Rules of Civil Procedure

for the Superior Courts of Arizona

Arizona Chamber of Commerce and Industry Supplement to Pre-Petition Comments & Suggestions on Task Force Vetting Draft Appendix A

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for the Superior Courts of Arizona

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 good faith and reasonable argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the contentions are well grounded in fact;

(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; or

(5) that if the signer had reason to believe representations made by others and contained in the document were false or materially insufficient, the signer has made an independent reasonable inquiry into the facts.

(c) Sanctions.

(1) ***Generally.*** If a pleading, motion or other document is signed in violation of this rule, the court, on motion or on its own, must impose on the person who signed it, a represented party, or both, an appropriate sanction, which must 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, and must include—as applicable—a dismissal of the document, or dismissal of the count or counts that violate this rule, unless the court sets forth on the record findings of fact, supported by clear and convincing evidence, that show a manifest injustice would result. All appeals of the court's rulings under this Rule 11(c)(1) are de novo on law and facts.

(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(a)(2)(B).

(d) Assisting Filing by Self-Represented Person. An attorney may help draft a pleading, motion or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented 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 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) identification of areas of expert testimony;

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

(D) propounding of written discovery;

(E) 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 of dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

(4) ***Requirements of Joint Report and Proposed Scheduling Order.*** Unless the court orders otherwise for good cause, the 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 defaulted parties has filed an answer;

(ii) There are no third party claims;

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

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

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

(C) *Complex*. The parties must use Forms 13(a) and (b) (Complex Case) if the factors enumerated in Rule 8(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 any action as expedited, standard, or complex. The court should endeavor to conduct trial in expedited actions within 12 months after the action commenced.

(c) Scheduling Orders.

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

(2) ***Contents.*** The Scheduling Order must include calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted under Rule 16(b). The Scheduling Order must also set either (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 for good cause and with the court's consent. Once a trial date is set, the parties may modify that date only under Rule 38.1.

(d) Scheduling Conferences in Non-medical Malpractice Actions. Except in medical malpractice actions, on a 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 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 trial preparation materials after production;

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

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

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

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

(8) resolve any discovery disputes;

(9) eliminate nonmeritorious claims or defenses;

(10) permit the amendment of the pleadings;

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

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

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

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

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

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

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

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

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

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

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

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

(1) Determine the additional disclosures, discovery and related activities to be undertaken and a schedule for those activities. The schedule must include the depositions to be taken, any medical examination that a defendant desires to be made of a plaintiff, and the additional documents, electronically stored information, and other materials to be exchanged. Except on the 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 the disclosure of standard-of-care and causation expert witnesses. Unless good cause is shown, such disclosure must be simultaneous and be made within 30 to 90 days after the conference, depending on the number and complexity of the issues. Unless good cause is shown, no motion for summary judgment based on the lack of expert testimony may be filed until after the date set for the simultaneous disclosure of expert witnesses;

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

(4) Determine the number of expert witnesses or designate expert witnesses as set

forth in Rule 26(b)(4)(D);

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

(6) Resolve any discovery disputes;

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

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

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

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

(11) Set a trial date 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) the imposition of time limits on trial proceedings;

(D) the use of juror questionnaires;

(E) the use of juror notebooks;

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

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

(H) other matters that the court deems appropriate.

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

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

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

(A) Stipulations of material fact and applicable law;

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

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

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

(E) Each 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 the stipulate can be admitted into evidence, with such stipulations being subject to court approval;

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

(G) A brief statement of the case to be read to the jury during voir dire. If the parties

cannot agree on this statement, then each party must submit a separate statement for the 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 Rule 615 of the Arizona Rules of Evidence regarding the exclusion of witnesses from the courtroom;

(L) A brief description of settlement efforts; and

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

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

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

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

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

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

(8) ***Modifications.*** This rule'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 lieu 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 untimely disclosed information from evidence.

(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.

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Comment

2017 Amendment

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. The amendments to Arizona Rules of Civil Procedure 16(a) and 26(b)(1)(C) have not been amended to incorporate use of the word "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 the "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 Rule of Civil Procedure 16(a)(3) and 26(b)(1)(C).

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) *Time to Issue.* Within 120 days after a person sues and serves or is sued and served 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 for the court's reasons for maintaining the case as a class action; and

(iv) describe all evidence in support of 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 fairly conduct the action—giving appropriate notice to some or all class members of:

(i) any step in the action;

(ii) the proposed extent of the judgment; or

(iii) the 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 except that—on motion—the court may permit discovery to continue.

(g) Class Counsel.

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

(A) must consider:

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

(ii) 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).

I. 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. Such discovery may be obtained only if 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.

(B) *Limits on Discovery.* The court—on motion under Rule 26(c) or on its own after reasonable notice to the parties—must limit discovery that would otherwise be permissible if it determines that the discovery: (i) is unreasonably cumulative or duplicative; (ii) can be obtained from another source that is more convenient, less burdensome, or less expensive; (iii) seeks information that the party has had ample opportunity to obtain; or (iv) is unduly burdensome or expensive given the needs of the action, the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, and the parties' resources.

(2) ***Specific Limits on Discovery of Electronically Stored Information***. A party need not provide discovery of electronically stored information from sources that the party shows are not reasonably accessible because of undue burden or expense of because of the good faith routine operation of an electronic information system. If a party makes that showing, the court may nonetheless order disclosure or discovery of electronically stored information if the requesting party shows good cause, considering the scope of Rule 26(b)(1)(A) and 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), 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 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 the 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 Non-party 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 non-party who is not disclosed in accordance with this rule except on stipulation of all the parties or on motion showing good cause, reasonable diligence, and lack of unfair prejudice to all other parties.

(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: (a) the party seeking confidentiality must show why a confidentiality order should be entered or continued; and (b) the party or intervenor opposing confidentiality must show why a confidentiality

order should be denied in whole or in part, modified or vacated. The burden of showing good cause for an order remains with the party seeking confidentiality.

(B) *Findings of Fact.* When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to: (i) any 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 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 must 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 Motions. Any discovery motion must attach a good faith consultation certificate complying with Rule 7.1(h).

Rule 26.1. Prompt Disclosure of Information

(a) Duty to Disclose; Disclosure Categories. Within the times set forth in Rule 26.1(d) or in a Scheduling Order or Case Management Order, each party must disclose in writing and serve on all other parties a disclosure statement that sets forth:

(1) The factual basis of each of the disclosing 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 damage;

(8) The existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party plans to use at trial, 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;

(10) For any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, (A) the existence and a copy of, or the substance of if no copy is available, the insurance policy, indemnity agreement, or suretyship agreement; (B) the existence, basis, and a copy 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; and

(11) Whether any tangible evidence, documents, or electronically stored information that the disclosing party believes may be relevant to the subject matter of the action is being withheld on the grounds that it (i) is unreasonably cumulative or duplicative; (ii) can be obtained from another source that is more convenient, less burdensome, or less expensive; (iii) is 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.

(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 confer promptly and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;

(ii) the form in which the information will be produced; and

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

(B) *Resolution of Disputes.* If the parties are unable to satisfactorily resolve any dispute, they must present it to the court for resolution 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 native form or in another reasonably usable form.

(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 whenever new or additional information is discovered or revealed. A party must serve such additional or amended disclosures in a timely manner, but in no event more than 30 days after the information is revealed to or discovered by the disclosing party. If 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 (c)(5).

(e) Signature Under Oath. Each disclosure must be in writing and signed under oath by the party making the disclosure.

(f) Claims of Privilege or Protection of Work Product Materials.

(1) ***Information Withheld*****.** When a party withholds information, a document, or electronically stored information from disclosure or discovery on a claim that it is privileged or subject to protection as work product, the party must 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 27. Discovery Before an Action Is Filed or During an Appeal

(a) Before an Action Is Filed.

(1) ***Petition.*** A person who wants to perpetuate testimony—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; or (ii) under Rule 35 for a physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; 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 to allow 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 non-parties under Rule 45 regardless of whether they are identified as an expected adverse party under Rule 27(a)(1)(D).

(C) Appointment of Counsel. If a court authorizes a deposition but an expected adverse party is not served in the manner 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.*** The party who wants to perpetuate testimony or preserve evidence under the rules must move for leave to conduct discovery during the pendency of the appeal. 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 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) ***Depositions Permitted.*** A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold a stipulation for additional depositions under this rule.

(2) ***Depositions by Plaintiff Fewer Than 30 Days After Serving the Summons and Complaint.*** A plaintiff must obtain leave of court to take a deposition earlier than 30 days after serving the summons and complaint on any defendant unless: (A) a defendant has served a deposition notice or otherwise sought discovery under these rules; or (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

(3) ***Incarcerated Deponents.*** Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court prescribes.

(4) ***Compelling Attendance of Deponent.*** A party may compel a non-party 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, as set out in the subpoena, must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents, 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 will be responsible for the cost of the original transcript. Any other party may, at its expense, arrange to receive a certified copy of the transcript.

(4) ***By Remote Means.*** The parties may 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. When a deposition is taken remotely, any documents or tangible items specified in the notice of deposition must be produced to the requesting party reasonably in advance of the deposition.

(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 or demeanor must not be distorted through recording techniques.

(C) *After the Deposition.* At the end of the deposition, the officer must state or note on the record that the deposition is complete and must set out any stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other relevant matters.

(6) ***Notice or Subpoena Directed to an Entity.*** In its deposition notice or subpoena, a party may name as the deponent a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or other entity, and must then describe with reasonable particularity the matters for examination. The named entity must then designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf. If the entity designates more than one person to testify, it must set out the matters on which each designated person will testify. Each designated person must testify about information known or reasonably available to the entity. This Rule 30(b)(6) does not preclude a deposition by any other procedure allowed by these rules.

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions.

(1) ***Examination and Cross-Examination.*** The examination and cross-examination of a deponent proceed as they would at trial under the Arizona Rules of Evidence, except for Rules 103 and 615. Any party not present within 30 minutes after the time specified in the notice of deposition waives any objection that the deposition was taken without its presence. After putting the deponent under oath or affirmation, the officer 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 limitation ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer and the testimony is taken subject to any objection.

(3) ***Conferences Between Deponent and Counsel.*** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) ***Participating Through Written Questions.*** Instead of participating in the oral examination, a party may serve written questions in a sealed envelope on the party who noticed the deposition, who must deliver them to the officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit.

(1) ***Duration.*** Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

(2) ***Sanction.*** The court must 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 makes during the 30-day period.

(f) Officer's Certification and Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) ***Certification and Delivery.*** The officer must certify in writing that the deponent was duly sworn by the officer and that the deposition accurately records the 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 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

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 documents requested in a subpoena served under Rule 45, provided the party seeking the documents shows clearly and convincingly in its motion that such documents are not obtainable from another source and are indispensable to the party's claim.

(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 must, 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 must not order this payment if:

(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;

(ii) the opposing party's nondisclosure, response, or objection was

substantially justified; or 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 must, 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 must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.

(b) Failure to Comply With a Court Order.

(1) ***Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure must 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 Rule 37(a), the court where the action is pending must enter further just orders. They must 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 must 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 shown, 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 must 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 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 must 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 must, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent—or a person designated under Rules 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 a request 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 must 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 must 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, must 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, must:

(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) dismiss the action or enter a default judgment.

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

(a) Trial Setting. Civil actions are set for trial under Rule 16 or Rule 77. Preference is given to short causes and actions that are entitled to priority by statute, rule or court order. 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 for the solely for the purpose of delay and that the postponement will serve the interests of justice.

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

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

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

(ii) the witness's expected testimony;

(iii) the expected testimony's materiality;

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

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

the witness available; and

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

(B) *Denial of a Motion for Postponement.* The court must deny a motion for postponement if, among other grounds, it rules that the described testimony would be inadmissible if presented at trial or if all non-moving parties stipulate that the movant's description of witness's expected testimony is accurate and would be admissible if presented at trial. If the non-moving parties offer such a stipulation, the movant's description of the witness's expected testimony may be read to the jury at trial as the witness's testimony. Such testimony may be controverted as if the witness were personally present.

(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 advised of a scheduling conflict, the affected 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 the 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 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 make an appropriate order regarding any bond or other posted security, unless, before the 60-day period expires:

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

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

(iii) permit the inspection of premises; and

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

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

(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 for 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 for the county where the action is pending.

(2) ***Combining or Separating a Command to Produce or to Permit Inspection.*** A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be included in a subpoena commanding attendance 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 forty miles from the place of service; or

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

(4) ***Command to Attend a Deposition—Notice of Recording Method.*** A subpoena commanding attendance 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 for the county where the production or inspection is to be made.

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

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

(B) *Form for Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form 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 produce electronically stored information from sources that the person shows are not reasonably accessible because of undue burden or expense or because of the good-faith routine operation of an electronic information system. If a person makes that showing, the court may nonetheless order production of electronically stored information if the requesting party shows good cause, considering the scope of Rule 26(b)(1)(A) and limits 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 upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) A person served with a subpoena that combines a command to produce materials, or to permit inspection, with a command to attend a deposition, hearing or trial, may object to any portion of the subpoena. A person objecting to the portion of a combined subpoena that commands attendance 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 trial-preparation material 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 trial preparation 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 1 day's attendance and the mileage allowed by law.

(2) ***Exceptions to Tendering Fees.*** Fees and mileage need not be tendered when the subpoena commands attendance at a trial or hearing or is issued on behalf of the state 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 clerk of the court 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 must impose an appropriate sanction—which must—include, but is not limited to, lost earnings, the reasonable costs of production, 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:

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

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

(iv) it subjects a person to undue burden; or

(v) in the case of a third-party subpoena, the party seeking the information has not shown clearly and convincingly that such documents are not obtainable from another source and are indispensable to the party's claim.

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

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

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

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

(iv) justice so requires.

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

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

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

(3) ***Subpoenas to Third-Parties for Production of Materials or Inspection of Premises.*** The reasonable production or inspection expenses resulting from a subpoena issued to a third-party commanding the production of documents,

electronically stored information, tangible things, or permission for the inspection of premises under 45(c) must be defrayed by the party seeking discovery unless the court determines that the third-party has an interest in the outcome of the case. If the production expenses can be reasonably calculated by the third-party prior to production or inspection, the court may require advance payment of such expenses at the time of the 16(d) Scheduling Conference.

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

Rule 45.1. Interstate Depositions and Discovery

(a) Definitions. In this rule:

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

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

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

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

(A) attend and testify at a deposition;

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

(C) permit the inspection of premises.

(b) Issuing Subpoena.

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

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

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

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

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

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

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

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

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

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

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

(1) Rules 30(a)(1) ("Depositions Permitted") and 30(a)(2) ("Depositions by Plaintiff Fewer than 30 Days after Serving the Summons and Complaint"), 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, by a court order, or by any other provision of Rules 45 or 45.1, a person who is properly served with a deposition subpoena must attend and testify at the date, time and place specified in the subpoena.

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

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

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

(C) must be filed as a separate civil action bearing the same caption as appears on the

subpoena. The following phrase must appear below the case number of the newly filed action: "Motion or Application Related to a Subpoena Issued Under Ariz. R. Civ. P. 45.1." Any later motion or application relating to the same subpoena must be filed in the same action.

Rule 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 Officer of Court as Surety. No attorney or court officer who is involved in an action or other judicial proceeding may be, or act on behalf of, a surety in the action or proceeding.

(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) Verified Pleadings. If a rule or statute requires a pleading to be verified, the pleading must be accompanied by an affidavit by the party—or a person acting on the party's behalf who is acquainted with the facts after independent reasonable inquiry into them—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.