party who wants to depose a person by oral questions must serve written notice to every other party at least 10 days before the date of the deposition. The notice must state the date, time, and place of the deposition and, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs.

**(2)** ***Producing Materials.*** If a subpoena for documents, electronically stored information, or tangible things has been or will be served on the deponent, the materials designated for production in the subpoena must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents, electronically stored information, or tangible things at the deposition. The procedures under Rule 34 apply to any such request.

**(3)** ***Method of Recording.***

**(A)** *Permitted Methods.* Unless all parties agree or the court orders otherwise, testimony must be recorded by a certified reporter and may also be recorded by audio or audiovisual means.

**(B)** *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

**(C)** *Additional Method.* With at least two days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the parties agree or the court orders otherwise, that party bears the expense of the additional recording.

**(D)** *Notice of Recording by Audiovisual Means.* Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).

**(E)** *Transcription*. Any party may request that the testimony be transcribed. If the testimony is transcribed, the party who originally noticed the deposition is responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

**(4)** ***By Remote Means.*** The parties may agree or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 28(a), 37(a)(2), 45(b)(3)(B), and 45(e), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent was in the officer's physical presence.

**(5)** ***Officer's Duties.***

**(A)** *Before Deposition.* Unless the parties agree otherwise under Rule 29, a deposition must be conducted before an officer appointed or designated under Rule 28. The officer must begin the deposition with a statement or notation on the record that includes:

**(i)** the officer's name, certification number, if any, and business address;

**(ii)** the date, time, and place of the deposition;

**(iii)** the deponent's name;

**(iv)** the officer's administration of the oath or affirmation to the deponent; and

**(v)** the identity of all persons present.

**(B)** *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 30(b)(5)(A)(i) through (iii) at the beginning of each unit of the recording

medium. The deponent's and attorneys' appearance, voice, and demeanor must not be distorted through recording techniques.

**(C)** *After the Deposition.* At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

**(6)** ***Notice or Subpoena Directed to an Entity.*** In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

**(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.**

**(1)** ***Examination and Cross-Examination.*** The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer personally—or a person acting in the presence and under the direction of the officer—must record the testimony by the method(s) designated under Rule 30(b)(3).

**(2)** ***Objections.*** The officer must note on the record any objection made during the deposition—whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the person who asked the question, an objecting person must not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer, and the testimony is taken subject to any objection.

**(3)** ***Conferences Between Deponent and Counsel.*** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

**(4)** ***Participating Through Written Questions.*** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

**(d) Duration; Sanctions; Motion to Terminate or Limit.**

**(1)** ***Duration.*** Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

**(2)** ***Sanctions.*** The court may impose appropriate sanctions—including any order under Rule 16(i)—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition, including an unreasonable refusal to agree to extend a deposition beyond 4 hours.

**(3)** ***Motion to Terminate or Limit.***

**(A)** *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court where the deposition is being taken. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

**(B)** *Order.* The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 26(c). If terminated, the deposition may be resumed only by order of the court where the action is pending.

**(C)** *Award of Expenses.* Rule 37(a)(5) applies to the award of expenses.

**(e) Review by the Deponent; Changes.**

**(1)** ***Review; Statement of Changes.*** If requested by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

**(A)** to review the transcript or recording; and

**(B)** if there are changes in form or substance, to sign and deliver to the officer a statement listing the changes and the reasons for making them.

**(2)** ***Officer's Certificate to Attach Changes.*** The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent made during the 30-day period.

**(f) Officer's Certification and Delivery; Documents and Tangible Things; Copies of the Transcript or Recording; Filing.**

**(1)** ***Certification and Delivery.*** The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the deponent's testimony. The certificate must accompany the record of the deposition. Unless the court orders otherwise, the officer must seal the deposition in an envelope or package bearing the title of the action and marked "Deposition of [witness's name]" and must promptly deliver it to the attorney who arranged for the transcript or recording. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

**(2)** ***Documents and Tangible Things.***

**(A)** *Originals and Copies.* Documents and tangible things produced for inspection during a deposition must, on a party's request, be marked for identification and attached to the deposition—and any party may inspect and copy them—but if the person who produced them wants to keep the originals, the person may:

**(i)** offer copies to be marked, attached to the deposition, and then used as originals—after giving all parties a fair opportunity to verify the copies by comparing them with the originals; or

**(ii)** give all parties a fair opportunity to inspect and copy the originals after they are marked—in which event the originals may be used as if attached to the deposition.

**(B)** *Order Regarding the Originals.* On motion, the court may order that the originals be attached to the deposition until final disposition of the action.

**(3)** ***Copies of the Transcript or Recording.*** Unless the parties agree or the court orders otherwise, the officer must retain the record of a deposition according to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of a reasonable charge, the officer must provide a copy of the transcript or recording to any party or to the deponent.

**(g) Failure to Attend a Deposition or Serve a Subpoena; Expenses.** A party who attends a noticed deposition in person or by an attorney may recover reasonable expenses for attending, including attorney's fees, if the noticing party failed to:

**(1)** attend and proceed with the deposition; or

**(2)** serve a subpoena on a nonparty deponent, who did not attend as a result of the lack of service.

**Committee Comment**

**1991 Amendment to Rule 30(a)**

Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without agreement or leave of court. Any other depositions must be taken either by agreement of the parties, on motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).

## Rule 31. Depositions by Written Questions

### (a) When a Deposition May Be Taken.

**(1)** ***Depositions Permitted.*** A party may, by written questions, depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not, by written questions, depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold its agreement to additional depositions under this rule.

**(2)** ***Service of Written Questions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.*** Unless a defendant has served a deposition notice or otherwise sought discovery under these rules, a plaintiff must obtain leave of court to serve written questions under Rule 31(b) earlier than 30 days after serving the summons and complaint on that defendant.

**(3)** ***Incarcerated Deponents.*** Subject to Rule 31(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court orders.

**(4)** ***Compelling Attendance of Deponent.*** A party may compel a nonparty deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party—or an officer, director, or managing agent of a party—need not serve a subpoena under Rule 45.

**(b) Notice; Service of Questions and Objections; Questions Directed to an Entity.**

**(1)** ***Service of Written Questions; Required Notice.*** A party who wants to depose a person by written questions must serve them on all parties, with a notice stating, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

**(2)** ***Service of Additional Questions.*** Unless the parties agree or the court orders otherwise, any additional questions to the deponent must be served on all parties as follows: cross-questions, within 15 days after being served with the notice and direct questions; redirect questions, within 5 days after being served with cross-questions; and recross-questions, within 5 days after being served with redirect questions.

**(3)** ***Service of Objections.*** A party who objects to the form of a written question served under Rule 31(b)(1) or (2) must serve the objection in writing on all parties within the time allowed for serving the succeeding cross-, redirect, or recross-questions, or, if to a recross-question, within 5 days after service of the recross-questions.

**(4)** ***Questions Directed to an Entity.*** In accordance with Rule 30(b)(6), a party may depose by written questions a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity.

**(c) Delivery to the Officer; Officer's Duties.** The party who noticed the deposition must deliver to the officer designated in the notice a copy of the notice and copies of all the questions and objections served under Rule 31(b). The officer must promptly proceed in the manner provided in Rule 30(b), (c), (e), and (f) to:

**(1)** take the deponent's testimony in response to the questions;

**(2)** prepare and certify the deposition; and

**(3)** deliver it to the party who noticed the deposition, attaching a copy of the notice, the questions, and the objections.

## Rule 32. Using Depositions in Court Proceedings

**(a) Using Depositions.**

**(1)** ***In the Same or Similar Action.*** At a hearing or trial, all or part of a deposition taken in the action—or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest—may be used against a party if:

**(A)** the deposition testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

**(B)** the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

**(C)** the party, its representative, or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

**(2)** ***In a Different Action.*** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

**(3)** ***Deponent's Availability at Trial.*** Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

**(4)** ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, the court may require that party to introduce contemporaneously other parts that in fairness should be considered with the part offered.

**(5)** ***Substituted Party.*** Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

**(b) Objections to Admissibility.** Subject to Rules 28(b) and (c), and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

**(c) Form of Presentation.** Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in

nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is unavailable in audio or audiovisual form, the court may require a single presenter to read the designated parts of the deposition testimony to the jury.

**(d) Preservation and Waiver of Objections.**

**(1)** ***To the Notice.*** A party objecting to an error or irregularity in a deposition notice must promptly serve the objection in writing on the party giving the notice.

**(2)** ***To the Officer's Qualification.*** A party objecting to the qualification of the officer before whom a deposition is to be taken must make such objection:

**(A)** before the deposition begins; or

**(B)** promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

**(3)** ***To the Taking of the Deposition.***

**(A)** *To Competence, Relevance, or Materiality.* A party objecting to a deponent's competence—or to the competence, relevance, or materiality of testimony—must make the objection before or during the deposition if the ground for the objection could have been corrected at that time.

**(B)** *To an Error or Irregularity at an Oral Deposition.* A party objecting to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that could be corrected at that time must timely make the objection during the deposition.

**(C)** *To a Written Question.* A party objecting to the form of a written question under Rule 31 must serve the objection under Rule 31(b)(3).

**(4)** ***To the Officer's Completion and Return of Deposition.*** A party objecting to how the officer (A) transcribed the testimony, or (B) prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition, must file a motion to suppress promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

## Rule 33. Interrogatories to Parties

**(a) Generally.**

**(1)** ***Definition*.** Interrogatories are written questions served by a party on another party.

**(2)** ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories, including all discrete

subparts. A uniform interrogatory and its subparts count as one interrogatory. Any discrete subpart to a non-uniform interrogatory shall be considered as a separate interrogatory.

**(3)** ***Scope.*** An interrogatory may ask about any matter allowed under Rule 26(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts, but the court may, on motion, order that such a contention interrogatory need not be answered until a later time.

**(4)** ***Uniform Interrogatories.*** Rule 84, Forms 4, 5, and 6, contain uniform interrogatories that a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by requesting a response only as to particular persons, events, or issues—without converting it into a nonuniform interrogatory.

**(b) Answers and Objections.**

**(1)** ***Time to Respond.*** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant.

**(2)** ***Answers Under Oath.*** Subject to Rule 33(b)(3), an answering party must answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party—including a public or private entity—must furnish the information available to it. It must also reproduce the text of an interrogatory immediately above its answer to that interrogatory.

**(3)** ***Objections.*** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.

**(4)** ***Signature.*** The party who answers the interrogatories must sign them under oath. If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath. An attorney who objects to any interrogatories must sign the objections.

**(c) Use.** An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

**(d) Option to Produce Business Records.** If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of determining the answer will be substantially the same for either party, the responding party may answer by:

**(1)** specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

**(2)** giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

**State Bar Committee Note**

**1970 Amendment to Rule 33(d)**
**[Formerly Rule 33(c)]**

[Rule 33(d) (formerly Rule 33(c))] is a new subdivision, adapted from Calif. Code Civ. Proc. § 2030(c), relating especially to interrogatories which require a party to engage in burdensome or expensive research into his own business records in order to give an answer. The subdivision gives the party an option to make the records available and place the burden of research on the party who seeks the information. The interrogating party is protected against abusive use of this provision through the requirement that the burden of ascertaining the answer be substantially the same for both sides. A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records. At the same time, the respondent unable to invoke this subdivision still has the protection available to him under new Rule 26(c) against oppressive or unduly burdensome or expensive interrogatories. And even when the respondent successfully invoke the subdivision, the court is not deprived of its usual power, in appropriate cases, to require that the interrogating party reimburse the respondent for the expense of assembling his records and making them intelligible.

**State Bar Committee Note**

**1983 Amendment to Rule 33(d)**
**[Formerly Rule 33(c)]**

A party who is permitted by the terms of [Rule 33(d) (formerly Rule 33(c))] to offer records for inspection in lieu of answering an interrogatory should offer them in a manner

that permits the same direct and economical access that is available to the party. If the information sought exists in the form of compilations, abstracts or summaries then available to the responding party, those should be made available to the interrogating party. The final sentence of Rule 33[d] is added to make it clear that a responding party has the duty to specify by category and location, the records from which answers to interrogatories can be derived or ascertained.

**Committee Comment**

**2009 Amendment to Rule 33(a)(4) (Uniform Interrogatories)**
**[Formerly Rule 33.1]**

The uniform interrogatories stated in the Appendix of Forms under Rule 84 are for use in any litigation brought under the civil rules, and the category heading for each Form is suggestive in nature and not restrictive; no uniform interrogatory is limited by the nature of the cause of action. Further, in light of Rules 26.1 and 26.2 and their comments, use of the uniform interrogatories is presumptively deemed to not be harassing or overly broad, and their language is presumptively not vague or ambiguous. Disputes arising from the use of the interrogatories should be considered in light of the standard stated in Rule 26(b)(1).

## Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

**(a) Generally.** A party may serve on any other party a request within the scope of Rule 26(b):

**(1)** to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

**(A)** any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

**(B)** any designated tangible things; or

**(2)** to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

**(b) Procedure.**

**(1)** ***Number.*** Unless the parties agree or the court orders otherwise, a party may not serve requests for more than 10 items or distinct categories of items on any other party.

**(2)** ***Contents of the Request.*** The request:

**(A)** must describe with reasonable particularity each item or distinct category of items to be inspected;

**(B)** must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

**(C)** may specify the form or forms in which electronically stored information is to be produced.

**(3)** ***Responses and Objections.***

**(A)** *Time to Respond.* Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served. But a defendant may serve its responses and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant.

**(B)** *Responding to Each Item.* For each item or distinct category of items, the response must either state that inspection and related activities will be permitted as requested or state the grounds for objecting with specificity, including the reasons.

**(C)** *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.

**(D)** *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use, which must be native form or another reasonably usable form that will enable the requesting party to have the same ability to access, search, and display the information as the responding party.

**(E)** *Producing the Documents or Electronically Stored Information.* Unless the parties agree or the court orders otherwise, these procedures apply to producing documents or electronically stored information:

**(i)** a party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

**(ii)** if a request does not specify a form for producing electronically stored information, a party must produce it in native form or in another reasonably usable form that will enable the requesting party to have the same ability to access, search, and display the information as the responding party; and

**(iii)** absent good cause, a party need not produce the same electronically stored information in more than one form.

**(c) Nonparties.** As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

**Supplemental Note**

Rule 34 provides for the inspection and, if desired, copying of discoverable documents. The costs of copying should be borne by the party that requests that copies be made. If a party designates documents to be copied after a permitted inspection, or specifies in the request that copies of documents may be provided in response, that party should be responsible for any copying costs involved. If a party, in response to a request made under this rule, elects to furnish copies in lieu of permitting an inspection, that party should bear any copying or related costs incurred. Reference should be made to A.R.S. § 12-351 (costs of compliance with subpoena for production of documentary evidence; payment by requesting party; definitions) for guidelines as to what constitutes reasonable copying charges.

## Rule 35. Physical and Mental Examinations

**(a) Examination on Order.**

**(1)** ***Generally.*** The court where the action is pending may order a party whose physical or mental condition is in controversy to submit to a physical or mental examination by a physician or psychologist. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

**(2)** ***Motion and Notice; Contents of the Order.*** An order under Rule 35(a)(1):

**(A)** may be entered only on motion for good cause and on notice to all parties and the person to be examined;

**(B)** must specify the time, place, manner, conditions, and scope of the examination; and

**(C)** must specify the person or persons who will perform the examination.

**(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.**

**(1)** ***Notice.*** When the parties agree that an examination is appropriate but do not agree on the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:

**(A)** identify the party or person to be examined;

**(B)** specify the time, place, and scope of the examination; and

**(C)** identify the examiner(s).

**(2)** ***Motion Objecting to Examiner.*** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a physician or psychologist other than the one specified in the notice.

**(3)** ***Failure to Appear.*** Unless the party has filed a motion under Rule 26(c), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may, on motion, make such orders concerning the failure as are just, including those under Rule 37(f).

**(c) Attendance of Representative; Recording.**

**(1)** ***Attendance of Representative.*** Unless his or her presence may adversely affect the examination's outcome, the person to be examined has the right to have a representative present during the examination.

**(2)** ***Recording.***

**(A)** *Audio Recording*. The person to be examined may audio-record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio-record any mental examination.

**(B)** *Video Recording*. On order for good cause—or on agreement of the parties and the person to be examined—an examination may be video-recorded.

**(C)** *Copy of Recording*. A copy of a recording made of an examination must be provided to any party upon request.

**(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.**

**(1)** ***Contents.*** The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

**(2)** ***Request by the Party or Person Examined.*** The party who is examined—or who produces the person examined—may request the examiner's report, like reports of the same condition, and written or recorded notes from the examination. If such a request is made, the party who moved for or noticed the examination must, within 20 days of the examination or request—whichever is later—deliver to the requestor copies of:

**(A)** the examiner's report;

**(B)** like reports of all earlier examinations of the same condition; and

**(C)** all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing them with the copies.

**(3)** ***Request by the Examining Party.*** After delivering the materials required by Rule 35(d)(2), the party who moved for or noticed the examination is entitled, on its request, to receive from the party who was examined—or who produced the person examined—like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

**(4)** ***Waiver of Privilege.*** By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony by any other person who has examined or who later examines the same condition.

**(5)** ***Failure to Deliver a Report as Ordered.*** On motion, the court may order—on terms that are just—that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examiner's testimony at trial.

**(6)** ***Scope.*** This Rule 35(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude a party from obtaining an examiner's report, or deposing an examiner, under other rules.

## Rule 36. Requests for Admission

### (a) Scope and Procedure.

**(1)** ***Scope.*** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b) relating to:

**(A)** facts, the application of law to fact, or opinions about either; and

**(B)** the genuineness of any described documents.

**(2)** ***Form; Copy of a Document.*** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

**(3)** ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.

**(4)** ***Time to Respond; Effect of Not Responding.*** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant. A shorter or longer time for responding may be agreed to by the parties or ordered by the court.

**(5)** ***Answer.*** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

**(6)** ***Objections.*** The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

**(7)** ***Motion Regarding the Sufficiency of an Answer or Objection.*** The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. If the court finds that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(e) applies to an award of expenses.

**(b) Effect of an Admission; Withdrawing or Amending It.** A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

## Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

**(a) Motion for Order Compelling Disclosure or Discovery.**

**(1)** ***Generally.*** A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.1(h).

**(2)** ***Appropriate Court.*** A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.

**(3)** ***Specific Motions.***

**(A)** *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26.1, any other party may move to compel disclosure and for appropriate sanctions.

**(B)** *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

**(i)** a deponent fails to answer a question asked under Rule 30 or 31;

**(ii)** a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(b)(4);

**(iii)** a party fails to answer an interrogatory served under Rule 33;

**(iv)** a party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34; or

**(v)** a person fails to produce materials requested in a subpoena served under Rule 45.

**(C)** *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order to compel an answer.

**(4)** ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

**(5)** ***Payment of Expenses; Protective Orders.***

**(A)** *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, the party or attorney advising that conduct, or both, to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court may not order this payment if:

**(i)** the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

**(ii)** the opposing party's nondisclosure, response, or objection was substantially justified; or

**(iii)** other circumstances make an award of expenses unjust.

**(B)** *If the Motion Is Denied.* If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both, to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court may not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

**(C)** *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may—after giving an opportunity to be heard—apportion the reasonable expenses, including attorney's fees, for the motion.

**(b) Failure to Comply with a Court Order.**

**(1)** ***Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of court.

**(2)** ***Sanctions by the Court Where the Action Is Pending.***

**(A)** *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(b)(4)—fails to obey an order to provide or permit discovery, including an order under Rule 35 or 37(a), the court where the action is pending may enter further just orders. They may include the following:

**(i)** directing that the matters described in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;

**(ii)** prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;

**(iii)** striking pleadings in whole or in part;

**(iv)** staying further proceedings until the order is obeyed;

**(v)** dismissing the action or proceeding in whole or in part;

**(vi)** rendering a default judgment, in whole or in part, against the disobedient party; or

**(vii)** treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

**(B)** *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 35(a) requiring it to produce another person for examination, the court may issue any of the orders listed in Rule 37(b)(2)(A)(i) through (vi), unless the disobedient party shows that it cannot produce the other person.

**(C)** *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient party, the attorney advising that party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

**(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.**

**(1)** ***Failure to Timely Disclose.*** Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 26.1 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or with respect to a motion.

**(2)** ***Inaccurate or Incomplete Disclosure.*** On motion, the court may order a party or attorney who makes a disclosure under Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for the reasonable cost, including attorney's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.

**(3)** ***Other Available Sanctions.*** In addition to or instead of the sanctions under Rule 37(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:

**(A)** may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

**(B)** may inform the jury of the party's failure; and

**(C)** may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i) through (vi).

**(4)** ***Use of Information, Witness, or Document Disclosed After Scheduling Order or Case Management Order Deadline or Later Than 60 Days Before Trial.*** A party seeking to use information, a witness, or a document that it first disclosed later than the deadline set in a Scheduling Order or a Case Management Order, or—in the absence of such a deadline—60 days before trial, must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

**(A)** the information, witness, or document would be allowed under the standards of Rule 37(c)(1); and

**(B)** the party disclosed the information, witness, or document as soon as practicable after its discovery.

**(5)** ***Use of Information, Witness, or Document Disclosed During Trial.*** A party seeking to use information, a witness, or a document that it first disclosed during trial must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

**(A)** the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

**(B)** the party disclosed the information, witness, or document immediately upon its discovery.

**(d) Failure to Timely Disclose Unfavorable Information.** If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 26.1, the court may impose serious sanctions, up to and including dismissal of the action—or rendering of a default judgment—in whole or in part.

**(e) Expenses on Failure to Admit.** If a party fails to admit what is requested under Rule 36 and if the requesting party later proves the matter true—including the genuineness of a document—the requesting party may move that the non-admitting party pay the reasonable expenses, including attorney's fees, incurred in making that proof. The court must so order unless:

**(1)** the request was held objectionable under Rule 36(a);

**(2)** the admission sought was of no substantial importance;

**(3)** the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

**(4)** there was other good reason for the failure to admit.

**(f) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.**

**(1)** ***Generally.***

**(A)** *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

**(i)** a party or a party's officer, director, or managing agent—or a person designated under Rule 30(b)(6) or 31(b)(4)—fails, after being served with proper notice, to appear for his or her deposition; or

**(ii)** a party—after being properly served with interrogatories under Rule 33 or requests for production under Rule 34—fails to serve its answers, objections, or written response.

**(B)** *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule 7.1(h).

**(2)** ***Unacceptable Excuse for Failing to Act.*** A failure described in Rule 37(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

**(3)** ***Types of Sanctions.*** Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i) through (vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both, to pay the reasonable expenses—including attorney's fees—caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

**(g) Failure to Preserve Electronically Stored Information.**

**(1)** ***Duty to Preserve.***

**(A)** *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

**(B)** *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

**(i)** it knows or reasonably should know that it is likely to be a defendant in a specific action; or

**(ii)** it seriously contemplates commencing an action or takes specific steps to do so.

**(C)** *Reasonable Steps to Preserve.*

**(i)** A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

**(ii)** Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's 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 party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' 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 party—either before or after an action's

commencement—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)(2). 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 information's 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 obtain 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 a joint report under Rule 16.3(b) are filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.

**(2)** ***Medical Malpractice Actions.*** In a medical malpractice action, no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing a written stipulation, 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 may not be combined with any other motion or pleading.

**(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.** Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.

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

**(a) Trial Setting.** Civil actions are set for trial under Rule 16 or 77. Preference is given to short causes and actions that are entitled to priority by statute, rule, or court order. Subject to Rule 65(a)(2), the court must give the parties notice of the trial date no later than 30 days before the first day of trial.

**(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) good 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. The party must attach a separate statement certifying that the requested postponement is not being sought solely for the purpose of delay and will serve the interests of justice.

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

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

**(i)** the witness's name and address—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 finds that the expected testimony would be inadmissible if presented at trial or if all non-moving parties agree 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 so agree, the movant's description of the witness's expected testimony may be read to the jury at trial in place of the witness's live testimony. Such testimony may be controverted as if the witness were personally present.

**(c) Scheduling Conflicts Between Courts.**

**(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 notified of a scheduling conflict, the respective judges should confer with each other and counsel 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 postponement of that matter will deprive a defendant of a speedy trial;

**(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 filing dates;

**(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:

**(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 a joint report under Rule 16.3(b);

**(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 enter 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 a joint report under Rule 16.3(b);

**(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).

## 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)** all parties 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. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

**(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:

**(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.

## Rule 40. Trial Procedures

**(a) Scope.** This rule 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 should proceed in the following order, unless the court orders otherwise for good cause:

**(1)** ***Preliminary Instructions.*** Immediately after the jury is sworn, the court should give preliminary instructions as provided in Rule 51(b)(2).

**(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;

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

**(C)** other parties, 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 should 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 crossclaims or third-party claims, as the court permits and in the order it directs.

**(4)** ***Final Instructions.*** Final jury instructions, as provided in Rule 51(b)(3), may be given before or after the parties' closing arguments.

**(5)** ***Closing Arguments.*** The party with the burden of proof on the whole case under the pleadings should 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 should prescribe the order in which they will make their respective closing arguments.

**(d) Omitted 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: (A) permit jurors to separate while not deliberating; or (B) on motion or on its own, require them to be sequestered in the charge of a designated officer when 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:

**(A)** the interests of justice require evening or weekend deliberations; and

**(B)** it will not impose an undue hardship on the jurors.

**(f) Juror Notes and Notebooks.**

**(1)** ***Juror Notes.*** The court should instruct the jurors that they may take notes during the trial for their use during recesses, discussions, and deliberations. The court should provide suitable writing materials for this purpose.

**(2)** ***Juror Notebooks.*** The court may allow documents 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 should have access to their notes and to any juror notebooks allowed by the court.

**(4)** ***Disposing of Juror Notes and Notebooks.*** When the jury is discharged, any juror notes and notebooks must be collected and promptly destroyed by the officer in charge of the jurors.

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

**(1)** make, or allow, any improper communication to them; or

**(2)** communicate with any person about the jury's deliberations or any verdict the jury may have reached.

**(h) Juror Admonitions.**

**(1)** ***Discussions.***

**(A)** The court should 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 limits as the court may impose for good cause, the jurors should 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 long as they reserve judgment about the action's outcome until deliberations begin.

**(2)** ***Other Influences.*** The court should admonish jurors not to 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 after they have been discharged or dismissed.

**(i) Juror Communications.**

**(1)** ***To the Court During Deliberations.*** The officer in charge of the jurors should notify the court of any juror request to communicate with the court during

deliberations. If the jury is brought into court, its foreperson should state to the court, either orally or in writing, what it desires to communicate.

**(2)** ***To Witnesses or the Court Before Deliberations.*** Before deliberations begin, jurors may submit to the court written questions directed to witnesses or to the court. Counsel must be allowed to object to such questions on the record and 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, the court may, in counsel's presence, ask the jurors to determine whether and how the court and counsel can assist 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 other person.

**(*l*) Memoranda.** Posttrial memoranda may not be filed, except:

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

**(2)** as ordered by the court.

**(m) Excluding Minors from Trial.** When trying an action or proceeding of a scandalous or obscene nature, the court may exclude minors from the courtroom if their presence—as parties or witnesses—is not necessary.

**Comment**

**1995 Amendment to Rule 40(j)**
**[Formerly Rule 39(h)]**

Many juries, after reporting to the judge that they have reached an impasse in their deliberations, are needlessly discharged very soon thereafter and a mistrial declared when it would be appropriate and might be helpful for the judge to offer some assistance in hopes

of improving the chances of a verdict. The judge's offer would be designed and intended to address the issues that divide the jurors, if it is legally and practically possible to do so. The invitation to dialogue should not be coercive, suggestive or unduly intrusive.

The judge's response to the jurors' report of impasse could take the following form:

"This instruction is offered to help your deliberations, not to force you to reach a verdict.

"You may wish to identify areas of agreement and areas of disagreement. You may then wish to discuss the law and the evidence as they relate to areas of disagreement.

"If you still have disagreement, you may wish to identify for the court and counsel which issues or questions or law or fact you would like counsel or court to assist you with. If you elect this option, please list in writing the issues where further assistance might help bring about a verdict.

"I do not wish or intend to force a verdict. We are merely trying to be responsive to your apparent need for help. If it is reasonably probable that you could reach a verdict as a result of this procedure, it would be wise to give it a try."

If the jury identifies one or more issues that divide them, the court, with the help of the attorneys, can decide whether and how the issues can be addressed. Among the obvious options are the following; giving additional instructions; clarifying earlier instructions; directing the attorneys to make additional closing argument; reopening the evidence for limited purposes; or a combination of these measures. Of course, the court might decide that it is not legally or practically possible to respond to the jury's concerns.

## Rule 41. Dismissal of Actions

### (a) Voluntary Dismissal.

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

**(A)** *On Notice or Order on Stipulation.* Subject to Rules 23(e), 23.1(c), 23.2, 66(d), and any applicable statute, 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 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 clerk, or a deputy clerk.

**(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 may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.

**(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, a dismissal under this Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

**(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 for the change of judge, 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's side 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 requesting party's name, 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 Limits.** A party is precluded from obtaining a change of judge as a matter of right unless it files a timely notice. The following deadlines apply:

**(1)** Notice must be filed within 90 days after the party giving notice first appears in the case.

**(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.

**(3)** If the right to a change of judge is renewed under Rule 42(e), a notice is timely if filed within 15 days after issuance of the appellate court's mandate under Arizona Rule of Civil Appellate Procedure 24.

**(4)** 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, or grants or denies a motion to dispose of any claim or defense, if the party had an opportunity to file a notice of change of judge before the ruling is made;

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

**(4)** a scheduled contested hearing begins; or

**(5)** trial begins.

**(e) Actions Remanded from an Appellate Court.** In actions remanded from 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; 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.

**(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 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. If the named judge is the only judge in the county, that judge may also reassign the case.

**(2)** ***On Improper Notice.*** If the court determines that the party who filed the notice is not entitled to a change of judge, the named judge 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 an available judge who is willing to hear the action. An agreement of all parties may be honored and, if so, bars further changes of judge as a matter of right unless the agreed-on judge 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 incapacity, the parties may assert any rights under this rule that existed immediately before the assignment to that judge.

**(B)** *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.

## Rule 42.2. Change of Judge for Cause

**(a) Definitions.** 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.** A party must file an affidavit seeking a change of judge for cause 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 may hold a hearing to determine the issues raised in the affidavit, or may decide the issues based on any affidavits and memoranda filed by the parties.

**(3)** On filing of the affidavit for cause, the named judge should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable harm from occurring before the request is decided and the action transferred. However, if the named judge is the only judge in the county, 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 A.R.S. § 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. 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, the named judge 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, to be paid from funds provided by law or by one or more parties. The compensation may be taxed as costs.

**(d) Limits on Examining Witness.** Unless 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 decide the matter on affidavits or on oral or deposition testimony.

**(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 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.**

**(1)** ***Domestic Record.*** A record—or an entry in it—may be authenticated as an official record if it is kept 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:

**(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:

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

**(c) 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.

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

## 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.

### Comment

Historically, laws of foreign nations and even laws of some United States jurisdictions were treated as matters which had to be proved as facts are proved. With modern availability of sources of law, this is no longer appropriate. Arizona has, for some time, treated matters of the law of foreign nations as questions of law rather than questions of fact. Since the law of foreign nations can be much more difficult to ascertain than the law of United States jurisdictions, a separate rule stating that law of other United States jurisdictions should also be treated as a question of law, rather than fact, is considered unnecessary.

## Rule 45. Subpoena

**(a) Generally.**

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

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

**(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 Supreme Court.

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

**(1)** ***Issuing Court*.** A subpoena commanding attendance at a hearing or trial must issue from the superior court in the county where the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding attendance at a deposition must issue from the superior court in 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 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 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 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 40 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 at a deposition must state the method for recording the testimony.

**(5)** ***Objections; Appearance Required.*** Objections to a subpoena commanding attendance 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 this 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.

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

**(1)** ***Issuing Court.*** If separate from a subpoena commanding attendance 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 in 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 may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person.

**(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 expense. 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 expense. 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 (b)(2). 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 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 things, 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 expense. 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.

**(ii)** The objection must be served on 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 a deposition, hearing, or trial, may object to any part of the subpoena. A person objecting to the part of a combined subpoena that commands attendance 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 parts 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)(1), and must be served on the subpoenaed person and all other parties under Rule 5(c).

**(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 work-product material must promptly comply with Rule 26(b)(6)(A).

**(ii)** If information produced in response to a subpoena is subject to a claim of privilege or of protection as work-product material, the person making the claim and the receiving parties must comply with Rule 26(b)(6)(A) or, if applicable, Rule 26(b)(6)(B).

**(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, along with any other disclosures required by 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 one 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 attendance at a trial or hearing or is issued on behalf of the State of Arizona or any of its officers or agencies.

**(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 the State*****.** A subpoena may be served anywhere within the state.

**(5)** ***Proof of Service*****.** Proof of service may not be filed except as allowed by Rule 5.1(c)(2)(A). Any such filing must be with the court clerk for the county where the action is pending and must include the server's certificate stating the date and manner of service and the names of the persons served.

**(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 in 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.

**(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 limits 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 otherwise be 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 for those expenses.

**(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).

**Comment**

**2017 Amendment**

A.R.S. § 12-351 also addresses recoverable costs in connection with the production of documents in response to a subpoena. Additional costs are allowed under Rule 45(d)(1) for a subpoena that compels testimony. The court may specify additional conditions on the production of electronically stored information to guard against undue burden or expense, as allowed by Rule 45(c)(2)(D).

## Rule 45.1. Interstate Depositions and Discovery

**(a) Definitions.** In this rule:

**(1)** "foreign jurisdiction" means a state other than the State of 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; and

**(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 clerk in the county where the discovery will be conducted. The foreign subpoena should 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 limits in, the Arizona Rules of Civil Procedure, except as follows:

**(1)** Rules 30(a)(1) ("Depositions Permitted"), 30(a)(2) ("Depositions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint"), 30(a)(4) ("Compelling Attendance of Deponent"), and 30(d)(1) ("Duration") 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, a court order, or any other provision of Rule 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 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.

**Comment**

**2013 Promulgation**

This rule derives from the Uniform Interstate Depositions and Discovery Act, 13 Pt.2 Uniform Laws Annotated 59 (West 2011 Supp.). In applying and construing this rule, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that adopt or enact it.

## 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 that it objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to object when the ruling or order is made.

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

**(a) Jury Selection.** The initial jury panel 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. 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 list is exhausted. If the list is exhausted before a jury is 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 and business telephone numbers and addresses 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. 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, fair, and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limits 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 associate; 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; or

**(D)** the prospective juror has—by words or actions—shown bias or prejudice for or against any party or otherwise demonstrated their unfitness 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.

**(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.

## Comment

### 1995 Amendment to Rule 47(a) and (e) [Formerly Rule 47(a)]

Prior to the 1995 amendment, [Rule 47(a) and (e) (Jury Selection and Peremptory Strikes) (formerly Rule 47(a)(1))] was read to require trial judges to use the traditional "strike and replace" method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. Challenges for cause are heard and decided with the jurors being examined in the box. A juror excused for cause leaves the courtroom in the presence and view of the other panel members, after which the excused juror's position is filled by a panel member who responds to all previous and future questions of the potential jurors.

The purpose of this amendment is to allow the trial judge to use the "struck" method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the "strike and replace" method. See T. Munsterman, R. Strand and J. Hart, The Best Method of Selecting Jurors, The Judges' Journal 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and "The Jury Project," Report to the Chief Judge of the State of New York 58-60 (1984).

The "struck" method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken, and all legal issues arising therefrom have been resolved, the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

**Comment**

**1961 Amendment to Rule 47(e)**
**[Formerly Rule 47(a)(3)]**

[Rule 47(e) (formerly Rule 47(a)(3))] now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate this inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.

## 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.**

**(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 foreperson 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.*** Once a verdict is returned:

**(A)** the clerk must read the verdict and inquire of the jury if it is their verdict;

**(B)** if any juror disagrees that it is their verdict, the judge must poll the jury under Rule 49(e)(2); and

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

**(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 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 based on it, 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.

## 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 is considered to have submitted 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. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2). 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 within the time required by Rule 59(b).

**(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 should the appellate court conclude 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.

**State Bar Committee Note**

**2010 Amendment to Rule 50(a)**

This amendment eliminates the need to make a motion for judgment as a matter of law at the close of all the evidence as a prerequisite to renewing a motion made earlier during trial, as the former rule had been interpreted by cases such as *Ash v. Flieger,* 118 Ariz. 547, 578 P. 2d 628 (App. 1978).

## Rule 51. Jury Instructions; 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 should 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;

**(G)** the legal principles that will govern the trial; and

**(H)** the procedures to be followed if the jury experiences any problem or difficulty during 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

**(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.

**Comment**

**2017 Amendment to Rule 51**

The 2017 amendment adopts the provisions of Rule 51 of the Federal Rules of Civil Procedure governing the required timing of objections to jury instructions. Under the amended rule, with some exceptions, objections must now be made before the instructions and arguments are delivered to the jury. This departs from Arizona's former rule, which allowed parties to object to jury instructions at any time before the jury retired to consider its verdict.

## 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. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2). 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 posttrial 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 Arizona Supreme Court Rule 81, 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.

**(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, upon 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. Any party, after notice to the other parties and master, may apply to the court for an order requiring the master to expedite the proceedings and, if applicable, make the report.

**(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, 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.

**Comment**

**2005 Amendments**

Rule 53 was extensively revised to incorporate most, but not all, of the December 2003 amendments to Rule 53 of the Federal Rules of Civil Procedure. Where the provisions of this rule are similar to those found in Federal Rule 53, a court may look to federal precedent and the advisory committee notes to Federal Rule 53 for guidance in interpreting this Rule.

[The provisions in Rule 53(c)(1)(C), formerly Rule 53(d)] for evidentiary hearings are reduced from the extensive provisions previously set forth in Rule 53. This simplification of the rule is not intended to diminish the authority that may be delegated to a master. Reliance is placed on the broad and general terms of the master's authority set forth in amended Rule 53(c).

The amendments to the rule require in several places that a court must give the parties "an opportunity to be heard" before taking a specified action. This requirement can be satisfied by giving the parties an opportunity to make written submissions to the court and does not require the court to hold a hearing before taking action.

## VII. JUDGMENT

### Rule 54. Judgment; Costs; Attorney's Fees; Form of Proposed Judgments

**(a) Judgment and Decision Defined.** "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. For purposes of this rule, a "decision" is a written order, ruling, or minute entry that adjudicates at least one claim or defense.

**(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 there is no just reason for delay and recites that the judgment is entered under Rule 54(b). If there is no such express determination and recital, any decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

**(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.

**(f) Request for Costs.**

**(1)** ***Time for Filing Request if a Motion for Attorney's Fees Is Filed.*** If a party seeking costs also seeks an award of attorney's fees, a verified request for an award of taxable costs under A.R.S. § 12-332 must be filed on the same day the party files its motion for attorney's fees under Rule 54(g).

**(2)** ***Time for Filing Request if No Motion for Attorney's Fees Is Filed.*** If a party seeking costs does not seek an award of attorney's fees under Rule 54(g), a request for costs must be filed within the time set forth below:

**(A)** *Rule 54(c) Judgments.* If a decision adjudicates all claims and liabilities of all of the parties and judgment is to be entered under Rule 54(c), any request for costs must be filed within 20 days after the decision is filed, or by such other date as the court may order.

**(B)** *Decisions Subject to Rule 54(b)—Adjudicating All Claims and Liabilities of Any Party.* If a decision adjudicates all claims and liabilities of any party:

**(i)** If that party or another party moves for entry of judgment under Rule 54(b), or includes Rule 54(b) language in a proposed form of judgment, a prevailing party seeking costs must file a verified request for an award of taxable costs under A.R.S. § 12-332 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.

**(ii)** If the court declines to enter judgment under Rule 54(b), or no party seeks entry of judgment under Rule 54(b), a prevailing party seeking costs must file a verified request for costs no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

**(C)** *Decisions Subject to Rule 54(b)—Adjudicating Fewer Than All Claims and Liabilities of a Party.* If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a prevailing party seeking costs must file a verified request for costs no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

**(D)** *Response and Reply.* A party opposing a request for costs must file a response within 5 days after the request is served. Any reply must be filed within 5 days after the response is served.

**(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 and liabilities 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, or by such other date as the court may order.

**(3)** ***Time for Filing Motion—Decisions Subject to Rule 54(b).***

**(A)** *Adjudicating All Claims and Liabilities of Any Party.* If a decision adjudicates all claims and liabilities of any party:

**(i)** If that party or another party moves for entry of judgment under Rule 54(b), or includes Rule 54(b) language in a proposed form of judgment, a motion for 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.

**(ii)** If the court declines to enter judgment under Rule 54(b), or no party seeks entry of judgment under Rule 54(b), a motion for fees must be filed no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

**(B)** *Adjudicating Fewer Than All Claims and Liabilities of a Party.* If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a motion for fees must be filed no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

**(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 7.1. The movant's affidavit must disclose the terms of any fee agreement for the services for which the claim is made.

**(h) Proposed Forms of Judgment.**

**(1)** ***Including Costs and Fees in Judgment.*** Except as otherwise allowed by this rule:

**(A)** claims for attorney's fees and costs must be resolved before any judgment may be entered under Rule 54(b) or (c); and

**(B)** any award of attorney's fees or costs must be included in the judgment.

**(2)** ***Form of Judgment.*** When a judgment is required to include fees or costs:

**(A)** If fees are requested, the form of judgment must either state the specific sum of attorney's fees awarded by the court, or must include a blank in the form of judgment to allow the court to include an amount for any attorney's fees.

**(B)** If costs are requested, the form of judgment must either state the specific sum of costs awarded by the court, or must include a blank in the form of judgment to allow the court to include an amount for costs.

**(C)** If the court enters a judgment under Rule 54(b) or (c) without first receiving a motion for judgment or a proposed form of judgment, a prevailing party seeking costs and/or fees must file a motion to alter or amend the judgment within the time required by Rule 59(d).

**(i) Scope; Jurisdiction.**

**(1)** ***Scope.*** Rules 54(f) and (g) 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.

**(2)** ***Jurisdiction***. If a judgment certified under Rule 54(b) adjudicates fewer than all of the claims and liabilities of any party, the court retains jurisdiction:

**(A)** to award costs with respect to that judgment, if a request for costs is timely filed under Rule 54(f); and

**(B)** to award attorney's fees with respect to that judgment, if a motion for fees is timely filed under Rule 54(g).

**Comment**

**2017 Amendments**

In addition to stylistic and organizational changes, the 2017 amendments make several clarifying and substantive changes to the rule:

***Rule 54(a).*** The former rule is clarified to define the term "decision," which is used elsewhere in the rule.

***Rule 54(f).*** The former rule did not require costs to be included in a judgment, and allowed a party seeking costs to file a request for costs within 10 days after entry of judgment. Under the amended rule, a prevailing party seeking both fees and costs must file its request for costs at the same time as its motion for attorney's fees under Rule 54(g). [Rule 54(f)(1)] In other cases, if the decision adjudicates all claims in the case and judgment is to be entered under Rule 54(c), a request for costs must be filed within 20 days after the decision is filed. [54(f)(2)(A)] For decisions subject to Rule 54(b), the time for requesting costs differs according to whether the decision adjudicates *all* claims or liabilities of a party, or adjudicates *fewer* than all claims or liabilities of a party. [*Cf.* Rule 54(f)(2)(B) *with* 54(f)(2)(C)] If a decision subject to Rule 54(b) adjudicates all claims or liabilities of a party (with the result that the party would effectively be out of the case), a request for costs must be filed within 20 days after any motion or proposed form of judgment seeking entry of judgment under Rule 54(b) is served. [Rule 54(f)(2)(B)(i)] If the court declines to grant Rule 54(b) treatment, or if no party seeks Rule 54(b) certification,

then the request for costs may be deferred until the conclusion of the action. [Rule 54(f)(2)(B)(ii)] Similarly, if a decision or judgment subject to Rule 54(b) does not adjudicate all claims or liabilities of a party, the prevailing party may defer seeking costs until the conclusion of the action. [Rule 54(f)(2)(C) (request must be filed "no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first")] Rule 54(f)(2)(D) is amended to provide for a response and a reply to a request for costs.

***Rule 54(g).*** Rule 54(g)(1) is amended to provide that 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." The new language codifies the holding of *Balestrieri v. Balestrieri*, 232 Ariz. 25, 27, 300 P.3d 560, 562 (App. 2013) (fee request made in a motion to dismiss, in lieu of a responsive pleading, satisfied the rule's requirement). Rule 54(g)(4) is amended to require that a movant's affidavit "must disclose the terms of any fee agreement for the services for which the claim is made."

The amendments to subdivision (g) also alter the deadline for filing a motion for attorney's fees, similar to the Rule 54(f) amendments governing the time for requesting costs. Former Rule 54(g)(1) provided that a "motion for attorneys' fees shall be filed within 20 days from the clerk's mailing of a decision on the merits of the cause," without distinguishing between decisions that result in a final judgment under Rules 54(b) or (c), and those decisions that do not result in such a judgment. The amended rule provides that if a decision adjudicates *all* claims in the action and judgment is to be entered under Rule 54(c), a motion for fees must be filed within 20 days after the decision is filed. [Rule 54(g)(2)] If a decision subject to Rule 54(b) adjudicates *all* claims or liabilities of a party, a motion for attorney's fees must be filed within 20 days after any motion or proposed form of judgment seeking entry of judgment under Rule 54(b) is served. [Rule 54(g)(3)(A)(i)] If the court declines to enter judgment under Rule 54(b), or if no party seeks entry of judgment under Rule 54(b), then the motion for fees may be deferred until the conclusion of the action. [Rule 54(g)(3)(A)(ii)(motion must be filed "no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the actions dismissal, whichever occurs first."] Similarly, if a decision subject to Rule 54(b) adjudicates *fewer* than all claims or liabilities of a party, the motion for fees also may be deferred until the conclusion of the action. [Rule 54(g)(3)(B)]

***Rule 54(h).*** New subdivision (h) is added, incorporating portions of former Rule 58 governing forms of judgment. Except where the rule expressly allows a motion for fees or request for costs to be deferred, subdivision (h)(1)(A) requires that claims for attorney's fees and costs must be resolved before judgment is entered. The amount of any such costs and fees must be included in the judgment. [Rule 54(h)(1)(B)] Any proposed form of judgment must either state the amount of fees or costs awarded by the court, or include a

blank where those amounts can be added by the court. [Rule 54(h)(2)(A) and (B)] In the rare instance where a court enters a judgment that should include fees or costs without first receiving a motion for judgment or a proposed form of judgment, Rule 54(h)(2)(C) clarifies that a prevailing party may move to alter or amend the judgment to include omitted fees or costs within the time allowed by Rule 59(d). Absent a timely motion under Rule 59(d), a judgment omitting fees or costs will be final for purposes of appeal.

## 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, default may be obtained under the procedures set forth in this rule.

**(2)** ***Application for Default.*** A party seeking entry of default must file a written application that:

**(A)** identifies the party against whom default is sought;

**(B)** states that the party has failed to plead or otherwise defend within the time allowed by these rules;

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

**(D)** identifies 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;

**(E)** if applicable, states that the party requesting the entry of default does not know the whereabouts of a party claimed to be in default, or the identity and address of an attorney known to represent the party in the action or a related action; and

**(F)** attaches 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 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 to that 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)** *Time of Notice.* Any required notice under Rule 55(a)(3)(A) or (B) must be mailed on the date that the application is filed, or as soon as practicable after its filing.

**(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(c).

**(4)** ***A Default's Effective Date.*** The filing of the application for default constitutes the entry of default. A 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.***

**(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 a 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 for default judgment at least 3 days before the hearing. The notice must include the date, time, and place of 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.

**(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 or one of its officers or agencies 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 crossclaim or counterclaim.

**Comment**

**2015 Amendment to Rule 55(b)**

This amendment clarifies when a defendant has a right to notice and a hearing if the plaintiff's claim is for a sum certain or for a sum that can be made certain by computation. Under the amendment, a defendant who has been defaulted on such a claim under Rule 55(b)(1), but who makes a post-default appearance, is not entitled to notice and a hearing before judgment may be entered.

**State Bar Committee Note**

**1984 Amendment to Rule 55(b)**

The amendment to Rule 55(b)(1) is intended to avoid the result suggested by dicta in *Monte Produce, Inc. v. Delgado*, 126 Ariz. 320, 614 P.2d 862 (App. 1980), that a default judgment including attorneys' fees may not be obtained by motion without a hearing unless the amount of attorneys' fees is liquidated. The amendment is intended to permit the court to consider and rule upon the issue of attorneys' fees by motion, even though it may be an unliquidated claim, where the complaint gives notice of an amount sought in the event of default [or if the award is allowed by law and supported by affidavit, and the defendant has not entered an appearance in the action.] The amendment does not attempt to change the substantive law in regard to liquidated or unliquidated damages.

## 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 shall 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 should 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 set oral argument, unless it determines that the motion should be denied or the motion is uncontested. The court may set oral argument even if not requested.

**(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.

**(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 part 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 that 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)(3) governs objections to the admissibility of evidence on summary judgment motions, but an objection may be included in a party's response to another party's separate statement of facts in place 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.

**(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:

**(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;

**(v)** an estimate of the amount of time the additional discovery will require; and

**(B)** a good faith consultation certificate complying with Rule 7.1(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 two 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.

**(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, shall be entered against that party.

**(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;

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

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

**(g) Declining 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.

**Comment**

**2017 Amendments**

Rule 56 was amended in significant respects in 2013. The 2013 amendments adopted some of the 2007 federal stylistic revisions, while retaining other unique aspects of Arizona's rule (such as the provisions of subdivision (c)(3) governing supporting and opposing statements of fact, which have no counterpart in FRCP 56). The 2017 amendments retain the substance of the 2013 amendments, but propose additional stylistic changes to simplify and clarify the rule. Some of the subdivisions of the current rule are reordered to conform to the structure of Federal Rule 56.

In addition to stylistic improvements, subdivision (c)(2) is modified to eliminate provisions governing stipulated or court-ordered extensions of briefing schedules. Those provisions of the former rule predated the adoption of Rule 7.1(g), which now provides uniform procedures governing and limiting the extension of briefing schedules on motions. Rule 7.1(g)'s provisions apply to motions for summary judgment under Rule 56. The structure of Rule 56(c)(3) is modified to add subdivisions and headings, consistent with the federal rule stylistic conventions. Portions of current subdivision (c), governing the form of affidavits, are moved to subdivision (c)(5) and (6), to conform more closely to the federal rule's structure.

Subdivision (f) of the former rule is moved to subdivision (d), to conform to the federal rule's structure. The revised rule now incorporates into the rule's text the specificity requirements set forth in Arizona case law for obtaining a continuance to conduct additional discovery, as set forth in *Simon v. Safeway, Inc.*, 217 Ariz. 330, 173 P.3d 1031 (App. 2007). *See* Rule 56 (d)(1)(A) (identifying five factors that must be addressed, if applicable, in an affidavit supporting a Rule 56(d) request).

## 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 person's personal identifying information was taken, and, as a result, the person's name was used by another person who was arrested, cited, or charged with a criminal offense, or the person's 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 Rule 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 person's 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 superior court clerk 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 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 petitioner's 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 person's personal identifying information being taken, the person's 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 in the county in which the petitioner's name was entered as of record in a civil action or judgment because of alleged improper use of the petitioner's 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 petitioner's identity was allegedly used. Service must be made in the same manner that a summons and pleading are served under Rule 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 person's birth date, social security number, or financial account numbers—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 superior court clerk must request the justice of the peace to transmit a copy of the file to the clerk's 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 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 court's findings to the petitioner and to all parties in the civil action in which the petitioner's identity was allegedly used.

## Rule 58. Entering Judgment

**(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 5.1(d) and 54(h).

**(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 of 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, but 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, including 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 minute entry that is filed.

**(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(c).

**(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 from the failure to appeal within the allowed time, except as provided in Arizona Rule of Civil Appellate Procedure 9(f).

**(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 on 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.

**Comment**

**2017 Amendments**

In addition to stylistic and organizational changes, the 2017 amendments make several substantive and clarifying changes to the former rule. Former Rule 58(d)(1) allowed a court to immediately enter a judgment denying all relief, or a judgment "other than for money or costs," without waiting 5 days after service of the proposed form of judgment. As amended, Rule 58(a)(2) eliminates this exception, so that the 5-day waiting period now applies to all judgments, subject to certain other exceptions set forth in Rule 58(a)(2)(A)(i) through (iii).

The amendments also clarify ambiguities in the former rule regarding when a judgment in a minute entry, or a judgment in a habeas corpus proceeding, becomes final. The amended rule provides that a judgment in a minute entry—like other judgments—is entered when filed by the clerk. [Rule 58(b)(2)(A)] Similarly, under the amended rule, a judgment in a habeas corpus proceeding "need not be signed, and is final when set forth in a minute entry that is filed." [Rule 58(b)(2)(B)] *See In re Maricopa Cty. Juvenile Action No. JS-8441*, 174 Ariz. 341, 849 P.2d 1371 (1992) (noting ambiguity of phrase "'entered in the minutes' of the court," where minute entry had multiple dates on its face).

## Rule 59. New Trial; Altering or Amending a Judgment

**(a) Generally.**

**(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. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2). The motion may be amended at any time before the court rules on it.

**(2)** ***Response and Reply.*** Rule 7.1(a) 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—which time may not be extended except as allowed by Rule 6(b)(2)—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 judgment. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2).

**(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 set by the court, the party adversely affected by the reduction or increase in damages files a statement accepting the amount of damages 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(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 specified 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 requires a reduction of or increase in damages, then the new trial may be granted only on damages, and the verdict must stand in all other respects.

**(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 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 Must Specify 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.

**Comment**

**2017 Amendments**

In *State v. Tucson Title*, 101 Ariz. 415, 420 P.2d 286 (1966), the Arizona Supreme Court held that under the former Rule 59(i), a consent to a remittitur was binding,

notwithstanding a later appeal by the moving party. Thus, the court held that the consent to the remittitur estopped the party in whose favor the judgment had been entered from taking a cross-appeal from the order. In many cases one of the primary reasons for consenting to a remittitur is the hope of thereby ending the litigation and avoiding an appeal by the moving party. If, despite the opposing party's consent to the remittitur, the moving party nevertheless perfects an appeal, the party consenting to the remittitur should have the right to cross-appeal from the order. To address this concern, Rule 59(i)(2) was amended in 1967 to provide that the party consenting to the remittitur or additur "may nonetheless cross-appeal and the perfecting of a cross-appeal shall be deemed to revoke the consent to the decrease or increase in damages."

The 2017 amendments eliminate the provision of former Rule 59(i)(2) providing that the cross-appeal is "deemed to revoke" a cross-appealing party's consent to an additur or remittitur. Subdivision (f)(2) of the amended rule instead provides that if the court's ruling on damages is affirmed, the cross-appealing party's prior acceptance will remain in effect, unless the appeal's final disposition requires otherwise.

## Rule 60. Relief from Judgment or Order

**(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.** A court must 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 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. After a mistake in the judgment is corrected, execution must conform to the corrected judgment.

**(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(b)(1);

**(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. This deadline may not be extended by stipulation or court order, except as allowed by Rule 6(b)(2).

**(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(g); or

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

**(e) 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 Arizona Rule of Civil Appellate Procedure 7 or as otherwise ordered by the court, 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 (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 such terms for bond, security, or otherwise 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 appeals 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 outcome of the appeal.

**(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)** ***Nonmoney Judgments.*** If a judgment other than a money judgment is entered against the State of Arizona or one of its agencies or political subdivisions, 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) Nonsubstantive 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 a court to exercise its inherent power to command the attendance in court of persons who disobey

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 noncriminal 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 against whom the warrant is directed 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 direct 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) Court's Duty 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) Bond Forfeiture.** 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 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 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 time the court, for good cause, extends it 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 an 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. If the party does not, the court must dissolve the order.

**(5)** ***Motion to Dissolve.*** On two-days' notice to the party obtaining an 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 collect 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*.** An 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. 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 Rule 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(c).

**(5)** ***Hearing.*** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(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.

**(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's 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.

**State Bar Committee Note**

**1966 Amendment**

In view of the possibly drastic consequences of a temporary restraining order, the opposition should be heard, if feasible, before the order is granted. Many judges have properly insisted that, when time does not permit formal notice of the application to the adverse party, some expedient, such as telephonic notice to the attorney for the adverse

party, be resorted to if this can reasonably be done. On occasion, however, temporary restraining orders have been issued without any notice when it was feasible for some fair, although informal, notice to be given.

Heretofore the first sentence of subdivision (b), in referring to a notice "served" on the "adverse party" on which a "hearing" could be held, perhaps invited the interpretation that the order might be granted without notice if the circumstances did not permit of a formal hearing on the basis of a formal notice. The subdivision is amended to make it plain that informal notice, which may be communicated to the attorney rather than the adverse party, is to be preferred to no notice at all.

Before notice can be dispensed with, the applicant's counsel must give his certificate as to any efforts made to give notice and the reasons why notice should not be required. This certificate is in addition to the requirement of an affidavit or verified complaint setting forth the facts as to the irreparable injury which would result before the opposition could be heard.

The amended subdivision continues to recognize that a temporary restraining order may be issued without any notice. In domestic relations cases, there may be a reasonable fear of bodily harm, and this is expressly regarded as one kind of irreparable injury which, if supported by affidavit and certificate, justifies a temporary restraining order without notice.

## 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 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 subcategory 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).

**(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 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 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 an affidavit or other proof demonstrating that the employer failed to file the required sworn affidavit 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 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 80(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 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 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 Rule 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 an 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 adequate; and

**(C)** no party objects.

**(2)** ***Bond, Oath, and Certificate of Appointment.*** Before performing the prescribed duties, a 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.*** A receiver may commence and defend actions, subject to the court's control and supervision. A 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 no 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) Dismissal.** An action in which the court has appointed a receiver may not be dismissed except by court order.

**Comment**

**2017 Amendment to Rule 66(a)**

Rule 66(a) previously allowed an application for receiver to be included in a verified complaint or made by separate verified application. Amended Rule 66(a) no longer permits this. A request for receiver must be filed as a separate application and must be accompanied by a supporting affidavit.

## 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 providing 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.** The court may order that money or any other deliverable property be deposited with the court if it is the subject of the action, if a party admits to control or possession of the money or property, and if that party holds it as trustee for another party or if it belongs to or is due to another party. 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 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 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(b).

**(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(b)(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, except:

**(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, an 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) 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(8), 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 transferee's name;

**(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 transferee's name;

**(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(21), 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 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, 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 selected 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(c) on the plaintiff and all other parties who 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 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 the court, on motion or on its own, 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 regarding such conduct as are just, including an order under Rule 11(c).

## Rule 73. Appointment of Arbitrator

**(a) Mutually Agreed 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 that person 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 of 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) for placing an action on the Dismissal Calendar.

**(f) Change of Arbitrator as of Right.** In any action, each side is entitled as 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.

**(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 § 21-211. The motion must be submitted to and considered by the judge assigned to the action in accordance with the procedures provided in Rule 42.2.

**(2)** ***Excusing an Arbitrator.*** The presiding superior court judge 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.

## Rule 74. General Proceedings and Prehearing Procedures

**(a) 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) Initial Disclosure.** Unless the parties agree or the arbitrator orders otherwise, the parties must serve their initial disclosure required under Rule 26.1 no later than the deadline provided in Rule 26.1(d).

**(c) 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.

**(d) Arbitrator's Rulings.**

**(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(d);

**(B)** motions to consolidate actions under Rule 42;

**(C)** motions to dismiss;

**(D)** motions to withdraw as attorney of record under Rule 5.3;

**(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(g).

**(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 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.

**(e) 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.

**(f) 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.

**(g) 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.

**(h) 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) Prehearing 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 prehearing statement. In preparing this prehearing 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 Excluded.*** 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.

**(c) Evidence.** The Arizona Rules of Evidence apply to arbitration hearings, except as provided in Rule 75(d). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.

**(d) Documentary Evidence.** Unless the document is not what it appears to be and an objection is stated in the prehearing statement, the arbitrator must admit into evidence the following documents without further proof, if relevant, and if listed in the prehearing 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, 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 Arizona Rule of Evidence 803(6); and

**(10)** a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, if listed in the prehearing statement.

**(e) 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.

**(f) 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.

**(g) 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 under Rule 74(c).

## Rule 76. Posthearing Procedures

**(a) Arbitrator's Decision.** 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 blanks 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) Arbitrator's Failure 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. If no party files such a motion within 90 days of the filing of the notice of decision and if no appeal is pending, the clerk or court administrator must notify the parties in writing that the action will be dismissed without prejudice unless a motion to enter judgment is filed within 30 days after the date of the notice. If no motion is filed within that time, the court must dismiss the action without prejudice and enter an appropriate order regarding any bond or other posted security. No further notice to the parties is required before dismissing the action.

**(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 assigned judge for appropriate action.

**(f) Arbitrator's Compensation.** 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.** 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(c), 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 a 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.**

**(1)** Any discovery conducted while the action was assigned to arbitration may be used on appeal.

**(2)** 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 Rule 26.1.

**(3)** 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 Rule 26.1.

**(4)** 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 prehearing statement submitted under Rule 75(b).

**(5)** The parties have 80 days after the filing of the notice of appeal to complete discovery under Rules 26 through 37.

**(6)** 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 the 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, on motion, finds that imposing 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.

## X. GENERAL PROVISIONS

### Rule 78. [Reserved]

### Rule 79. [Reserved]

## Rule 80. General Provisions

**(a) 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.

**(b) Attorney or Court Officer 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.

**(c) 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.

**(d) 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.

**(e) Clerk's Distribution of Minute Entries and Other Court Records.**

**(1)** ***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.

**(2)** ***Electronic Distribution.*** The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's attorney by electronic means. Electronic distribution of a document is complete when the clerk transmits it to the email address that the party or attorney has provided to the clerk.

## Rule 81. Effective Date; 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.

### Comment

### 2017 Amendment

Consistent with 1946 Advisory Committee Note accompanying Rule 84 of the Federal Rules of Civil Procedure, the forms contained in the Appendix of Forms are sufficient to withstand attack under the rules from which they are drawn, and, in that event, the practitioner using them may rely on them. A practitioner is not required, however, to use such forms.

**Form 1. Notice of Lawsuit and Request for Waiver of Service of Summons**

TO: *[Name of individual Defendant (or name of officer or agent of corporate defendant]*

as *[Title, or other relationship of individual to corporate defendant]*

of *[Name of corporate defendant to be served, if any]*

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this Notice. The complaint has been filed in the Superior Court for the State of Arizona in and for the County of *[County]* and has been assigned case number *[Case number of action]*.

This is not a formal summons or notification from the Court, but rather my request that you sign and return the enclosed Waiver of Service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within *[Addressee must be given at least 30 days (60 days if located in foreign country) within which to return waiver]* days after the date designated below as the date on which this Notice of Lawsuit and Request for Waiver of Service of Summons is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the Waiver of Service is also attached for your records.

If you comply with this request and return the signed Waiver of Service, the waiver will be filed with the Court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, and you will be required to answer or otherwise respond to the complaint within sixty (60) days from the date designated below as the date on which this notice is sent (or within ninety (90) days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Arizona Rules of Civil Procedure and then, to the extent authorized by those Rules, I will ask the Court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to avoid unnecessary costs of service of summons, which is set forth on the reverse side (or at the foot) of the enclosed "Waiver of Service of Summons" form.

I affirm that this Notice of Lawsuit and Request for Waiver of Service of Summons is being sent to you on behalf of the Plaintiff on the date indicated below.

NOTICE AND REQUEST SENT this _____ day of _____, _____.

_____

Signature of Plaintiff's Attorney
-or-
Unrepresented Plaintiff

**Form 2. Waiver of Service of Summons**

TO: *[Name of Plaintiff's Attorney or Unrepresented Plaintiff]*

I acknowledge receipt of your request that I waive service of a summons in the action of *[Caption of Action]*, which is case number *[Docket Number]* in the Superior Court of the State of Arizona in and for the County of *[County]*. I also have received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by the Arizona Rules of Civil Procedure.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within sixty (60) days after *[Date Request Was Sent]*, or within ninety (90) days after that date if the request was sent outside the United States.

Dated this _____ day of _____, _____.

[Signed] _____

[Printed or Typed Name of Defendant]
as [Title]
of [Name of corporate Defendant, if any]

**Form 2. Waiver of Service of Summons (Cont.)**

*To be printed on reverse side of the waiver form or set forth at the foot of the form:*

DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS

Rule 4.1 and Rule 4.2 of the Arizona Rules of Civil Procedure require certain parties to cooperate in saving unnecessary costs of service of the summons and a pleading. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must, within the time specified on the waiver form, serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and also must file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

**Form 3. Abrogated August 30, 2012, effective January 1, 2013**

**Form 4. Uniform Interrogatories for use in Medical Malpractice Cases**

**SET A. (TO INDIVIDUAL HEALTH CARE PROVIDER)**

I. GENERAL INFORMATION

**Interrogatory No. 1:** Please state:

A. Your full name.

B. Any and all other names you have used or by which you have been known.

C. Date of your birth.

D. Full name of your spouse, if one.

E. Your residence and office addresses.

F. The name of your professional association or corporation, if any.

**Interrogatory No. 2:**

A. Please state your present marital status.

B. Please state the name and last known address of your spouse and every former spouse.

C. Please state the date of each such marriage.

D. As to previous marriages, please give the date, place and manner of each termination.

E. Please state the name, age and address of each of your children.

**Interrogatory No. 3:** Please state:

A. The name and location of each university, college, or other post-secondary institution that you have attended, the dates of such attendance, and any degrees you have received.

B. The name and location of each medical school you attended and the dates of attendance.

C. The name and location of each institution where you served as an intern and the dates of such internship.

D. The name and location of each institution where you were a medical resident or resident physician, the dates of each residency and the medical specialty which you studied during each residency.

E. The name and location of each institution where you have done a medical fellowship or other advanced study, the dates of such fellowship or study and the medical specialty which you studied.

**Interrogatory No. 4:** Please list each state or other jurisdiction in which you are, or have been, licensed to practice in the healthcare field, and in each instance, give:

A. The date on which you first received your license.

B. The name of the entity that issued such license.

C. The current status of each license.

D. The termination date and reason for termination for each license that is no longer in force

**Interrogatory No. 5:** Have you ever held yourself out to anyone as being specially qualified in any field of health care? ___ If so, please state:

A. The name of the specialty.

B. The date you first held yourself out as a specialist.

C. Whether you are board certified in such specialty.

D. The board which certified you.

E. The date you first became board certified.

F. The date you qualified to take the board certification examination.

G. The number of times and dates you took the oral and written exams.

**Interrogatory No. 6:** Have you ever taught any subject at any medical or healthcare institution? ___ If so, please state:

A. The name and address of the institution.

B. What position you held, if any, and the dates that you held each position.

C. The name of each subject taught by you.

**Interrogatory No. 7:** Have you ever written or collaborated in writing any treatises, papers or articles on any phase of medical practice or treatment? ___ If so, please state:

A. The title of each writing.

B. The citation for each writing.

C. Whether you have a copy of each such writing and, if not, where a copy might be obtained.

**Interrogatory No. 8:** Please list the name of every professional society or organization in which you have held membership, the inclusive dates of your membership, any positions which you have held, and the dates such positions were held.

**Interrogatory No. 9:** Please list the names of each hospital where you have had staff privileges in the last five years, any limitations on your privileges, any hospital staff or committee memberships that you have held, and the dates thereof.

**Interrogatory No. 10:** Have you ever testified in deposition, or in court, or in another tribunal in a negligence lawsuit? ___ If so, please state:

A. The name of the plaintiff(s).

B. The name of the defendant(s).

C. The cause number and court or other tribunal where filed.

D. The names of the lawyers for the parties.

E. The subject matter of your testimony (e.g., standard of care, causation, damages).

F. The allegations of negligence in the suit.

G. The name and address of the person presently having possession of each transcript of any testimony you gave.

## II. RECORDS OF HEALTH CARE

**Interrogatory No. 11:** With regard to each occasion on which you saw the injured person/decedent in your office, please state the following:

A. Any history taken.

B. The precise physical examination performed and a detailed listing of all findings upon this physical examination.

C. Any other diagnostic aids employed.

D. Any other diagnoses or diagnostic impressions which were reached.

E. Any modalities of treatment selected.

F. Any and all conversations with the injured person/decedent.

**Interrogatory No. 12:** With regard to each occasion on which you saw the injured person/decedent in the hospital, nursing home, or other institution, please state the following:

A. Any history taken.

B. The precise examination performed and a detailed listing of all findings upon this physical examination.

C. Any other diagnostic aids employed.

D. Any diagnoses or diagnostic impressions which were rendered.

E. Any modalities of treatment selected.

F. Any and all conversations with the injured person/decedent.

**Interrogatory No. 13:** Please state whether you ever indicated or suggested to anyone that the injured person/decedent was an unsatisfactory patient, or made any other critical representations concerning the injured person/decedent. ___ If you answer yes, please state the following with respect to each such representation:

A. A general description of the representation.

B. The date and place where it was made.

C. The name and address of each person to whom this representation was made.

**Interrogatory No. 14:** Do you contend that any entries in the medical records/chart at issue are incorrect or inaccurate? ___ If so, please state:

A. The precise entry(ies) that you think are incorrect or inaccurate.

B. What you contend the correct or accurate entry(ies) should have been.

C. The name, present or last known address and telephone number and present or last known employer of each and every person who has knowledge pertaining to A and B.

D. A description, including the author and title, of each and every document that you claim supports your answer to A and B.

E. The name, present or last known address and telephone number of each and every person you intend to call as a witness in support of your contention.

**Interrogatory No. 15:** Are you aware of any medical records, reports or letters from health care providers, or other written or recorded information or photographs concerning the medical, mental or physical condition of the injured person/decedent prior to the incident in question? ___ If so, please state:

A. The nature and subject of each such item.

B. The date each item was prepared.

C. The name, present or last known address of the person or persons preparing each item.

D. The name, present or last known address of the person who presently has custody or control of each item.

E. Whether you are in possession of copies of each or any item.

III. INVESTIGATION

**Interrogatory No. 16:** Are you aware of the existence of any oral, written or recorded statement or admission made or claimed to have been made by any party or witness? ___ If so, please state:

A. The name, present or last known address and telephone number of the person making the statement or admission.

B. The date of the statement or admission.

C. The name, present or last known employer, occupation, and present or last known address and telephone number of the person or persons taking or hearing the statement or admission.

D. The name and present or last known address of the person now in possession of a written or recorded statement or admission.

**Interrogatory No. 17:** Have any drawings, diagrams, photographs, motion pictures, digital images or videotapes been prepared or taken of any object or person involved in the incident? ___ If so, please state:

A. What is depicted by each drawing, diagram, photograph, motion picture, digital image and/or videotape.

B. The date on which each drawing, diagram, photograph, motion picture, digital image or videotape was taken.

C. The name, present or last known address of the person preparing the drawing or diagram and/or the photographer of each photograph, motion picture, digital image or videotape.

D. The name, present or last known address and telephone number of the person who now has custody of the drawing, diagram, photograph, motion picture, digital image and/or videotape.

**Interrogatory No. 18:** Please state whether any meetings or hearings were held by any committee, or any other group, at which the injured person/decedent or any of the incident(s) in question were discussed. ___ If so, please state the following with respect to each such meeting or hearing:

A. The date and place where it was held.

B. The name of each person present.

C. Whether any written memoranda or minutes were made of the meeting.

D. Each written or documentary item submitted to the committee or organization.

E. As to each item set forth in subsections (A) and (D) above, please state whether you contend the item is privileged (i.e., not subject to discovery) and the precise basis of the claim.

## IV. WITNESSES AND EXHIBITS

**Interrogatory No. 19:** Are you aware of any person you may call as a witness at the trial of this action who may have or claims to have any information concerning the medical, mental, or physical condition of the injured person/decedent prior to the incident(s) in question? ___ If so, please state:

A. The name and present or last known address and telephone number of each such person.

B. The occupation and present or last known employer of each such person.

C. The subject and substance of the information each such person claims to have.

**Interrogatory No. 20:** Other than as disclosed above, are you aware of any person who may have or claims to have knowledge of the history or background of the injured person/decedent whom you may call as a witness in this action? (The "history or background of the injured person/decedent" as used in this interrogatory is intended to have the broadest possible reference to the injured person/decedent's background, including, but not limited to any of the following that may apply: the injured person/decedent's personal, employment, academic, military, criminal, financial, religious, social or marital background.) ___ If so, please state:

A. The name and address of each person.

B. The occupation and employer of each person.

C. The nature and substance of the information concerning the injured person/decedent of which each person has knowledge.

**Interrogatory No. 21:** Other than as described above, are you aware of any written or recorded information relating to the history or background of the injured person/decedent (as defined in the previous interrogatory) which you may offer as exhibits in this action? ___ If so, please state:

A. The nature of each such item of written or recorded information with sufficient particularity to identify it.

B. The date of each such item.

C. The name, present or last known address and telephone number of the author or preparer of each such item.

D. The name, present or last known address and telephone number of the person presently having possession of each such item or any copy thereof.

**Interrogatory No. 22:** Please list the names, present or last known addresses and telephone number, official titles, if any, and other identification of all persons, not previously identified, who:

A. Were known to be present at the events in question;

B. Claimed to have information concerning the events in question;

C. Were reported to have information concerning the events in question;

D. Have knowledge of any pre-existing medical problems or medical treatment received by the injured person/decedent prior to the events in question;

E. Have knowledge of the medical problems or medical treatment received by the injured person/decedent from the events in question up to the present time;

F. Participated in any investigation concerning this incident in question of any party or witness thereto;

G. Participated in any surveillance of the injured person/decedent.

As to each such person, please state:

1. His or her name, present or last known address and telephone number.

2. Present or last known address of any employer.

3. The subject and substance of the information each such person claims to have.

4. The present whereabouts of such person and the telephone number.

**Interrogatory No. 23:** Do you know of any person who is skilled in any particular field whom you may call as a witness at trial of this action and who has expressed an opinion on any issue of this action? ___ If so, please state:

A. The name, present or last known address and telephone number of each person.

B. The field in which each such person is sufficiently skilled to enable him (or her) to express opinion evidence in this action.

C. A complete list of all actions, in any tribunal, in which each person has rendered an opinion, whether by written report, deposition testimony or trial testimony, including:

1. The name of the case.

2. The court or other tribunal in which filed.

3. The docket number assigned.

4. Whether each person rendered his (or her) opinion by written report, deposition testimony, trial testimony or a combination thereof.

5. Whether you have a copy of such report or testimony and, if not, who you believe would have such copies.

D. Whether such person will base his (or her) opinion:

1. In whole or in part upon the facts acquired personally by him (or her) in the course of an investigation or examination of any of the issues of this case, or

2. Solely upon information as to facts provided him (or her) by others.

E. If your answer to D (above) discloses that any such person has made a personal investigation or examination relating to any of the issues of this case, please state the nature and dates of such investigation or examination.

F. Each and every fact, and each and every document, item, photograph or other tangible object supplied or made available to such person.

G. The general subject upon which each such person may express an opinion.

H. The substance of the facts and opinions to which such person is expected to testify.

I. Whether such persons have rendered written reports. ___ If so, please state:

1. The dates of each report.

2. The name, present or last known address and telephone number of the custodian of such reports.

**Interrogatory No. 24:** With respect to every lay witness whom you intend to or may call to testify, please state:

A. The name, present or last known address and telephone, occupation and present or last known employer of each such person.

B. What documents or facts such person has provided or communicated to you.

C. The substance of the testimony of such person.

**Interrogatory No. 25:** Please list specifically and in detail each and every exhibit you intend to use, or believe you may use, at trial in this matter.

**Interrogatory No. 26:** At the time of trial, do you intend to use or refer to any textbook, periodical or other publication during direct examination of your witnesses. ___ If so, please provide the citation for any text or periodical you intend to use.

V. MISCELLANEOUS

**Interrogatory No. 27:** Is it your contention that the injured person/decedent's injuries/death was/were caused in whole or in part by the fault of some person or persons other than yourself, whether named as a party in this action or not, or that some such other person or persons may have or share in the legal responsibility for the injuries set forth in injured person/decedent's pleadings? ___ If so, please state:

A. The name and present or last known address and telephone number of each such person or entity.

B. Each act or omission by which you contend such person is at fault for causing injured person/decedent's injuries.

C. The relationship of each person or entity, if any, to you or to any other party in this action.

**Interrogatory No. 28:** Have you entered into any agreement or covenant with any other person or entity in any way compromising, settling, and/or limiting the liability or potential liability for any party to the claim arising out of the occurrence alleged in the injured person/decedent's pleadings? ___ If so, please set forth the following:

A. The name and present or last known address and telephone number of each person or entity with whom such agreement or covenant was made.

B. The date of each such agreement or covenant.

C. Is the agreement or covenant in writing? ___ If so, state the name and present or last known address and telephone number of the individual who has custody and control of a copy of each such agreement or covenant.

D. The terms of each such agreement or covenant.

E. The consideration paid for each such agreement or covenant.

F. Whether you claim that the agreement or covenant is confidential and, if so, the legal and factual basis for such claim.

**Interrogatory No. 29:** As to any affirmative defenses you allege, please state the factual basis of and describe each such affirmative defense, the evidence which will be offered at

trial concerning any such alleged affirmative defense, including the names, present or last known addresses and telephone numbers of any witnesses who will testify in support of the defense, and the descriptions of any exhibits which will be offered to establish each such affirmative defense.

**Interrogatory No. 30:** Have you ever been a party to a civil action or arbitration proceeding? ___ If so, please state:

A. The names and designations (Plaintiff, Defendant, intervenor, garnishee, etc.) of all parties to each such action;

B. The cause number, state, and tribunal where each such action was filed;

C. The names and address of any lawyers representing any parties to each such action;

D. The general nature of the claims and defenses, including any allegations made against you; and

E. How the claims against you were resolved.

**Interrogatory No. 31:** Please state the name of any insurance company or any other person or entity who might be liable to satisfy part or all of a judgment which may be entered in favor of the injured party/decedent and/or against you, or to indemnify or reimburse for payments made to satisfy the judgment.

With respect to each such entity listed above, please state the following:

A. The date on which any policy was issued, or other contract executed.

B. The period for which the policy was issued, or the duration of any contractual obligation of indemnity or reimbursement.

C. The policy or monetary limits for any liability and medical pay coverage.

D. Whether any person or entity asserts any policy defenses or other defenses to its liability to you with regard to any claim made by the injured party/decedent.

E. Whether any claim made by the injured party/decedent is being defended under a reservation of rights.

F. Each and every factual basis for any defense under a reservation of rights.

G. The exact language of the policy which provided the basis for any reservation of rights, or attach a copy of the policy language in question.

H. If more than one entity is listed, state whether any entity asserts, by contract or otherwise, that its obligations are " secondary" to any other entity, or otherwise contingent on any event or occurrence.

**SET B. (TO INSTITUTIONAL HEALTH CARE PROVIDER)**

I. INVESTIGATION

**Interrogatory No. 1:** Please state the name of any and all witnesses or purported witnesses who are believed or understood by you to have any knowledge concerning the activities and/or medical treatment received by the injured party/decedent during his/her stay/treatment at ___. As to each such person, please state the following:

A. Name, present or last known address and telephone number.

B. Present or last known employer.

C. Please set forth the subject and substance of the information each such person claims to have.

D. The present whereabouts of such person.

**Interrogatory No. 2:** Are you aware of the existence of any oral, written or recorded statement or admission made or claimed to have been made by any party or witness? ___ If so, please state:

A. The name, present or last known address and telephone number of the person making the statement or admission.

B. The date of the statement or admission.

C. The name, present or last known employer, occupation, and present or last known address and telephone number of the person or persons taking or hearing the statement or admission.

D. The name and present or last known address and telephone number of the person now in possession of a written or recorded statement or admission.

**Interrogatory No. 3:** Have any drawings, diagrams, photographs, motion pictures, digital images or video-tapes been prepared or taken of any object or person involved in the incident? ___ If so, please state:

A. What is depicted by each drawing, diagram, photograph, motion picture, digital image and/or video-tape.

B. The date on which each drawing, diagram, photograph, motion picture, digital image or video-tape was taken.

C. The name, present or last known address and telephone number of the person preparing the drawing or diagram and/or the photographer of each photograph, motion picture, digital image or video-tape.

D. The name, present or last known address and telephone number of the person who now has custody of the drawing, diagram, photograph, motion picture, digital image and/or video-tape.

**Interrogatory No. 4:** Are you aware of any medical records, reports or letters from health care providers, or other written or recorded information or photographs concerning the medical, mental or physical condition of the injured person/decedent prior to the incident in question? ___ If so, please state:

A. The nature and subject of each such item.

B. The date each item was prepared.

C. The name, present or last known address and telephone number of the person or persons preparing each item.

D. The name, present or last known address and telephone number of the person who presently has custody or control of each item.

E. Whether you are in possession of copies of each or any item.

**Interrogatory No. 5:** Other than as disclosed above, are you aware of any person who may have or claims to have knowledge of the history or background of the injured person/decedent whom you may call as a witness in this action? (The "history or background of injured person/decedent)" as used in this interrogatory is intended to have the broadest possible reference to the injured person/decedent's background, including, but not limited to, any of the following that may apply: injured person/decedent's personal, employment, academic, military, criminal, financial, religious, social or marital background.) ___ If so, please state:

A. The name, present or last known address and telephone number of each person.

B. The occupation and present or last known employer of each person.

C. The nature and substance of the information concerning the injured person/decedent of which each person has knowledge.

**Interrogatory No. 6:** Other than as described above, are you aware of any written or recorded information relating to the history or background of the injured person/decedent (as defined in the previous interrogatory) which you may offer as exhibits in this action? ___ If so, please state:

A. The nature of each such item of written or recorded information with sufficient particularity to identify it.

B. The date of each such item.

C. The name, present or last known address and telephone number of the author or preparer of each such item.

D. The name, present or last known address and telephone number of the person presently having possession of each such item or any copy thereof.

**Interrogatory No. 7:** Please state whether any person engaged in the administration or management of the institution, or engaged in supervision of any staff that provides health care was consulted at any time from the date of admission to the date of discharge concerning the injured person/decedent. ___ If so, please state:

A. The name, present or last known address and telephone number of the person who was contacted.

B. The name, address, telephone number and present or last known employer of the person who made the contact.

C. Whether any written memoranda or minutes were made of this meeting and, if so, the name, present or last known address and telephone number of the person who presently has custody of such documents.

**Interrogatory No. 8:** Please list the names, present or last known addresses and telephone numbers, official titles, if any, and other identification of all persons, not previously identified, who:

A. Were known to be present at the events in question;

B. Claimed to have information concerning the events in question;

C. Were reported to have information concerning the events in question;

D. Have knowledge of any pre-existing medical problems or medical treatment received by injured person/decedent prior to the events in question;

E. Have knowledge of the medical problems or medical treatment received by injured person/decedent from the events in question up to the present time;

F. Participated in any investigation concerning this incident in question of any party or witness thereto;

G. Participated in any surveillance of the injured person/decedent. As to each such person, please state:

1. Name, present or last known, address and telephone number.

2. Present or last known address of any employer.

3. The subject and substance of the information each such person claims to have.

4. The present whereabouts of such person and the telephone number.

II. GENERAL

**Interrogatory No. 9:** Please identify by name, present or last known address, telephone number, and present or last known employer each and every registered nurse, licensed practical nurse, nurses' aide, nursing assistant, orderly, or other health care provider or care giver who had anything to do with the care of injured person/decedent during the following shifts: _____

**Interrogatory No. 10:** Please state the name, present or last known address and telephone number and present or last known employer of any person engaged in the supervision of any staff that provided health care for the shifts set forth in the preceding interrogatory.

**Interrogatory No. 11:** Please state the number of beds at the _____ as of the present time.

**Interrogatory No. 12:** Please state the number of beds at the _____ as of the time in question.

**Interrogatory No. 13:** Please state the number of beds in the _____ [e.g., OB ward] section or unit as of the present time.

**Interrogatory No. 14:** Please state the number of beds in the _____ [e.g., OB ward] section or unit as of the time in question.

III. RECORDS

**Interrogatory No. 15:** Do you contend that any entries in the medical records/chart at issue are incorrect or inaccurate? ___ If so, please state:

A. The precise entry(ies) that you think are incorrect or inaccurate.

B. What you contend the correct or accurate entry(ies) should have been.

C. The name, present or last known address and telephone number and present or last known employer of each and every person who has knowledge pertaining to A and B.

D. A description, including the author and title, of each and every document that you claim supports your answer to A and B.

E. The name, present or last known address and telephone number of each and every person you intend to call as a witness in support of your contention.

**Interrogatory No. 16:** Were any incident reports, quality assurance reports, written memoranda, or other reports made which relate to any aspect of the injured person/decedent's care while the injured person/decedent was a patient or resident of the institution or which concerns the injuries/death or cause of injury/death of the injured

person/decedent or concerning an investigation into injured person/decedent's injury/death? ___ If yes, please state for each such report:

A. The name, present or last known address and telephone number and title of the person who made it.

B. The date and time it was made.

C. The name, present or last known address, telephone number and title of each person who has custody of the written report or any copy thereof.

**Interrogatory No. 17:** Please state whether any meetings or hearings were held by any committee, or other group, at which the injured person/decedent or any of the incident(s) in question were discussed. ___ If so, please state the following with respect to each such meeting or hearing:

A. The date and place where it was held.

B. The name of each person present.

C. Whether any written memoranda or minutes were made of the meeting.

D. Each written or documentary item submitted to the committee or group.

E. As to each item set forth in subsections (A) and (D) above, please state whether you contend the item is privileged (i.e., not subject to discovery)and the precise basis of the claim.

## IV. WITNESSES AND EXHIBITS

**Interrogatory No. 18:** Are you aware of any person you may call as a witness at the trial of this action who may have or claims to have any information concerning the medical, mental, or physical condition of the injured person/decedent prior to the incident(s) in question? ___ If so, please state:

A. The name, present or last known address and telephone number of each such person.

B. The occupation and present or last known employer of each such person.

C. The subject and substance of the information each such person claims to have.

**Interrogatory No. 19:** Do you know of any person who is skilled in any particular field whom you may call as a witness at trial of this action and who has expressed an opinion on any issue of this action? ___ If so, please state:

A. The name, present or last known address and telephone number of each person.

B. The field in which each such person is sufficiently skilled to enable him (or her) to express opinion evidence in this action.

C. A complete list of all actions in any tribunal, in which each person has rendered an opinion, whether by written report, deposition testimony or trial testimony, including:

1. The name of the case.

2. The court or other tribunal in which filed.

3. The docket number assigned.

4. Whether each person rendered his (or her) opinion by written report, deposition testimony, trial testimony or a combination thereof.

5. Whether you have a copy of such report or testimony and, if not, who you believe would have such copies.

D. Whether such person will base his (or her) opinion:

1. In whole or in part upon the facts acquired personally by him (or her) in the course of an investigation or examination of any of the issues of this case, or

2. Solely upon information as to facts provided him (or her) by others.

E. If your answer to D (above) discloses that any such person has made a personal investigation or examination relating to any of the issues of this case, please state the nature and dates of such investigation or examination.

F. Each and every fact, and each and every document, item, photograph or other tangible object supplied or made available to such person.

G. The general subject upon which each such person may express an opinion.

H. The substance of the facts and opinions to which such person is expected to testify.

I. Whether such persons have rendered written reports. ___ If so, please state:

1. The dates of each report.

2. The name, present or last known address and telephone number of the custodian of such reports.

**Interrogatory No. 20:** With respect to every lay witness whom you intend to or may call to testify, please state:

A. The name, present or last known address, telephone number, occupation and present or last known employer of each such person.

B. What documents or facts such person has provided or communicated to you.

C. The substance of the testimony of such person.

**Interrogatory No. 21:** Please list specifically and in detail each and every exhibit you intend to use, or believe you may use, at trial in this matter.

**Interrogatory No. 22:** At the time of trial, do you intend to use or refer to any textbook, periodical or other publication during direct examination of your witness? ___ If so, please provide the citation for any text or periodical you intend to use.

V. MISCELLANEOUS

**Interrogatory No. 23:** Is it your contention that the injured person/decedent's injuries/death were/was caused in whole or in part by the fault of some person or persons other than yourself, whether named as a party in this action or not, or that some such other person or persons may have or share in the legal responsibility for the injuries set forth in Plaintiff(s)' pleadings? ___ If so, please state:

A. The name, present or last known address and telephone number of each such person or entity.

B. Each act or omission by which you contend such person is at fault for causing the injured person/decedent's injuries/death.

C. The relationship of each person or entity, if any, to you or to any other party in this action.

**Interrogatory No. 24:** Have you entered into any agreement or covenant with any other person or entity in any way compromising, settling, and/or limiting the liability or potential liability for any party to the claim arising out of the occurrence alleged in Plaintiff(s)' pleadings? ___ If so, please set forth the following:

A. The name, and present or last known address and telephone number of each person or entity with whom such agreement or covenant was made.

B. The date of each such agreement or covenant.

C. Is the agreement or covenant in writing? ___ If so, please state the name, present or last known address and telephone number of the individual who has custody and control of a copy of each such agreement or covenant.

D. The terms of each such agreement or covenant.

E. The consideration paid for each such agreement or covenant.

F. Whether you claim that the agreement or covenant is confidential and, if so, the legal and factual basis for such claim.

**Interrogatory No. 25:** As to any affirmative defenses you allege, please state the factual basis of and describe each such affirmative defense, the evidence which will be offered at

trial concerning any such alleged affirmative defense, including the names of any witnesses who will testify in support of the defense, and the descriptions of any exhibits which will be offered to establish each such affirmative defense.

**Interrogatory No. 26:** Please state whether the institution has been sued for negligence (including but not limited to malpractice or professional negligence) within the past ten years. ___ If so, please state:

A. The name of the Plaintiff(s).

B. The name of any and all other Defendant(s).

C. The cause number and court where filed.

**Interrogatory No. 27:** Give the name, present or last known address and telephone number of every person, physician, staff member or employee of the institution or representative of any insurance company who has been permitted to see, examine, investigate or copy any of the records of the injured person/decedent. (This interrogatory does not apply to any persons whose review/copying of the records was conducted as part of peer review, as set forth in A.R.S. § 35-445.01, § 36-2401, et seq., or § 36-441, or as a part of formal quality assurance procedures.)

**Interrogatory No. 28:** Please state the name of any insurance company or any person or entity who might be liable to satisfy part or all of a judgment which may be entered in favor of Plaintiff and/or against you, or to indemnify or reimburse for payments made to satisfy the judgment.

With respect to each such person or entity listed above, please state the following:

A. The date on which any policy was issued, or other contract executed.

B. The period for which the policy was issued, or the duration of any contractual obligation of indemnity or reimbursement.

C. The policy or monetary limits for any liability and medical pay coverage.

D. Whether any person or entity asserts any policy defenses or other defenses to its liability to you with regard to any claim made by the Plaintiff.

E. Whether any claim made by the Plaintiff is being defended under a reservation of rights.

F. Each and every factual basis for any defense under a reservation of rights.

G. The exact language of the policy which provided the basis for any reservation of rights or attach a copy of the policy language in question.

H. If more than one person or entity is listed, state whether the person or entity asserts, by contract or otherwise, that its obligations are "secondary" to any other entity, or otherwise contingent on any event or occurrence.

**SET C. (TO AN INDIVIDUAL)**

(These interrogatories should be answered to provide information regarding each person claiming damages in this action and also regarding the decedent if a wrongful death action.)

I. GENERAL INFORMATION & BACKGROUND

**Interrogatory No. 1:**

A. Please state your full name, address and date of birth.

B. Please state any and all other names which you have ever used or by which you have been known.

**Interrogatory No. 2:**

A. Please state your present marital status.

B. Please state the name and last known address of your spouse and every former spouse.

C. Please state the date of each such marriage.

D. As to previous marriages, please give the date, place and manner of each termination.

E. Please state the name, age and address of each of your children.

**Interrogatory No. 3:** Have you ever been a party to a civil action or arbitration proceeding? ___

If so, please state:

A. The names and designations (Plaintiff, Defendant, intervenor, garnishee, etc.) of all parties to each such action;

B. The cause number, state, and tribunal where each such action was filed;

C. The names and address of any lawyers representing any parties to each such action;

D. The general nature of the claims and defenses, including any allegations made against you; and

E. How the claims against you were resolved.

**Interrogatory No. 4:** Have you ever been convicted of a felony? ___

If so, please state:

A. The original charge made against you.

B. The charge of which you were convicted.

C. Whether you pled guilty to the charge, or were you convicted after trial.

D. The name and address of the court where the proceedings took place.

E. Date of conviction or date plea entered.

II. EDUCATION, EMPLOYMENT, ACTIVITIES AND IMPAIRMENT

**Interrogatory No. 5:** Please state the highest grade of formal schooling completed by you and any certificate or degrees received.

**Interrogatory No. 6:** Please list each job or position of employment, including self-employment, held by you on the date of and since the incident in question, stating as to each:

A. Name and address of employer.

B. Date of commencement and date of termination.

C. Nature of employment and duties performed.

D. Name and address of immediate supervisor.

E. Rate of pay or compensation received.

F. The reason for termination.

**Interrogatory No. 7:** Please list each job or position of employment, including self-employment, held by you for the five (5) years before the incident in question, stating as to each:

A. Name and address of employer.

B. Date of commencement and date of termination.

C. Place of employment.

D. Nature of employment and duties performed.

E. Name and address of immediate supervisor.

F. Rate of pay or compensation received.

G. Reason for termination.

**Interrogatory No. 8:** Do you claim to have lost any time from gainful employment as a result of the incident in question? ___

If so, please state:

A. The specific condition which you claim caused the loss of time.

B. The amount of time lost.

C. The rate of pay or compensation regularly received from each such gainful employment.

D. The total amount and your method of computation of damage, if any, as a result of the time lost.

E. Whether you have in your possession or control any records or other written memoranda which show or purport to show any or all of the amount of your income for the five (5) years preceding the incident in question to the present time, including a brief description of each such record or memorandum and the person who has it or controls it.

**Interrogatory No. 9:** Do you claim your earning capacity will be impaired as a result of the incident in question? ___

If so, please state:

A. The manner in which the condition will impair your ability to work.

B. Name and address of each person who had advised you concerning the impairment.

**Interrogatory No. 10:** Have you received any special education or training for any type of work? ___

If so, please state:

A. The names and addresses of the training or education institutions attended and the dates of attendance.

B. The names, addresses and inclusive dates of employment by employers from whom you received on-the-job training.

**Interrogatory No. 11:** Do you claim that as a result of the incident in question you have lost any opportunities for advancement or promotion in your employment? ___

If so, please state:

A. What opportunities would have been available had the incident in question not occurred.

B. When would each opportunity have been available.

C. The amount of monetary damages you allege you have lost as a result of said lost opportunity, and how you calculate those damages.

III. INVESTIGATION

**Interrogatory No. 12:** Have you or anyone acting on your behalf interviewed or spoken with any party, or its agents, servants or employees, about the events in question? ___

If so, please state who was present, when and where such conversation took place and the substance of any such conversations including, but not limited to, any statement or admission made by a party.

**Interrogatory No. 13:** Are you aware of the existence of any oral, written or recorded statement or admission made or claimed to have been made, by any party or witness? ___

If so, please state:

A. The name, present or last known address and telephone number of each person making the statement or admission.

B. The date of the statement or admission.

C. The name, present or last known employer, occupation and present or last known address of the person or persons taking or hearing the statement or admission.

D. The name and present or last known address and telephone number of the person now in possession of a written or recorded admission.

IV. INJURIES & DAMAGES

**Interrogatory No. 14:** Please describe in detail all injuries, complaints and symptoms, whether physical, mental or emotional, each person claiming damages in this action has experienced since the incident in question and which is claimed to have been caused, aggravated or otherwise contributed to by the incident in question.

**Interrogatory No. 15:** Do you claim any of your injuries are permanent? ___

If so, please state:

A. What, if any, pains do you contend such injuries will cause in the future.

B. Whether you believe the pains will be alleviated (and if so, when), or whether the pains are permanent.

C. What, if any, disabilities do you contend such injuries will cause.

D. Whether you believe the disabilities are permanent or, if not, when they might be resolved.

E. The name, profession and specialty, if any, of any medical practitioner who has provided you with any of the information given in answers (A) through (D).

V. PRIOR AND SUBSEQUENT INJURIES/TREATMENT

**Interrogatory No. 16:** Have you been in a medical institution since the incident in question? ___

If so, please state:

A. The person.

B. The name and location of each medical institution in which each person stayed.

C. The dates of each stay.

D. The conditions treated during each stay.

E. The nature of the treatment rendered during each stay.

**Interrogatory No. 17:** Has any health care provider or any person claiming damages in this action criticized any medical care or treatment given to you during or after the incident in question? ___ If so, for each criticism, please state:

A. A description of the criticism.

B. The name, address and qualifications of the person who made the criticism.

C. The date, time and place it was made.

**Interrogatory No. 18:** Please list each injury, symptom or complaint for which damages are claimed in this action from which you suffered at any time before the incident in question.

**Interrogatory No. 19:**

Please state:

A. The name and address of each health care provider who examined or treated you for any physical or emotional condition during the past ten years.

B. The conditions or complaints for which the examination or treatment was performed.

C. The date of each examination or treatment performed.

D. Whether or not the symptoms caused by conditions described in your answer to paragraph (B) of this interrogatory were completely relieved and, if so, the date of relief.

**Interrogatory No. 20:** Since the incident in question, have you suffered any injuries? ___

If so, please state:

A. The date and place.

B. How the injury was sustained.

C. A detailed description of each injury received.

D. The name and address of each medical practitioner rendering treatment.

E. The nature and extent of any permanent disability.

F. The name and address of each person or organization against whom a claim was made, and/or from whom payments were received, for any such injury.

**Interrogatory No. 21:** Have you ever made any claim for money damages against anyone, group, organization, corporation, industrial commission or any entity for any reason? ___

If so, for each claim please state:

A. The complete caption of any lawsuit, arbitration, or other judicial or non-judicial proceeding in which the claim was made.

B. The current status of the claim (pending, settled, on appeal, etc.).

C. The amount of any compensation you received, if any, related to the claim.

**Interrogatory No. 22:** Please identify each health-care provider who has records pertaining to your health care that was rendered during the seven years prior to the incident in question.

A. With respect to each provider identified above, please state whether you will obtain and produce the records.

B. With respect to any records you will not obtain and produce, please state the specific reason or reasons for nonproduction.

## VI. MATTERS CONCERNING THE CONDUCT OF PARTIES

**Interrogatory No. 23:** In this action, you have characterized certain acts or conduct on the part of other parties as being below the standard of care. As to such acts and conduct, please state:

A. Each specific act or acts, failure or failures to act which you contend fell below the standard of care.

B. Specifically what conduct you claim would have complied with the standard of care.

C. Each and every fact upon which you rely when you claim:

1. That any health care provider negligently performed its professional duties to you.

2. That any health care provider's negligent performance of its professional duties to you proximately caused you injury.

**Interrogatory No. 24:** Do you allege that any agent, servant or employee of any party violated or failed to follow any rule, regulation, policy or procedure of a health care institution or of some other authority? ___ If so, please state:

A. The identity of said rule, regulation, policy or procedure.

B. How and by whom you allege said rule, regulation, policy or procedure was violated.

C. How you allege said violation proximately caused injury to you.

**Interrogatory No. 25:** Do you contend that any agent, servant or employee of any party neglected to inform, instruct or warn you as to any matters relating to your condition, care or treatment? ___ If so, for each matter, please state:

A. A description of what agent, servant or employee neglected to inform, instruct or warn you.

B. Whether such failure or neglect contributed to any injury of which you complain, and if so, in what way and to what extent.

**Interrogatory No. 26:** Do you know of any person who is skilled in any particular field whom you may call as a witness at trial of this action and who has expressed an opinion on any issue of this action? ___

If so, please state:

A. The name, present or last known address and telephone number of each person.

B. The field in which each such person is sufficiently skilled to enable him [or her] to express opinion evidence in this action.

C. A complete list of all actions in which each person has rendered an opinion, whether by written report, deposition testimony or trial testimony, including:

1. The name of the case.

2. The court or other tribunal in which filed.

3. The docket number assigned.

4. Whether each person rendered his [or her] opinion by written report, deposition testimony, trial testimony or a combination thereof.

5. Whether you have a copy of such report or testimony and, if not, who you believe would have such copies.

D. Whether such person will base his [or her] opinion:

1. In whole or in part upon facts acquired personally by him [or her] in the course of an investigation or examination of any of the issues of this case, or

2. Solely upon information as to facts provided him [or her] by others.

E. If your answer to (D) above discloses that any such person has made a personal investigation or examination relating to any of the issues of this case, please state the nature and dates of such investigation or examination.

F. Each and every fact, and each and every document, item, photograph or other tangible object supplied or made available to such person.

G. The general subject upon which each person may express an opinion.

H. The substance of the facts and opinions to which such person is expected to testify.

I. Whether such persons have rendered written reports.

If so, please state:

1. The dates of each report.

2. The name, present or last known address and telephone number of the custodian of such reports.

## VII. DAMAGES

**Interrogatory No. 27:** Please state each and every expense, debt or obligation you have incurred, amount expended and item of special damage you will claim at trial as a result of the incident in question. This Interrogatory includes, but is not limited to: medical expense, ambulance expense, transportation expense, physiotherapist expense, psychologist fees, psychiatric fees, laboratory charges, hospital costs and x-ray costs.

## VIII. WITNESSES & EXHIBITS

**Interrogatory No. 28:** With respect to every lay witness whom you intend to or may call to testify, please state:

A. The name, present or last known address and telephone number, occupation and present or last known employer of each such person.

B. What documents or facts such person has provided or communicated to you.

C. The substance of the testimony of such person.

**Interrogatory No. 29:** Please list the names, addresses, official titles, if any, and other identification of all witnesses whom you contemplate will be called upon to testify in support of your claim in this action at trial indicating the nature and substance of the testimony which is expected will be given by each such witness, and stating the relationship, if any, to you.

**Interrogatory No. 30:** Please list specifically and in detail each and every exhibit you intend to use, or believe you may use, at trial in this matter.

**Interrogatory No. 31:** At the time of trial, do you intend to use or refer to any textbook, periodical or other publication during direct examination of your witnesses? ___

If so, please provide the citation for any text or periodical you intend to use.

## IX. COLLATERAL SOURCE

**Interrogatory No. 32:** Have you received, are you now receiving, or are you entitled to receive, collateral source benefits as enumerated in A.R.S. § 12-565?

If so, please state:

A. The amount of each and every payment.

B. Schedule or frequency of such payments/benefits.

C. If the payments have stopped, the date and reason the payments stopped.

D. If the payments are still being received, the length of time you expect to receive these payments.

E. If the benefits are stopped at some future time, please state when and under what circumstances the payments will terminate.

F. The amount of payments you expect to receive in the future.

## X. MISCELLANEOUS

**Interrogatory No. 33:** Have you entered into any agreement or agreements or covenants with any other person or entity in any way compromising, settling or in any way limiting such persons or entity's liability or potential liability for any claim, or part of any claim, arising out of the incident in question? ___

If so, please state:

A. The name and address of each person or entity with whom such agreement or covenant was made.

B. The date of each such agreement or covenant.

C. Whether the agreements or covenants are in writing. ___ If so, state the name and address of the individual who has custody and control of a copy of each such agreement or covenant.

D. The terms of each such agreement or covenant.

E. The consideration paid for each such agreement or covenant.

**Interrogatory No. 34:** Have you asserted any claim against any person or entity, not a named party to this lawsuit, for any part of the loss or damage arising out of the incident in question? ___

If so, state:

A. The name and last known address of each such person or entity.

B. The basis upon which the claim was asserted.

**Interrogatory No. 35:** Does any insurance company or any other person or organization have any interest in this action or any recovery herein by way of subrogation, assignment, trust receipt or otherwise, or has any such claim been asserted? ___ If so, please state the name and address of each such company, other person or organization and the nature and amount of any such claimed interest.

**Interrogatory No. 36:** Do you contend that any entries in the medical records/chart at issue are incorrect or inaccurate? ___

If so, please state:

A. The precise entry (entries) that you think is/are incorrect or inaccurate.

B. What you contend the correct or accurate entry (entries) should have been.

C. The name, present or last known address and telephone number and present or last known employer of each and every person who has knowledge pertaining to (A) and (B).

D. A description, including the author and title of each and every document that you claim supports your answers to (A) and (B).

E. The name, present or last known address and telephone number of each and every person you intend to call as a witness in support of your contention.

**Interrogatory No. 37:** Please list the names, present or last known addresses and telephone numbers, official titles, if any, and other identification of all persons, not previously identified, who:

A. Were present at the events in question.

B. Claim to have information concerning the events in question.

C. Are reported to have information concerning the events in question.

D. Have knowledge of any preexisting medical problems or medical treatment received by you prior to the events in question.

E. Have knowledge of medical problems or medical treatment received by you from the events in question up to the present time.

F. Participated in any investigation concerning the incident in question or of any party or witness thereto.

G. Participated in any surveillance of the injured person/decedent. As to each such person, please state:

1. His or her name, present or last known address and telephone number

2. Present or last known address of any employer.

3. The subject and substance of the information each such person claims to have.

4. The present whereabouts of such person and the telephone number.

**Form 5. Uniform Personal Injury Interrogatories**

**INSTRUCTIONS FOR USE**

A. All information is to be divulged which is in the possession of the individual or corporate party, his attorneys, investigator, agents, employees, or other representative of the named party.

B. A "medical practitioner" as used in these interrogatories is meant to include any person who practices any form of healing arts.

C. Where an individual interrogatory calls for an answer which involves more than one party, each part of the answer should be clearly set out so that it is understandable.

D. Where the terms "you", "your", "plaintiff", or "defendant" are used, they are meant to include every individual party, and separate answers should be given for each responding person or party, if requested.

E. Where the terms "accident(s)" or "incident(s)" are used, they are meant to mean the incident which is the basis of this lawsuit, unless otherwise specified.

**INTERROGATORIES**

**Interrogatory No. 1:** State your name and address or principal place of business, date of birth, and social security number.

**Interrogatory No. 2:** Have you been convicted of a felony? ___ If so, for each felony state:

A. The original charge made against you.

B. The charge of which you were convicted.

C. Did you plead guilty of the charge or were you convicted after trial?

D. The court and cause number.

**Interrogatory No. 3:** Have you ever been a party to a civil lawsuit? ___ If so, state:

A. Were you plaintiff or defendant?

B. What was the nature of the plaintiffs' claim

C. When, where, and in what court was the action commenced?

D. State the names of all the parties other than yourself.

**Interrogatory No. 4:** State exactly and in detail your version of how this accident occurred.

**Interrogatory No. 5:** State specifically and in detail the facts upon which your contention is based that the accident was caused by a negligent conduct of another party, including former parties, or non-party.

**Interrogatory No. 6:** Was an investigation conducted concerning the accident in question? ___ If so, state:

A. The name, address, and occupation of the person or organization conducting the investigation.

B. The date or dates on which the investigation was conducted.

C. Whether you or anyone acting on your behalf has interviewed or spoken with any other party or any of its agents or employees about the event in question. ___ If so, please identify the individual spoken with and the substance of the conversation.

D. The name and address of the person now having custody of any written report made concerning the investigation.

**Interrogatory No. 7:** Do you know of any person who is skilled in any particular field or science, including the field of medicine, whom you may call as a witness upon the trial of this action and who has expressed an opinion upon any issue of this action? ___ If so, state:

A. The name and address of each person.

B. The field or science in which each such person is sufficiently skilled to enable opinion evidence in this action.

C. Whether such potential witness will base his or her opinion:

1. In whole or in part upon facts acquired personally by him or her in the course of an investigation or examination of any of the issues of this case, or

2. Solely upon information as to the facts provided him or her by others.

D. If your answer to 7(C) discloses that any such witness has made a personal investigation or examination relating to any of the issues of this case, state the nature and dates of such investigation or examination.

E. Each and every fact, and each and every document, item, photograph, or other tangible object supplied or made available to such person.

F. The general subject upon which each such person may express an opinion.

G. Whether such persons have rendered written reports. ___ If so:

1. Give the dates of such report.

2. State the name and address of the custodian of such reports.

**Interrogatory No. 8:** Describe in detail all injuries, whether physical, mental, or emotional, experienced since the occurrence and claimed to have been caused, aggravated, or otherwise contributed to by it.

**Interrogatory No. 9:** For all injuries mentioned in the proceeding interrogatory, please identify those injuries which are considered by you to be permanent.

**Interrogatory No. 10:** As to each medical practitioner who has examined or treated any of the persons named in your answers to Interrogatory No. 1 above, for any of the injuries or symptoms described, state:

A. The name, address, and specialty of each medical practitioner.

B. The date of each examination or treatment.

C. The physical, mental, or emotional condition for which each examination or treatment was performed.

**Interrogatory No. 11:** State as to each item of medical expense attributable to the accident:

A. The name and address of the person or organization paid or owed for the medical expense.

B. The amount.

C. The date of each item of expense (attach copies of the itemized bills, if desired).

D. The person or organization who paid the medical expense.

E. The condition for which you incurred the expense.

F. Will you incur medical expenses in the future as a result of the accident in question? ___ If so, state the amount of medical expenses which will be incurred in the future and state in detail the knowledge and source upon which you rely in support of this belief.

**Interrogatory No. 12:** List each injury, symptom, or complaint mentioned in answer to Interrogatory No. 8 from which you suffered at any time before the accident.

**Interrogatory No. 13:** Do you claim to have lost any time from gainful employment as a result of the accident? ___ If so, state:

A. The specific condition which you claim caused the loss of time.

B. The amount of time lost.

C. The rate of pay or compensation regularly received from each such gainful employment.

D. If you claim any damage as a result of the time lost, the total and your method of computation.

**Interrogatory No. 14:** If your answer to Interrogatory No. 13 is yes, list each job or position of employment including self-employment, held by you on the date of and since the accident, stating as to each, the following:

A. Name and address of employment.

B. Date of commencement of and date of termination.

C. Place of employment.

D. Nature of employment and duties performed.

E. Name and address of immediate supervisor.

F. Rate of pay or compensation received.

**Interrogatory No. 15:** Do you claim that your ability to engage in any type of gainful employment has been affected by the accident? ___ If so, state:

A. The specific condition which limits your ability to engage in gainful employment.

B. The economic loss caused by your inability to find gainful employment.

C. Your method of computation for computing such loss.

**Interrogatory No. 16:** Provide the identity and location of any nonparty identified in your response to Interrogatory No. 5 above, who you claim, pursuant to A.R.S. § 12-2506(B) (as amended), was wholly or partially at fault in causing any personal injury, property damage, or wrongful death for which damages are sought in this action.

**Interrogatory No. 17:** Do you have liability insurance or are you aware of any other form of indemnity which you claim is applicable to this accident? ___ If the answer is yes, state:

A. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage.

B. The policy number or numbers of any applicable policy.

C. The limit or limits of liability of each policy.

D. The named insured on each policy.

E. Whether the insurance carrier has accepted or denied coverage.

F. Whether you are being defended by the insurance carrier under a reservation of rights.

**Interrogatory No. 18:** State the name, address, and occupation of the owner of any vehicles you allege caused damage to the plaintiff.

**Interrogatory No. 19:** At the time of the alleged accident, was the driver of said vehicle engaged in the business of any other person or entity? ___ If so, please state the name and address of such other person or entity.

**Interrogatory No. 20:** State whether you or anyone else involved in the accident ingested or used any drugs or medications within 48 hours prior to the accident or drank any intoxicating beverages of any kind within the 12 hours prior to the accident or to the occurrence of the accident alleged in the Complaint. ___ If so, state the times, places, amount, and type of drugs or alcoholic beverages.

**Interrogatory No. 21:** Do there exist any liens, including AHCCCS, Medicare, or any liens provided for by A.R.S. § 33-931 et seq., on any recovery you may have or may obtain in this matter? ___ If so, give the amount and entity holding such lien and the nature of said lien.

**Interrogatory No. 22:** If the accident that is the subject of the plaintiff's claim was a automobile accident, please state the following:

A. Did the vehicle which you were occupying at the time of the accident contain operational seatbelts? ___ If so, were you wearing seatbelts available for your use? ___

B. If you were not wearing the seatbelts available for your use in the vehicle at the time of the accident, set forth your reasons for failing to do so.

COMMITTEE COMMENT

If interrogatories are served with the complaint or an answer, responses to the interrogatories should be due on the same date as the Rule 26.1 disclosure. If the interrogatories *completely* respond to a Rule 26.1 disclosure requirement or if a Rule 26.1 disclosure requirement *completely* responds to an interrogatory, the answer or response may be incorporated by reference.

Counsel are encouraged to submit these uniform interrogatories by reference to their number simultaneously with submission of non-uniform interrogatories.

**Form 6. Contract Interrogatories**

## INSTRUCTIONS FOR USE

A. All information is to be divulged which is in the possession of the individual or corporate party, his attorneys, investigators, agents, employees or other representatives of the named party.

B. When an individual interrogatory calls for an answer which involves more than one part, each part of the answer should clearly set out so that it is understandable.

C. When the terms "you", "Plaintiff" or "Defendant" are used, they are meant to include every individual party and include your agents, employees, your attorneys, your accountants, your investigators, anyone else acting on your behalf. Separate answers should be given for each person named as the party, if requested.

D. When the term "document" is used, it is meant to include every "writing", "recording" and photograph" as those terms are defined in Rule 1001, Ariz. R. Evid.

E. The term "contract(s)" refers to the contract(s) between the parties or to any contract(s) otherwise a subject of the action.

F. Where the terms "claim" or "claims" are used, they are meant to mean or to include a demand, cause of action or assertion for something due or believed to be due.

G. Where the terms "defense" or "defenses" are used, they are meant to mean or to include any justification, excuse, denial or affirmative defense in response to the opposing party's claim.

H. Where the term "negotiation(s)" is used, it is meant to mean or to include conversations, discussions, meeting, conferences and other written or verbal exchanges which relate to the contract.

## GENERAL IDENTIFICATION AND BACKGROUND

**Interrogatory No. 1:** Please state your full name and state any, and all other names which you have ever used or by which you have ever been known.

**Interrogatory No. 2:** If you are a business entity:

A. Please state the name you used, or went by, during your involvement in the events that are the subject of the pleadings;

B. Please state any other names or "d/b/a's" under which you have ever transacted business;

C. Are you a corporation? ___ If so, please state:

1. The name stated in the current Articles of Incorporation.

2. All the other names used by the corporation during the last 10 years and the dates each was used.

3. The date and place of the incorporation;

4. The address of the principal place of business; and

5. Whether you are qualified to do business in Arizona.

D. Are you a partnership? ___ If so, please state:

1. The current partnership name;

2. All of the names used by the partnership during the past 10 years and the dates each was used;

3. Whether you are a limited partnership and, if so, under the laws of what jurisdiction;

4. The name and address of each general partner; and

5. The address of the principal place of business.

E. Are you a joint venture? ___ If so, please state:

1. The current joint venture name;

2. All the names used by the past joint venture during the past 10 years and the dates each was used;

3. The name and address of each joint venturer; and

4. The address of the principal place of business.

F. Are you an unincorporated association? ___ If so, please state:

1. The current unincorporated association name;

2. All of the name used by the unincorporated association in the past 10 years and the dates each was used; and

3. The address of the principal place of business.

G. Are you a limited liability company? ___ If so, please state:

1. The name listed in the current articles of organization;

2. All of the names used by the company during the past 10 years and the dates each was used;

3. The name and address of each member, if any;

4. The name and address of each manager, if any;

5. The date and place of formation;

6. The address of the principal place of business; and

7. Whether you are qualified to do business in Arizona.

H. Are you a business entity of a type (corporation, partnership, etc.) not listed above? ___ If so, please state:

1. The current name of the entity;

2. The type of entity it is, including a statement of the legal authority under which the entity was formed;

3. All of the names used by the entity during the past 10 years and the dates each was used;

4. The date and place the entity was formed;

5. The address of the principal place of business of the entity; and

6. Whether you are qualified to do business in Arizona.

**Interrogatory No. 3:** Have you done business under a fictitious name during the past 10 years? ___ If so, for each fictitious name, please state:

A. The name;

B. The dates used;

C. The state and county where the fictitious name was filed; and

D. The address of the principal place of business.

**Interrogatory No. 4:** During the past 5 years has any public entity registered or licensed your businesses? ___ If so, for each license or registration, please:

A. Identify the license or registration;

B. State the name of the public entity; and

C. State the date of the issuance and expiration.

**Interrogatory No. 5:** State whether you have ever been convicted of a felony. If so, for each felony conviction, please provide the following information:

A. The original charge made against you.

B. The charge of which you were convicted.

C. Did you plead to the charge or were you convicted after the trial?

D. The court and cause (or case) number.

**Interrogatory No. 6:** State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

A. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

B. What was the nature of each claim and defense?

C. The date, location, and title of the court in which the action was commenced.

D. The names of all the parties other than yourself involved in the action.

**Interrogatory No. 7:** Do you have liability insurance, or are you aware of any other form of indemnity or bond, through which you were or might be insured in any manner for the damages, claims, or actions that are the subject of the pleadings? ___ If you answered "Yes", please provide the following information for each policy:

A. The kind of insurance, indemnity or bond;

B. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

C. The policy number or policies numbers of any applicable policy;

D. The limit or limits of liability of each policy.

E. The named insured of each policy.

F. Whether the insurance carrier has accepted or denied coverage.

G. Whether you are being defended by the insurance carrier under a reservation or rights.

**Interrogatory No. 8:** Please state the name, address and telephone number of all employees and/or agents involved in the transactions and events which are the subject of the pleadings.

**Interrogatory No. 9:** Please identify all persons responsible for furnishing any materials or information used to complete the disclosure statement required by Rule 26.1, Ariz.R.Civ.P.

**Interrogatory No. 10:** Please state the name, address and telephone number of all persons who you believe may have knowledge or relevant information concerning each claim or defense disclosed pursuant to Rule 26.1, Ariz.R.Civ.P. If you have disclosed multiple claims or multiple defenses, state the claim(s) or defense(s) about which you believe the person has information or knowledge.

**Interrogatory No. 11:** Identify and list each document you believe may be relevant to each separate claim or defense disclosed pursuant to Rule 26.1, Ariz.R.Civ.P. If you disclosed multiple claims or multiple defenses, state which claim(s) or defense(s) about which you believe the document bears relevance. As to each of the documents identified, please provide the following:

A. The location of the documents.

B. The name, address, and telephone number of the individual with the custody or control over the documents.

**CONTRACT MATTER**

**Interrogatory No. 12:** Do you contend that you did not enter the contract(s)? ___ If your answer was "Yes", please provide the following:

A. Explain in detail the factual support for your position, identifying all documents you believe may be relevant to this issue and identifying the name, addresses, and telephone number of all persons you believe to have knowledge or information relating to your position.

B. Describe in detail the factual support for any contention of lack of contract formation, identifying all documents you believe may be relevant to this issue, and identifying the name, address, and telephone number of all persons you believe have knowledge or information relating to your position.

**Interrogatory No. 13:** With respect to the negotiations leading to the formation of the contract(s), please identify the name, address, and telephone number of all persons involved in those negotiations, and identify all documents that relate to, or were part of, directly or indirectly, the negotiations.

**Interrogatory No. 14:** If you claim that the contract(s) is (are) an oral contract(s), please state what you believe to be the terms and provisions of the contract(s) in detail and state the name, address and telephone number of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

**Interrogatory No. 15:** Do you contend there was a breach of the contract(s)? ___ If so, for each breach, please describe and give the date of every act or omission that you claim is a breach of the contract.

**Interrogatory No. 16:** Do you contend there was a failure to pay money or a debt when due? ___ If so, for each contention of monies or debt being due, please describe and specifically identify the monies or amounts due, including the principal amount, the interest, and any other charges in your description.

**Interrogatory No. 17:** Please provide a detailed computation and/or disclosure of the amount you allege you are owed, and/or the contract performance or benefit you believe you are entitled to, and which you have not been provided. Identify all documents that support your calculation and/or disclosure and state the name of the person who has custody and control over the documents.

**Interrogatory No. 18:** Do you contend that you are entitled to an award of attorneys' fees in this matter? ___ If so, please identify each and every basis upon which you believe you are entitled to attorneys' fees (i.e. statute, contract, or otherwise).

**Interrogatory No. 19:** Do you contend any contract is ambiguous? ___ If so, please identify each such contract, specifically identifying each ambiguous term or provision, and state why it is ambiguous, and identify all documents that support your contention of ambiguity.

**Interrogatory No. 20:** For each contract, please provide the following information:

A. Identify all documents that are part of the contract and for each state the name, address, and telephone number of each person who has the document;

B. State each part of the contract not in writing, the name, address, and telephone number of each person agreeing to that provision and the date the part of the contract was made;

C. Identify all documents that evidence each part of the contract not in writing and for each state the name, address, and telephone number of each person who has the document;

D. Identify all documents that are part of each modification to the contract, and for each state the name, address, and telephone number of each person who has the document;

E. State each modification not in writing, the date, and the name, address and telephone number of each person agreeing to the modification, and the date the modification was made; and

F. Identify all documents that evidence each modification of the contract not in the writing and for each state the name, address, and telephone number of each person who has the document.

**Interrogatory No. 21:** Was performance of the contract(s) excused or discharged? ___ If so, please identify each contract excused or discharged and state why performance was excused or discharged.

**Interrogatory No. 22:** Was (were) the contract(s) terminated by mutual agreement, release, accord and satisfaction, or novation? ___ If so, please identify each contract terminated and state why it was terminated; including dates.

**Interrogatory No. 23:** Is (Are) the contract(s) unenforceable? ___ If so, please identify each unenforceable contract and state why it is unenforceable

**Form 7. Deleted September 16, 2008, effective January 1, 2009.**

**Form 8. Notice of Limited Scope Representation**

Name:
_____

Mailing Address:
_____

City, State, Zip Code:
_____

Telephone:
_____

State Bar #:
_____

Representing:
_____

ARIZONA SUPERIOR COURT OF _____

| | |
|---|---|
| [Name]<br><br>Plaintiff,<br><br>[Name(s)]<br><br>Defendant(s). | Case No. _____<br><br>NOTICE OF LIMITED SCOPE REPRESENTATION PURSUANT TO ARIZ. R. CIV. P. 5.3(c)<br><br>(Assigned to the Honorable _____) |

TO: THE COURT, THE CLERK OF THE COURT AND ALL PARTIES

Undersigned counsel, pursuant to Ariz. R. Civ. Proc., Rule 5.3(c), hereby gives this Notice of Limited Scope Representation and appears on behalf of [name of party represented], who [is/is not] also the real party in interest, as follows:

1. Undersigned counsel's appearance in this matter shall be limited in scope to the following matters, hearings or issues: [Identify the specific matters, hearings or issues with regard to which the representation shall extend].

2. Undersigned counsel hereby states that undersigned counsel and [his/her] [client/client's legally authorized representative] have a written agreement that the attorney shall provide limited scope representation for the purpose of representing the client in this Court, and this Notice accurately represents the scope of that agreed representation.

| | |
|---|---|
| _____ | _____ |
| Date | Attorney |
| _____ | _____ |
| Date | Client or client's legally authorized representative |

**Form 9. Form of Subpoena**

Name:

Address:

City:

State:

Phone:

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____

| | | |
|---|---|---|
| _____ | ) | |
| Plaintiff | ) | Case No.: |
| | ) | |
| vs. | ) | **SUBPOENA IN A CIVIL CASE** |
| | ) | |
| _____ | ) | |
| Defendant | ) | |
| | ) | |
| | ) | |

**TO:** _____
(Name of Recipient)

[Select one or more of the following, as appropriate:]

[ ] **For Attendance of Witnesses at Hearing or Trial**

**YOU ARE COMMANDED** to appear in the Superior Court of the State of Arizona, in and for the County of _____, at the place, date and time specified below to testify at [ ] a hearing [ ] trial in the above cause:

Judicial Officer:

Courtroom:

Address:

Date:

Time:

[ ] **For Taking of Depositions**

**YOU ARE COMMANDED** to appear at the place, date and time specified below to testify at the taking of a deposition in the above cause:

Place of Deposition:

Address:

Date:

Time:

Method of Recording:

[ ] **For Production of Documentary Evidence or Inspection of Premises**

**YOU ARE COMMANDED,** to produce and permit inspection, copying, testing, or sampling of the following designated documents, electronically stored information or tangible things, or to permit the inspection of premises:

[designation of documents, electronically stored information or tangible things, or the location of the premises to be inspected]

at the place, date, and time specified below:

Place of Production or Inspection:

Address:

Date:

Time:

[The following text must be included in every subpoena:]

**Your Duties in Responding To This Subpoena**

***Attendance at a Trial*.** If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena" section below. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

***Attendance at a Hearing or Deposition.*** If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or (2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than: (a) the county where you reside or you transact business in person; or (b) the county where you were served with the subpoena or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena" section below.

***Production of Documentary Evidence.*** If this subpoena commands you to produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date, and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense. *See* Rule 45(c)(2)(D) and (c)(5) of the Arizona Rules of Civil Procedure. *See also* "Your Right To Object To This Subpoena" section below. If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form. *See* Rule 45(c)(2)(B) and (C) of the Arizona Rules of Civil Procedure.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

***Inspection of Premises.*** If the subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena. *See* Rule 45(c)(5) of the Arizona Rules of Civil Procedure. *See also* "Your Right to Object to This Subpoena" section below.

***Combined Subpoena.*** You should note that a command to produce certain designated materials, or to permit the inspection of premises, *may* be combined with a command to appear at a trial, hearing, or deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil

Procedure. You do not, however, need to appear in person at the place of production or inspection unless the subpoena *also* states that you must appear for and give testimony at a hearing, trial or deposition. *See* Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

**Your Right To Object To This Subpoena**

***Generally*.** If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of Civil Procedure.

***Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition*.** If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rule 45(e)(2)(E) of the Arizona Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so—by the party or attorney serving the subpoena or by a court order—before the date and time specified for your appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

The court *must* quash or modify a subpoena:

(1) if the subpoena does not provide a reasonable time for compliance;

(2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than: (a) the county where you reside or transact business in person; (b) the county where you were served with a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order; or

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

(4) if the subpoena subjects you to undue burden.

*See* Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

The court *may* quash or modify a subpoena:

(1) if the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

(2) if you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;

(3) if you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or

(4) if the court determines that justice requires the subpoena to be quashed or modified.

*See* Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if: (1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (2) if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated. *See* Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

***Procedure for Objecting to Subpoena For Production of Documentary Evidence.*** If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to: (1) producing, inspecting, copying, testing, or sampling any or all of the materials designated in the subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense. You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(c)(5)(A)(i) and (ii) of the Arizona Rules of Civil Procedure.

If you object because you claim the information requested is privileged, protected, or subject to protection as trial preparation material, you must express the objection clearly, and identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that—without revealing information that is itself privileged or

protected—will enable the demanding party to assess the claim. *See* Rules 26(b)(6)(A) and 45(c)(5)(C) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. *See* Rule 45(c)(5)(B) of the Arizona Rules of Civil Procedure.

If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. *See* Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

Instead of sending a written objection to the party or attorney who served the subpoena, you also have the option of raising your objections in a motion to quash or modify the subpoena. *See* Rule 45(e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition."

If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. *See* Rule 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena as described in the section above entitled "Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition." *See* Rule 45(b)(5) and 45(c)(5)(A)(iii) of the Arizona Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so—by the party or attorney serving the subpoena or by a court order—before the date and time specified for your appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

**ADA Notification**

Requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding.

[Optional: this form may include the provisions of Rule 64.1(c)(2) of the Arizona Rules of Civil Procedure].

SIGNED AND SEALED this date _____

_____, CLERK

By: _____
Deputy Clerk

Certificate of service:

**Form 10. Certification of a Complex Case**

**IN THE SUPERIOR COURT OF ARIZONA**

**IN AND FOR THE COUNTY OF _____**

| | | |
|---|---|---|
| _____, | ) | Case No. _____ |
| Plaintiff | ) | |
| | ) | [ ] Certification of Complexity |
| vs. | ) | [ ] Joint Certification of Complexity |
| | ) | [ ] Contravening Certification |
| | ) | |
| Defendant | ) | |
| _____, | ) | |

[ ] The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

[ ] Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve

[ ] Management of a large number of witnesses or a substantial amount of documentary evidence

[ ] Management of a large number of separately represented parties

[ ] Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:

_____

_____

[ ] The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law

[ ] Inherently complex legal issues

[ ] Factors justifying the expeditious resolution of an otherwise complex dispute

[ ] The following other factor(s) warranting designation as a complex case, in the interest of justice:

_____

_____

_____

[ ] The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:

_____

_____

_____

_____

Dated this ___ day of _____, 20___.

_____ _____

(Attorney for) (Plaintiff) (Defendant) (Attorney for) (Plaintiff) (Defendant)

[This certification must be accompanied by a motion]

**Form 11(a). Joint Report: Expedited Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Joint Report** |
| Defendants | ) | *(Expedited case)* |
| | ) | Assigned to: |

The parties signing below certify that they have conferred about the matters contained in Rule 16(d), and they further certify that:

(a) Every defendant has been served or dismissed, and every defendant who has not been defaulted has filed a responsive pleading;

(b) There are no third party claims;

(c) This case is not subject to the mandatory arbitration provisions of Rule 72; and

(d) The parties will disclose no more than one expert per side, and each party will call no more than four lay witnesses at trial.

With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 12 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:***_____

_____.

- If a claimant is seeking other than monetary damages, specify the relief sought:

_____.

***2. Settlement:*** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

- The parties will be ready for a settlement conference or a private mediation by _____.
- If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

***3. Readiness:*** This case will be ready for trial by _____.

***4. Jury:*** A trial by jury is demanded. yes no

***5. Length of trial:*** The estimated length of trial is ___ days.

***6. Summary jury:*** The parties agree to a summary jury trial. yes no

***7. Short cause:*** A non-jury trial will not exceed one hour. yes no

***8. Preference:*** This case is entitled to preference for trial under this statute or rule:

_____.

***9. Special requirements:*** At a pretrial conference or at trial, a party will require

disability accommodations (specify) _____

an interpreter (specify language) _____

***10. Scheduling conference:*** The parties request a Rule 16(d) scheduling conference. yes no

If requested, the reasons for having a conference are: _____

_____.

***11. Other matters:*** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

_____.

***12. Items upon which the parties do not agree:*** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

Dated this ___ day of _____, 20 ___.

| | |
|---|---|
| _____ | _____ |
| For Plaintiff | For Defendant |

**Form 11(b). Proposed Scheduling Order: Expedited Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Proposed Scheduling Order** |
| Defendants | ) | *(Expedited case)* |
| | ) | Assigned to: |

Upon consideration of the parties' Joint Report, the court orders as follows:

***1. Initial disclosure:*** The parties have provided their initial disclosure statements, or will provide them no later than _____.

***2. Witness disclosure:*** The parties will disclose no more than one expert per side, and each party will call no more than four lay witnesses at trial. The parties will disclose lay witnesses by _____. The parties will identify any expert witnesses and the experts' areas of testimony, and will simultaneously disclose the opinions of those expert witnesses, by _____. (Alternative: Plaintiff will disclose an expert's identity, area of testimony, and opinions by _____, and Defendant will disclose an expert's identity, area of testimony, and opinions by _____.) The parties will simultaneously disclose the experts' rebuttal opinions.

***3. Final supplemental disclosure:*** Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

**No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial if not disclosed in a timely manner, except for good cause shown or upon a written or an on-the-record agreement of the parties.**

***4. Discovery deadlines:*** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

***5. Settlement conference or private mediation:*** [choose one]:

**Referral to ADR for a settlement conference:** The clerk or the court will issue a referral to ADR by a separate minute entry.

**Private mediation:** The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

**No settlement conference or mediation:** A settlement conference or private mediation is not ordered.

***6. Dispositive motions:*** The parties shall file all dispositive motions by _____.

***7. Trial setting conference:*** On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Participants shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other attorneys and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

***8. Firm dates:*** No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

***9. Further orders:*** The court further orders as follows: _____.

| | |
|---|---|
| _____ | _____ |
| Date | Judge of the Superior Court |

**Form 12(a). Joint Report: Standard Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Joint Report** |
| Defendants | ) | *(Standard case)* |
| | ) | Assigned to: |

The parties signing below certify that they have conferred about the matters set forth in Rule 16(d), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

***1. Brief description of the case:*** _____

- If a claimant is seeking other than monetary damages, specify the relief sought

_____.

***2. Current case status:*** Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a "no" response to either of the above statements: _____

_____.

***3. Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

***4. Special case management:*** Special case management procedures are appropriate: yes no If "yes," the following case management procedures are appropriate because:

_____.

***5. Settlement:*** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s):

_____.

***6. Readiness:*** This case will be ready for trial by _____.

***7. Jury:*** A trial by jury is demanded. yes no

***8. Length of trial:*** The estimated length of trial is ___ days.

***9. Summary jury:*** The parties agree to a summary jury trial. yes no

***10. Preference:*** This case is entitled to a preference for trial pursuant to the following statute or rule:

_____.

***11. Special requirements:*** At a pretrial conference or at trial, a party will require

disability accommodations (specify) _____

an interpreter (specify language) _____

***12. Scheduling conference:*** The parties request a Rule 16(d) scheduling conference. yes no If requested, the reasons for having a conference are

_____.

***13. Other matters:*** Other matters that the parties wish to bring to the court's attention that may affect management of this case:

_____.

***14. Items upon which the parties do not agree:*** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

Dated this ___ day of _____, 20 ___.

| | |
|---|---|
| _____ | _____ |
| For Plaintiff | For Defendant |

**Form 12(b). Proposed Scheduling Order: Standard Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Proposed Scheduling Order** |
| Defendants | ) | *(Standard case)* |
| | ) | Assigned to: |

Upon consideration of the parties' Joint Report, the court orders as follows:

***1. Initial disclosure:*** The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

***2. Expert witness disclosure:*** The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

***3. Lay (non-expert) witness disclosure:*** The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

***4. Final supplemental disclosure:*** Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

**No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.**

***5. Discovery deadlines:*** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

***6. Settlement conference or private mediation:*** [choose one]:

**Referral to ADR for a settlement conference:** The clerk or the court will issue a referral to ADR by a separate minute entry.

**Private mediation:** The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

**No settlement conference or mediation:** A settlement conference or private mediation is not ordered.

***7. Dispositive motions:*** The parties shall file all dispositive motions by _____.

***8. Trial setting conference:*** On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

***9. Firm dates:*** No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

***10. Further orders:*** The court further orders as follows: _____

_____

_____ _____

Date Judge of the Superior Court

**Form 13(a). Joint Report: Complex Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Joint Report** |
| Defendants | ) | *(Complex case)* |
| | ) | Assigned to: |

The parties signing below certify that they have conferred about the following matters. With regard to issues upon which the parties could not agree, they have set forth their positions separately in item 6 below.

***1. Brief description of the case:***

***2. Participants:*** The total number of parties (including third parties) in this case is _____:

- Number of counsel appearing: _____
- Number of self-represented litigants appearing: _____
- Number of parties not yet served: _____

***3. Pleadings:*** This case includes [check if applicable]:

A counterclaim(s)

A cross claim(s)

A third party complaint(s)

A request for class action certification

Consolidated cases

***4. Complexity:*** This case is complex under the factors specified in Rule 8(i)(2) because:

***5. Special considerations:*** The parties request the court to consider at this time the following information concerning management of this case:

***6. Items upon which the parties do not agree:*** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

***7. Initial case management conference:*** The parties agree that the court may set this matter for an initial case management conference under Rule 16.3. Prior to the conference, the parties will meet and confer, and prepare a second joint report, addressing those items specified in Rules 16(d) and 16.3(a) of the Arizona Rules of Civil Procedure. If the parties cannot agree on an item in the joint report, the report will state the positions of the parties concerning the item at issue. The parties will submit the second joint report to the court at least seven (7) days before the conference date specified above.

Dated this ___ day of _____, 20 ___.

| | |
|---|---|
| _____ | _____ |
| For Plaintiff | For Defendant |
| _____ | _____ |
| For: | For: |

**Form 13(b). Proposed Scheduling Order: Complex Case**

<Text of form as added by Arizona Supreme Court Order No. R-13-0017, subject to the applicability provisions provided in the Nov. 27, 2013 amendment to the order.>

In the Superior Court of Arizona
_____ County

| | | |
|---|---|---|
| Plaintiffs | ) | Case number _____ |
| v | ) | **Proposed Scheduling Order** |
| Defendants | ) | *(Complex case)* |
| | ) | Assigned to: |

Upon consideration of the parties' Joint Report, this court orders as follows:

***1. Initial case management conference:*** This case is set for an initial case management conference in this division on the ___ day of _____, 20 ___, at ___ a.m./p.m. [The court will provide the date.]

***2. Second joint report:*** The parties shall meet and confer, and prepare a second joint report, addressing those items specified in Rules 16(d) and 16.3(a) of the Arizona Rules of Civil Procedure. If the parties cannot agree on an item in the joint report, the report will state the positions of the parties concerning the item at issue. The parties will submit the joint report at least seven (7) days before the conference date specified above.

***3. Sanctions:*** Any party who does not participate in good faith with the other parties in conferring and in preparing the second joint report, or who does not attend the initial case management conference, shall be subject to sanctions as provided in Rules 16(i) and 16.3(b).

***4. Further orders:*** The court further orders as follows: _____

_____.

_____ _____

Date Judge of the Superior Court

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