

Appendix B

Proposed Rule Amendments (redline copy)

Rule 4. Summons

...

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

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

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

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

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

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

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

Appendix B

Rule 4.2. Service of Process Outside Arizona

...

(b) Direct Service.

- (1) *Generally.* A party may serve process outside Arizona, but within the United States, in the same manner as provided in Rules 4.1(d) through ~~(j)~~(i).
- (2) *Who May Serve.* Service must be made by a person who is authorized to serve process under the law of the state where service is made.
- (3) *Effective Date of Service.* Service is complete when made, and the time period under Rule 4.2(m) starts to run on that date.

...

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

- (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
- (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
 - (A) as set forth by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
 - (B) as the foreign authority directs in response to a letter rogatory or letter of request;~~or~~
 - (C) unless prohibited by the foreign country's law, by:
 - (i) delivering a copy of the summons and of the pleading being served to the individual personally; or

Appendix B

- (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
- (D) by other means not prohibited by international agreement, as the court orders.

Appendix B

Rule 6. Computing and Extending Time

...

(d) Minute Entries, Orders, and Other Court-Generated Documents.

Notices, minute entries, orders, and other court-generated documents are entered on the date they are filed by the clerk. Unless the court orders otherwise, if an order or other court-generated document states that an act may or must be done within a specified time after the ~~order~~ document is entered, the date the ~~order~~ document is filed is “the day of the act, event or default” under Rule 6(a)(1).

Appendix B

Rule 7.1. Motions

...

(f) Limits on Motions to Strike.

...

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

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

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

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

Appendix B

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

(a) Time to File and Serve a Responsive Pleading.

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

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

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

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

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

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

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

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

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

Appendix B

Rule 26. General Provisions Governing Discovery

...

- (e) **Supplementing and Correcting Discovery Responses.** A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect. If the party knows or reasonably should know the additional or corrective information is relevant to a hearing or deposition scheduled to occur in less than 30 days, the party must supplement or correct the discovery response reasonably in advance of the hearing or deposition.

Appendix B

Rule 54. Judgment; Costs; Attorney's Fees; Form of Proposed Judgments

...

(f) Request for Costs.

(1) *Time for Filing Request if a Motion for Attorney's Fees Is Filed.*

If a party seeking costs also seeks an award of attorney's fees, a verified request for an award of taxable costs under A.R.S. § 12-332 must be filed on the same day the party files its motion for attorney's fees under Rule 54(g).

(2) *Time for Filing Request if No Motion for Attorney's Fees Is Filed.*

If a party seeking costs does not seek an award of attorney's fees under Rule 54(g), a verified request for costs must be filed within the time set forth below:

(A) *Rule 54(c) Judgments.* If a decision adjudicates all claims and liabilities of all of the parties and judgment is to be entered under Rule 54(c), any request for costs must be filed within 20 days after the decision is filed, or by such other date as the court may order.

(B) *Decisions Subject to Rule 54(b)—Adjudicating All Claims and Liabilities of Any Party.* If a decision adjudicates all claims and liabilities of any party:

(i) If that party or another party moves for entry of judgment under Rule 54(b), or includes Rule 54(b) language in a proposed form of judgment, a prevailing party seeking costs must file a verified request for an award of taxable costs under A.R.S. § 12-332 within 20 days after service of the motion or proposed form of judgment seeking Rule 54(b) treatment, or by such other date as the court may order.

(ii) If the court declines to enter judgment under Rule 54(b), or no party seeks entry of judgment under Rule 54(b), a prevailing party seeking costs must file a verified request for costs no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action's dismissal, whichever occurs first.

Appendix B

(C) *Decisions Subject to Rule 54(b)—Adjudicating Fewer Than All Claims and Liabilities of a Party.* If a decision or judgment adjudicates fewer than all claims and liabilities of a party, a prevailing party seeking costs must file a verified request for costs no later than 20 days after any decision is filed that adjudicates all remaining claims in the action, or 20 days after the action’s dismissal, whichever occurs first.

~~(D) *Response and Reply.* A party opposing a request for costs must file a response within 5 days after the request is served. Any reply must be filed within 5 days after the response is served.~~

(3) *Response and Reply.* A party opposing a request for costs must file a response within 5 days after the request is served. Any reply must be filed within 5 days after the response is served.

...

(g) **Attorney’s Fees.**

...

(2) *Time for Filing Motion—Rule 54(c) Judgments.* If a decision adjudicates all claims and liabilities of all of the parties, except a claim for attorney’s fees, and judgment is to be entered under Rule 54(c), any motion for attorney’s fees must be filed within 20 days after the decision is filed, or by such other date as the court may order.

...

(i) **Scope; Jurisdiction.**

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

(2) *Jurisdiction.* If a judgment certified under Rule 54(b) adjudicates fewer than all of the claims and liabilities of any party, the court retains jurisdiction:

Appendix B

- (A) to award costs with respect to that judgment, if a request for costs is timely filed under Rule 54(f); and
- (B) to award attorney's fees with respect to that judgment, if a motion for fees is timely filed under Rule 54(g).

Appendix B

Rule 55. Default; Default Judgment

(a) Entering a Default.

...

(2) *Application for Default.* A party seeking entry of default must file a written application that:

...

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

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

...

Appendix B

Rule 56. Summary Judgment

...

Comment

2017 Amendments

Rule 56 was amended in significant respects in 2013. The 2013 amendments adopted some of the 2007 federal stylistic revisions, while retaining other unique aspects of Arizona's rule (such as the provisions of subdivision (c)(3) governing supporting and opposing statements of fact, which have no counterpart in FRCP 56). The 2017 amendments retain the substance of the 2013 amendments, but propose additional stylistic changes to simplify and clarify the rule. Some of the subdivisions of the current rule are reordered to conform to the structure of Federal Rule 56.

In addition to stylistic improvements, subdivision (c)(2) is modified to eliminate provisions governing stipulated or court-ordered extensions of briefing schedules. Those provisions of the former rule predated the adoption of Rule 7.1(g), which now provides uniform procedures governing and limiting the extension of briefing schedules on motions. Rule 7.1(g)'s provisions apply to motions for summary judgment under Rule 56. The structure of Rule 56(c)(3) is modified to add subdivisions and headings, consistent with the federal rule stylistic conventions. ~~Portions of current subdivision (e), governing the form of affidavits, are moved to subdivision (e)(5) and (6), to conform more closely to the federal rule's structure. Former subdivisions (e)(1) and (e)(2), governing affidavits, are moved to subdivisions (c)(5) and (c)(6), respectively, to conform more closely to the federal rule's structure.~~

Subdivision (f) of the former rule is moved to subdivision (d), to conform to the federal rule's structure. The revised rule now incorporates into the rule's text the specificity requirements set forth in Arizona case law for obtaining a continuance to conduct additional discovery, as set forth in *Simon v. Safeway, Inc.*, 217 Ariz. 330, 173 P.3d 1031 (App. 2007). *See* Rule 56 (d)(1)(A) (identifying five factors that

Appendix B

must be addressed, if applicable, in an affidavit supporting a Rule 56(d) request).

Appendix B

Rule 75. Hearing Procedures

...

(b) Joint Prehearing Statement.

- (1) ***Requirement.*** No later than 10 days before the hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written prehearing statement. In preparing this prehearing statement, the parties and their counsel must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive resolution of claims and the parties are encouraged to agree on facts and issues.
- (2) ***Content.*** The statement must contain the following:
 - (A) a brief statement of the nature of each party's claims or defenses;
 - (B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;
 - (C) an exhibit list; and
 - (D) the estimated time required for the arbitration hearing.
- (3) ***Evidence Excluded.*** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.

4845-7419-9882