

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-13-0017
PETITION TO AMEND RULES 16,)
16.1, 26, 37, 38, 38.1, 72, 73,)
74 AND 77, ARIZONA RULES OF)
CIVIL PROCEDURE) **FILED 07/31/2014**
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CORRECTIVE ORDER
AMENDING RULES 4(g), 4(i), 7.1, 7.2, 16, 16.1,
26(f), 26.1, 30(a), 36(b), 38.1, 38.1(a), 65.2, and 74,
ARIZONA RULES OF CIVIL PROCEDURE,
and
APPENDIX 4, PART IV, RULE 113(b), JUSTICE COURT RULES OF CIVIL
PROCEDURE

The captioned Arizona Rules of Civil Procedure were amended by this Court's Order dated August 28, 2013. It has come to the Court's attention that certain technical errors in the Rules of Civil Procedure and the Justice Court Rules of Civil Procedure were inadvertently overlooked at that time, including terminology, erroneous cross-references, and other matters. Upon consideration,

IT IS ORDERED amending Rules 4(g), 4(i), 7.1, 7.2, 16, 16.1, 26(f), 26.1, 30(a), 36(b), 38.1, 38.1(a), 65.2, and 74, Arizona Rules of Civil Procedure, and Appendix 4, Part IV, Rule 113(b), Justice Court Rules Of Civil Procedure, in accordance with Attachments A and B hereto, effective as of the date of signing.

DATED this 31st day of July, 2014.

SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

John A Furlong

Charles V Harrington

Sarah R Simmons

Carmine Cornelio

Mark C Faull

Laurie Beaver San Angelo, Pima County Bar Association

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Marcus Reinkensmeyer, Task Force on R-13-0017

ATTACHMENT A
ARIZONA RULES OF CIVIL PROCEDURE¹

* * *

Rule 4(g). Return of service

If service is not accepted or waived, then the person effecting service shall make proof thereof to the court. When the process is served by a sheriff or a sheriff's deputy, the return shall be officially endorsed on or attached thereto and returned to the court promptly. If served by a person other than the sheriff or a deputy sheriff, return and proof of service shall be made promptly by affidavit thereof. Each such affidavit of a registered private process server shall include clear reference to the county where that private process server is registered. When the summons is served by publication, the return of the person making such service shall be made in the manner specified in ~~Rules 4.1(n) and 4.2(e)~~ Rules 4.1(l) and 4.2(f), of these Rules. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of ~~Rule 4.2(h)~~ Rule 4.2(i), be made pursuant to the applicable treaty or convention; and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. In any event the return shall be made within the time during which the person served must respond to process. Failure to make proof of service does not affect the validity thereof.

* * *

Rule 4(i). Summons; time limit for service

This subdivision does not apply to service in a foreign country pursuant to ~~Rule 4.2(h), (i), (j) and (k)~~ Rule 4.2(i), (j), (k) and (l) of these rules.

* * *

Rule 7.1. Civil motion practice

(a)-(e) [No change in text.]

(f) Limitations on Motions to Strike.

(1) *Generally.* Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on ~~the~~ the ground ~~that~~ that it is prohibited, or not authorized, by a specific statute, rule, or court order. Unless ~~the~~ the motion to strike is expressly authorized by statute or rule: (a) it may not exceed two (2) pages in length, including any supporting

¹ Changes or additions to text are shown by underscoring; deletions by ~~strikeouts~~.

memorandum; (b) any responsive memorandum must be filed within five (5) days of service of the motion and may not exceed two (2) pages in length; and (c) no reply memorandum may be ~~fed~~filed unless authorized by the court.

(2) *Objections to Admission of Evidence on Written Motions.* Subject to Rule 56(c)(4), governing motions or summary judgment, any objections to, and any arguments regarding the admissibility of, evidence offered in support of or in opposition to a 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. Any response to an objection must be included in the responding party's reply memorandum or ~~hethe~~ underlying motion and may not be presented in a separate responsive memorandum. If ~~hethe~~ evidence is offered ~~or~~for the first time in connection with a reply memorandum, ~~hethe~~ objecting party may file a separate objection limited to addressing ~~hethe~~ new evidence and not exceeding three (3) pages in length, within five (5) days after service of the reply memorandum. No responsive memorandum may be filed unless authorized by the court.

(g) [No change in text.]

Rule 7.2. Motions *in limine*

(a) [No change in text.]

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

(c)-(f) [No change in text.]

* * *

Rule 16. ~~Pre-trial conferences; scheduling; management~~ Scheduling and management of cases

* * *

Rule 16.1. Settlement conferences: objectives

(a)-(g) [No change in text.]

(h) **Sanctions.** The provisions of Rule 16(i) ~~16(f)~~ of these Rules concerning sanctions shall apply to a conference provided by this rule.

* * *

Rule 26(f). Discovery requests, responses, objections and sanctions

The court shall assess an appropriate sanction including any order under Rule ~~16(f)~~ 16(i) against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct.

* * *

Rule 26.1. Prompt disclosure of information

(a) [No change in text.]

(b) Time for Disclosure; a Continuing Duty.

(1) [No change in text.]

(2) The duty prescribed in subdivision (a) shall be a continuing duty, and each party shall make additional or amended disclosures whenever new or additional information is discovered or revealed. Such additional or amended disclosures shall be made seasonably, but in no event more than thirty (30) days after the information is revealed to or discovered by the disclosing party. A party seeking to use information which that party first disclosed later than (A) the deadline set in a Scheduling Order, or (B) in the absence of such deadline, sixty (60) days before trial, ~~shall~~ must seek leave of court to extend the time for disclosure as provided in Rule 37(c)(2) or (c)(3).

(3) [No change in text.]

(c)-(g). [No change in text.]

* * *

Rule 30(a). When Depositions may be taken

After commencement of the action, the testimony of parties or any expert witnesses expected to be called may be taken by deposition upon oral examination. Depositions of document custodians may be taken to secure production of documents and to establish evidentiary foundation. No other depositions shall be taken except upon:

(1) agreement of all parties;

(2) an order of the court following a motion demonstrating good cause; ~~or~~

(3) an order of the court following a ~~Comprehensive Pretrial Conference~~ Scheduling Conference pursuant to ~~Rule 16(e)~~ Rule 16(d);

(4) an order of the court following a comprehensive pretrial conference in a medical malpractice case pursuant to Rule 16(e); or

(5) an order of court following a Trial Setting Conference pursuant to Rule 16(f).

If the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service which is completed under Rule 4.2 of these rules, leave of court, granted with or without notice, is required except that leave is not required: (1) if a defendant has served a notice of taking deposition or otherwise sought discovery or (2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

* * *

Rule 36(b). Procedure

Each request shall contain only one factual matter or request for genuineness of all documents or categories of documents. Each party without leave of court shall be entitled to submit no more than twenty-five (25) requests in any case except upon:

(1) agreement of all parties;

(2) an order of the court following a motion demonstrating good cause; ~~or~~

(3) an order of the court following a ~~Comprehensive Pretrial Conference~~ Scheduling Conference pursuant to ~~Rule 16(e)~~ Rule 16(d);

(4) an order of the court following a comprehensive pretrial conference in a medical malpractice case pursuant to Rule 16(e); or

(5) an order of court following a Trial Setting Conference pursuant to Rule 16(f).

Any interrogatories accompanying requests shall be deemed interrogatories under Rule 33.1.

* * *

Rule 38.1. Setting of civil cases for trial; postponements; scheduling conflicts; dismissal calendar

* * *

**STATE BAR COMMITTEE NOTE
2000 Amendment**

~~As part of an effort to consolidate formerly separate sets of procedural rules into either the Arizona Rules of Civil Procedure or the Rules of the Arizona Supreme Court, the former Uniform Rules of Practice of the Superior Court were abrogated in their entirety. With one exception, the provisions of Rule V of those Rules were incorporated into a new Rule 38.1 of the Arizona Rules of Civil Procedure. The provisions of former Rule V(a) of the Uniform Rules of Practice of the Superior Court, which required the filing, in certain counties, of a list of witnesses and exhibits as a predicate for submitting a Motion to Set and Certificate of Readiness were not retained in the process. The Committee was of the view that this requirement had been rendered obsolete by the provisions of Rule 26.1, which requires the voluntary and seasonable disclosure of, inter alia, the identities of trial witnesses and exhibits. Changes were also made to the form of Motion to Set and Certificate of Readiness prescribed by what is now Rule 38.1(a) to reflect the abandonment of the witness and exhibit list requirement.~~

~~Some other changes were also made in this process. The provisions of former Rules V(b) through (i) of the Uniform Rules of Practice of the Superior Court became new Rules 38.1(a) through (h) of the Arizona Rules of Civil Procedure, and former Rule V(j) became new Rule 38.1(k). To ensure that all provisions relating to trial settings and securing trial continuances appeared in a single Rule, the provisions of former Rules 42(d) and (e) of the Arizona Rules of Civil Procedure were transferred to the new Rule 38.1, as subparts (i) and (j), respectively.~~

~~New Rule 38.1(g) continues to refer to alternative time frames by which discovery in a civil case “shall be completed,” as did former Rule V(g) of the Uniform Rules of Practice of the Superior Court. A Supplemental State Bar Committee Note to former Rule V pointed out that “completed” signified that discovery requests had to be both propounded and answered, rather than simply propounded, by the date for the completion of discovery. This construction of the Rule should pertain to new Rule 38.1(g) as well.~~

~~This issue is of particular significance in the case of written discovery requests, where the party to whom they are directed is typically allowed, under the applicable Rules, a period of forty (40) days in which to respond. To interpret the date for the completion of discovery as merely establishing the deadline for service of such written discovery requests would make little sense, for example, in those courts which require only the certification set forth in what is now Rule 38.1(a)(3)(iii), that pretrial discovery procedures “shall be completed prior to ten days before trial.” Under such an interpretation of the phrase “shall be completed,” a written discovery request under Rule 33, 34 or 36 would be deemed timely if propounded more than ten (10) days prior to trial, even though the responses would not be due until after the trial had commenced. That is not what the Rule contemplates.~~

~~In order to satisfy the Rule, written discovery requests must be propounded sufficiently in advance of the discovery completion date to afford the party to whom they are directed the time for response prescribed by the Rules and to insure that the responses are due prior to the date for the completion of discovery. The propounding party may, of course, pursue any further proceedings under Rule 37 deemed necessary to secure a further response.~~

RULE 38.1. INACTIVE CALENDAR GUIDELINES
[Applicable in Maricopa County, only]

Originally adopted April 9, 1985, amended effective December 1, 2000

~~The time limits of Rule 38.1, Arizona Rules of Civil Procedure, are essential ingredients of the Civil Delay Reduction Program (fast track) of Maricopa County. (See State Bar Committee note to 1983 and 1984 amendments to Rule V). Uniform application of this Rule by the judges of Maricopa County will assist in reducing delay in the disposition of civil cases and will assist the bar in processing claims for litigants. The following guidelines have been adopted by the civil judges of the Superior Court of Maricopa County in order to facilitate the uniform application of Rule 38.1.~~

~~I. Stipulations:~~

~~Stipulations to extend a case on the inactive calendar (IAC) will be treated as joint motions and must comply with the good cause standard of Rule 38.1(d)(2).~~

~~II. Other Rule V motions:~~

~~Prior to assignment of a case to the IAC, motions or stipulations to extend the time to file motions to set will be subject to the “good cause” standard of Rule 38.1(d)(2).~~

~~III. Timeliness of motion to continue:~~

~~A. Motions for extensions of time on the IAC which are submitted for ruling prior to the dismissal date will require a showing of good cause pursuant to Rule 38.1(d)(2). This standard will apply even though the court has not ruled upon the motion prior to the date set for dismissal.~~

~~B. Motions submitted for ruling after the dismissal date but prior to the entry of an order of dismissal will be subject to the excusable neglect standard of Rule 6(b), A.R.C.P., and the good cause standard of Rule 38.1(d)(2).~~

~~C. Motions for extensions of time filed after a signed order of dismissal has been entered under Rule 38.1 will be treated as a motion to reinstate and must meet the requirements of Rule 60(c), A.R.C.P., and good cause under Rule 38.1(d)(2). *Bickerstaff v. Denny's Restaurant*, 141 Ariz. 629, 688 P.2d 637 (1984).~~

~~IV. “Good cause” within the meaning of Rule 38.1(d)(2):~~

~~The phrase “good cause” as used in Rule 38.1 does not lend itself to precise definition. Whether facts add up to “good cause” is a question for the sound discretion of each trial judge.~~

~~Walker v. Kendig, 107 Ariz. 510, 489 P.2d 849 (1971). From a quantitative viewpoint, the “good cause” required for a continuance on the IAC is less than that required to continue a trial because the impact on the court's calendar is less. It does require far more cause than that needed to extend the time for the filing of a response to a motion. The party seeking the continuance is required to show some substantial basis for the continuance and the court's focus is primarily upon whether there are unusual discovery or procedural problems which have prevented the case from proceeding at the presumptive pace.~~

~~From a qualitative viewpoint the following elements, although not exclusive, will be considered by the court in determining whether “good cause” exists:~~

- ~~A. Whether the underlying circumstances were unforeseeable;~~
- ~~B. Whether the underlying circumstances were not due to lack of preparation;~~
- ~~C. Whether the grounds are relevant;~~
- ~~D. Whether the matter was brought to the court's attention in a timely manner; and~~
- ~~E. Whether the adversary is prejudiced.~~

~~See: ABA Commission on Standards of Judicial Administration, *Standards Relating to Trial Courts*, Commentary to § 2.55 (Revised 1984).~~

~~Some examples of what does not amount to good cause are:~~

- ~~A. Stipulations to extend on the IAC which are not supported by a factual basis;~~
- ~~B. Motions grounded on the fact that settlement negotiations are pending;~~
- ~~C. Motions grounded upon failure to serve the defendant where due diligence to serve has not been shown.~~

~~Note: The running of the statute of limitations is a factor which may be considered in extending a case on the IAC. However, Rule 38.1 does not provide that the running of the statute of limitations alone is grounds for a continuance and dismissal under such circumstances may not be an abuse of discretion. Cf., *Bickerstaff v. Denny's Restaurant*, *supra*.~~

~~V. Demonstrating “good cause”:~~

~~A motion or stipulation seeking an extension of time on the IAC must be based upon identifiable facts rather than mere conclusions by the attorney.~~

~~VI. Length of continuance:~~

~~Assuming good cause has been shown justifying an extension on the IAC, the length of continuance on the IAC will be according to the following guidelines:~~

~~A. If grounds exist for a continuance, the court will extend the date for 45 to 60 days unless additional time is mandated.~~

~~B. If the complexity of the case is such that a longer continuance appears necessary, the court should set a pretrial status conference pursuant to Rule 16(a), A.R.C.P., wherein discovery guidelines and other deadlines will be imposed.~~

~~VII. Rule 38.1 versus Rule 6(f):~~

~~The one year abatement period of Rule 6(f), A.R.C.P., does not affect the time limitations imposed by Rule 38.1(d). Both rules require the exercise of due diligence in processing the case. Nor will the granting of a motion to continue on the IAC serve as an extension of the one year abatement period of Rule 6(f). Suggested language for minute order—“This extension of time is without prejudice to the rights of any person or parties not yet served.”~~

~~VIII. Sua sponte extension of time because of adverse ruling by court:~~

~~When a party has made a good faith attempt to place a case on the active calendar and an adverse ruling is entered, such as or striking the motion to set and certificate of readiness, the court may, on its own motion, extend the case on the IAC for such period of time necessary to comply with Rule 38.1.~~

Rule 38.1(a). Setting for Trial

[No change in text of rule.]

* * *

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

(a)-(e) [No change in text.]

(f) Scheduling Conference. Simultaneously with the filing of the complaint required by subsection (a) of this Rule, the county attorney shall file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order shall be served upon the employer and may be served with the complaint. At the scheduling conference, the court may address the matters set forth in Rule ~~16(b)-16(d)~~ and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer shall file and serve a written disclosure of the identity of all business licenses that it holds in this State.

(g)-(m) [No change in text.]

* * *

Rule 74. Powers of arbitrator; scheduling of arbitration hearing; permitted rulings by arbitrator; time for filing summary judgment motion receipt of court file; settlement of cases; offer of judgment

(a)-(b) [No change in text.]

(c) Rulings by Arbitrator.

(1) *Authorized rulings.* After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, except:

(A)-(C) [No change.]

(D) motions to withdraw as attorney of record under Rule 5.1 of these Rules; ~~or~~

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party; or

(F) motions for sanctions under Rule 68 of these Rules.

(2)-(4) [No change in text.]

(d)-(g) [No change in text.]

ATTACHMENT B

JUSTICE COURT RULES OF CIVIL PROCEDURE ²

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Appendix 4. Table of Cross-References (JCRCF to ARCP)

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Part IV. Starting a lawsuit: the complaint, the summons, and service of the lawsuit

* * *

Rule 113(b). Service on a corporation, partnership, limited liability company, or association within the State of Arizona

JCRCF Rule #	JCRCF Rule Title	X-ref ARCP Rule #	ARCP Rule Title
113(b)	Service on a corporation, partnership, limited liability company, or association within the State of Arizona	4.1(k) <u>4.1(i)</u> 4(d) 4(g)	Service of summons upon corporations, partnerships or other unincorporated associations Process; by whom served Return of service

² Changes or additions to text are shown by underscoring; deletions by ~~strikeouts~~.