

Task Force on the Arizona Rules of Civil Procedure

Meeting Agenda

Friday, October 30, 2015

10:00 AM to 3:00 PM

State Courts Building * 1501 West Washington * Conference Room 230* Phoenix, AZ

Conference call-in number: (602) 452-3288 Access code: 6976

Item no. 1	Call to Order Introductory comments	<i>Mr. Rosenbaum and Mr. Klain, co-chairs</i>
Item no. 2 Pages 3-12	Approval of the September 18, 2015 and October 1, 2015 meeting minutes	<i>Mr. Rosenbaum and Mr. Klain</i>
Item no. 3 Pages 13-29 Pages 30-190 Pages 191-220 Pages 261-270 Pages 271-286	Further discussion of proposed rules, including: <ul style="list-style-type: none">- Rules concerning electronic filings and related subjects [Rules 5, 5.1, 5.2, 6, 7.1-7.5, 8, 11(a), 58, and 80]- Suggested workgroup changes to the vetting draft- Workgroup proposals regarding comments to the rules- Other proposed revisions to the vetting draft, including a disposition table- Comment mailbox	<i>Mr. Rogers Mr. Jacobs Mr. Pollock Ms. Feuerhelm Mr. Hathaway</i>
Item no. 4 Pages 221-260	Further discussion of a draft rule petition	<i>All</i>
Item no. 5	Roadmap	<i>Mr. Rosenbaum and Mr. Klain</i>
Item no. 6	Call to the Public Adjourn	<i>Mr. Klain</i>

The Chairs may call items on this Agenda, including the Call to the Public, out of the indicated order.

There will be a lunch break about midway through the meeting.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.

Please note: *The Task Force next meeting is currently set for
November 20, 2015.*

Task Force on the Arizona Rules of Civil Procedure

State Courts Building, Phoenix

Meeting Minutes: September 18, 2015

Members attending: William Klain and David Rosenbaum (co-chairs), Pamela Bridge (by telephone), Jodi Feuerhelm, Milton Hathaway, Rebecca Herbst, Andrew Jacobs, Hon. Michael Jeanes by his proxy Aaron Nash, Hon. Douglas Metcalf, Prof. Catherine O'Grady by her proxy Sara Agne, Brian Pollock, Greg Sakall, Dev Sethi, Hon. Peter Swann, Hon. Randall Warner

Absent: Michael Gottfried, Hon. Mark Moran

Staff: Mark Meltzer, John W. Rogers, Nick Olm, Sabrina Nash

1. Call to order, introductory comments, approval of meeting minutes. Mr. Rosenbaum called the meeting to order at 10:02 a.m. This is the tenth meeting of the Task Force. Mr. Rosenbaum confirmed that the vetting draft has been completed, and he congratulated Mr. Rogers, Ms. Feuerhelm, and Ms. Jana Ferguson at Perkins Coie for the fine work they had done preparing that draft. Staff distributed the vetting draft to about two dozen stakeholder organizations on September 15, and on September 16, the State Bar of Arizona distributed the draft to about 18,000 members of the bar. Both distributions included a cover letter from the chairs that invited comments. The deadline for comments on the vetting draft is November 16, 2015. Federal judges David Campbell, chair of the Advisory Committee on the Federal Rules of Civil Procedure, and Neil Wake, chair of the District Court of Arizona's Local Rules Committee, also received the draft. Mr. Klain advised that the Chief Justice was informed of, and supports, the Task Force efforts to widely vet the draft.

Mr. Rosenbaum then asked the members to review draft minutes of the August 21, 2015 Task Force meeting. Members had no comments or corrections to the draft minutes.

Motion: A member moved to approve the August 21, 2015 minutes, another member made a second, and the motion passed unanimously. **TF.ARCP: 2015-10**

2. Additional issues. Mr. Rosenbaum and Mr. Klain reminded the Task Force that over the Labor Day weekend, they had made minor, non-substantive changes to an earlier version of the draft. Staff circulated these changes to the members on September 8, and the members concurred with the proposed changes. The chairs noted that the vetting draft now included experimental Rule 8.1, which applies to cases in the pilot commercial court.

Several additional issues have been raised in the interim:

a. Electronic filing. Rule 7.1(b)(I) in part provides that "only originals may be filed...." Mr. Rogers suggested that the rule should expressly acknowledge electronic filing, and that the rule should state, "Unless filing electronically, only originals may be

filed.” He asked whether other rules in the vetting draft are primarily applicable to paper filing and fail to adequately accommodate electronic filing. Mr. Rogers noted that the Arizona Rules of Civil Appellate Procedure have two separate rules, Rule 4.1 and Rule 4.2, which respectively apply to paper and electronic filing. One member believes adding definitions of paper and electronic filing to the superior court rules might be useful. Another member thought a new provision should be added to Rule 7.1 that might say something like, “these rules apply equally to paper and electronic filings.” Mr. Rogers further noted that a superior court rule also should cover the topics of electronic signatures and the courts’ electronic transmission of records. Ms. Agne and Mr. Sethi mentioned A.R.S. § 41-132, which contains requirements for electronic signatures for documents filed with a state agency, board, or commission, and this statute might be helpful in drafting a corresponding court rule.

ACTION: After further discussion, Mr. Rogers and Mr. Jacobs agreed to collaborate on drafting new provisions that would address electronic filing. Rules 6 and 7 both were mentioned as possible placeholders for the new rule, but another member believes that a rule dealing with electronic signatures should be located in Rule 11. A judge member questioned whether the current practice of electronically signing a court filing with “/s/” has the same solemnity that a paper signature would customarily have. Another practical issue is that multiple individuals might have access to a single electronic filing account. An admonition in the registration process, which informs registrants that opening the account renders the registrant responsible for every filing under that account, might be inadequate, especially because the admonition does not appear in the filing screens of the e-filing portal. The federal electronic filing system requires that the name on a filing match the name on the registration, and a similar provision should also be considered for any new Arizona rule.

b. Maricopa Local Rule 2.23 (“Certification of electronically transmitted court records”). A newly proposed local rule in Maricopa County concerns certification of electronically transmitted court records, as more fully detailed in pending Rule Petition number R-15-0031. The chairs asked the members to consider whether the Court’s adoption of this local rule would affect Rule 44(a) [“authenticating an official record”] of the vetting draft.

Members are critical of electronically transmitted court records from another jurisdiction without some certification that the records are genuine. But Mr. Nash noted that this local rule would be promulgated under the authority of A.R.S. § 12-282(D), which allows the clerk to electronically transmit court records to an Arizona officer, board, or commission, provided that the records are certified as a “full, true, and correct copy of the original...” Mr. Nash added that the clerk routinely transmits court records to the Department of Corrections under authority of this statute. The members discussed adding a new provision to Rule 44(a) that would govern electronic transmission of records from one Arizona court to another Arizona court. However, by a straw vote of 7 to 3, a majority of the members believed there was no need to replicate the substance of the statute within the content of Rule 44(a).

c. Rule 26.1, and disclosure of impeachment materials. Mr. Jacobs proposed adding to the disclosure duties of Rule 26.1(a)(8) the words “including any material to be used for impeachment.” The State Bar’s Civil Practice and Procedure Committee, which Mr. Jacobs chairs, concluded that a significant number of counsel still have an erroneous belief that they have no duty to disclose impeachment materials. His proposed addition to Rule 26.1(a)(8) would dispel that misperception. The members considered adding the qualifying word “only” for impeachment, but agreed with Mr. Jacobs that this was a disingenuous distinction.

MOTION: A member moved to adopt Mr. Jacobs’ proposed amendment, the motion received a second, and it passed unanimously. **TF.ARCP: 2015-11**

d. Rule 23(h) (“Class actions: Attorney’s fees and nontaxable costs”). Rule 23(h) of the vetting draft contains a provision that allows the court to refer issues related to the amount of an attorney’s fee award to a special master. But at their last meeting, Task Force members agreed to delete a more general provision in proposed Rule 54(g) that would have allowed the court to refer issues concerning attorney’s fees to a special master. Ms. Feuerhelm therefore raised the question of whether the Task Force still wishes to retain a provision that would allow the court in a class action to refer attorney’s fee controversies to a special master.

One of the chairs noted that the corresponding federal rule included a similar provision, but said that in his experience federal judges rarely used it, and he did not see a need for a special master option in this section of Arizona’s class action rule. A judge member added that there are few class actions filed in the superior court of Arizona. Another judge member thought that attorney’s fees in class actions often involve issues of public policy, and judges, not special masters, should make findings and conclusions concerning fees. But before deleting the provision, Mr. Klain suggested obtaining input from practitioners in this area. **ACTION:** Ms. Feuerhelm will follow up on this suggestion.

e. Rule 80(f) (“Lost or destroyed records”). This section, although previously drafted, inadvertently had been omitted from a prior draft version of the rules. Mr. Hathaway explained that it now had been added to the vetting draft, with conforming stylistic changes. The members had no changes to this addition.

f. Comments to the rules. The workgroup chairs have obtained, or are in the process of obtaining, input from their respective workgroup members concerning comments to the rules. Mr. Klain recommended that the workgroups have a unified approach to the comments, rather than four different ones. Discussion ensued.

As a preliminary matter, Mr. Klain thought that no rules should include a comment to explain that changes to a rule were merely stylistic (also referred to as the “no comment-comment.”) This type of comment is repetitive and takes up space without adding significant value. But while the Court generally disfavors comments, some comments greatly assist practitioners. He mentioned in particular a comment to Rule

6(e) regarding calculating time, and a new comment proposed by the Task Force concerning Rule 16.

Yesterday, Mr. Rogers and Ms. Feuerhelm presented the vetting draft at a firm's lunch meeting. Mr. Rogers advised that the first inquiry at this presentation asked whether the final version would include comments describing substantive changes to the rules. Mr. Rogers suggested today that comments describing substantive changes would mitigate counsels' apprehension about missing an important change as they transition to the new rules. Mr. Rosenbaum believes that comments of this nature will only have temporary value. In several years, when counsel have been accustomed to the new rules, those comments won't be useful. A bar magazine article that outlines substantive changes might have more value to practitioners than dozens of these comments. But one member would include substantive comments in the rules, with a caveat that the Civil Practice and Procedure Committee file a rule petition a few years hence to remove them. Another member said that comments would assist counsel in doing research by demarcating when a rule changed relative to an appellate court decision.

Mr. Klain suggested that practitioners would find it helpful if the rules included a table that showed provisions that formerly had been in a different rule. This would save counsel the time of trying to locate the new rule, and inform them the provision had been moved but not deleted. The table should be sufficiently detailed to include sections of a rule that had moved. **ACTION:** The members unanimously agreed that the rules should include this table. Mr. Klain then took a straw poll on the question of whether the rules should include at least some comments, and on that question the members again concurred unanimously. The next issue was establishing the purpose of comments that might be included with the rules.

A judge member believed that a comment might be necessary to explain the practical meaning of a rule, but not the work or the reasoning of the Task Force in proposing the rule. But on reconsideration, neither the judge member nor the other members thought that explaining the "practical meaning" of a rule was the appropriate standard for including a comment. One member suggested that comments should alert users to a significant change in a rule (referred to as a "signpost comment.") Another judge member hypothesized that regardless of what distinctions the Task Force discusses at today's meeting, the workgroups will use their own individual standards for proposing comments.

Mr. Klain then took another straw poll. This poll, by a two-to-one margin, indicated that while the members generally did not support signpost comments, they did favor some, albeit limited, comments. Mr. Klain and Mr. Rosenbaum agreed that the value of the Task Force's prefatory comment could be enhanced if it noted, without detailing, a dozen or so major substantive changes, for example, new disclosure requirements in Rule 26.1 regarding electronically stored information. **ACTION:** They asked that workgroup members compile major substantive changes for possible inclusion as a bullet-point list in the prefatory comment. But regardless of the way the Task Force

chooses to flag major substantive changes in the new rules, the chairs emphasized that comments proposed by the workgroups should be limited in number, should have valuable content, and should be truly explanatory and useful. Mr. Rogers added that although comments might be limited in number, the justices will still expect to have a comprehensive explanation of rule changes in the Task Force's rule petition.

g. Other comments concerning the vetting draft. The chairs invited other remarks regarding the vetting draft, and members discussed the following two.

- Rule 5(f)(2)(B): This provision concerns "documents not to be filed." Subpart B, which is entitled "discovery documents," includes a reference to disclosure statements, but the title of subpart B is "discovery documents." Mr. Jacobs believes that disclosure statements are not discovery documents, and the title of the subpart should therefore be "disclosure and discovery documents." Although the members did not all agree with Mr. Jacobs' premise, they nonetheless unanimously agreed to change the title of subpart B as he suggested.
- Rule 7.2(f): This rule concerns "limitations on motions to strike." Mr. Klain suggested that while the rule is well-intentioned (it's designed to cut down the volume of motions to strike), the rule as phrased is not clear. A judge member suggested that motions to strike, except for motions to strike a pleading, should be altogether eliminated. Other members thought that motions to strike were useful in situations where something was included in a motion that was not authorized by a rule; or when sensitive data was included in a filing. Another judge added that some motions to strike are more accurately motions *in limine*, or motions to preclude evidence, but these motions would be filed even if Rule 7.2(f) was deleted. Because Rule 7.2(f) was recently adopted, the consensus of the Task Force was to leave it as is.

The members agreed the pending rule petition should identify changes made to the vetting draft so stakeholders will not have to reread the entirety of the draft rules when they are filed with the petition. **ACTION:** Staff will maintain a list of changes to the vetting draft, and Ms. Feuerhelm will track these changes in her master draft of the rules.

3. Mailbox for comments. The Administrative Office of the Courts has established an Outlook mailbox (CivilRules@courts.az.gov) as a repository for comments concerning the vetting draft. **ACTION:** Staff has access to the mailbox, and the chairs directed staff to send comments to the members as they accumulate. The workgroups should do the initial screening of the comments and report back to the Task Force on those that are significant. Staff's emails to the members will note the workgroup or workgroups that should pay particular attention to a comment.

4. Draft rule petition. The meeting materials included a draft rule petition, and Mr. Klain reviewed the draft petition with the members. He noted Part V of the draft, which is reserved for text from the workgroup chairs. He explained that this is where content that might have gone into “signpost” comments should be located. Every rule should be included in Part V, and if the only change to a rule was restyling, that should be stated. He also noted that the concluding pages of the draft petition request a “staggered” comment period.

Although Part V of the petition would include the rules sequentially, the workgroups were not always assigned sequential rules. Mr. Klain advised that the final draft will integrate the workgroups’ work products so that the rules are presented in sequence. Mr. Klain also suggested that the title of Part V be changed from “substantive changes,” because not all of the changes discussed in this portion of the petition will be substantive. Mr. Rogers observed that the petition will have two distinct audiences (practitioners and justices) who have different interests. While practitioners will want to know what changed in a rule, the justices will also want to know why a change was proposed. Because staff anticipates that this part of the petition will be voluminous, he suggested moving the rule-by-rule details to an appendix, or to a table in the appendix. Members made other suggestions, including a section-by-section narrative, a list of rules with no substantive changes, or the uniform use of explanations such as “to follow the federal rule,” or “no substantive change.” The format for the next draft of the rule petition will abide preparation of content by the workgroup chairs.

5. Roadmap. The members agreed to set the next Task Force meeting on October 30. The workgroup chairs will have their materials for that meeting to staff by October 23. Stakeholder comments on the vetting draft are due November 16, so the November meeting is scheduled for November 20. The December meeting, while not yet set, will focus on “fine-tuning” the materials for the rule petition filing.

Mr. Jacobs advised that the Civil Practice and Procedure Committee has the vetting draft, and it is making progress on its review. He expects that Committee will provide partial, preliminary comments to the Task Force in early October.

Mr. Rogers noted that the Task Force needs to consider other sets of rules impacted by its proposed changes to the civil rules. The Civil Practice and Procedure Committee will look at this issue, but the Task Force should too, preferably by someone who is well-versed in technology and legal research. Mr. Jacobs volunteered to look for suitable individuals. The Task Force also needs to check internal cross references in the vetting draft.

6. Call to the public, adjourn. There was no response to a call to the public. The meeting adjourned at 12:45 p.m.

Task Force on the Arizona Rules of Civil Procedure
State Bar of Arizona, 4201 North 24th Street, Phoenix
Meeting Minutes: October 1, 2015

Members attending: William Klain (co-chair), Pamela Bridge, Jodi Feuerhelm, Michael Gottfried, Andrew Jacobs, Hon. Michael Jeanes, Brian Pollock, Greg Sakall, Dev Sethi (by telephone), Hon. Peter Swann, Hon. Randall Warner

Absent: David Rosenbaum, Rebecca Herbst, Hon. Douglas Metcalf, Hon. Mark Moran, Prof. Catherine O'Grady

Staff: Mark Meltzer, John W. Rogers

Also present: Members of the State Bar's Civil Practice and Procedure Committee

1. Call to order, call to the public. Mr. Klain called the meeting to order at 4:28 p.m. He announced that this Task Force meeting will be held concurrently with a meeting of the State Bar's Civil Practice and Procedure Committee ("CPPC"), on which eleven Task Force members serve. Mr. Klain advised that the purpose of today's Task Force meeting is to consider CPPC comments on the vetting draft. He noted that the Task Force will not take action today on these CPPC comments, and any votes by Task Force members who are present today would be in their capacity as members of the CPPC.

Mr. Klain then made a call to the public, to which there was no response. Mr. Klain proceeded to turn the floor over to Mr. Jacobs, who serves as chair of the CPPC, and Mr. Jacobs called the CPPC meeting to order at 4:30 p.m.

Mr. Jacobs noted that the CPPC meeting agenda is in three parts: a consent agenda, a "short" agenda, and a "long" agenda. Each item on these agendas require the CPPC's consideration of a rule amendment proposed by the Task Force's vetting draft, or an issue arising from that draft. These three agendas cumulatively have dozens of items, and Mr. Jacobs indicated that he would like the CPPC to address as many of these items as possible during today's two-hour meeting.

2. Consideration of the CPPC's consent agenda. The consent agenda included the following items (the referenced "rules" are the Arizona Rules of Civil Procedure):

1. **Rule 11**, the Task Force's response to changes proposed by the State Bar's rule petition R-15-0004;

2. **Rule 26.1(a)(8)**, the Task Force's adoption of a CPPC recommendation that expressly requires disclosure of materials used for impeachment;

3. **Rules 33, 34, 36**, the Task Force's response to a CPPC recommendation that limits on certain discovery requests may not be exceeded "unless the parties agree or the court orders otherwise;" and

4. **Rule 38(b)**, concerning trial setting practices in medical malpractice cases.

By consent and agreement of its members, the CPPC approved its consent agenda.

3. Consideration of the CPPC's "short" agenda. The "short" agenda included the following items:

5. *Rule 4(f)*, distinguishing waiver and acceptance of service. Approved by the CPPC.

6. *Rule 5.2*, currently, as modified in proposed *Rule 5.1(c)*, dealing with limited scope representation. Approved by the CPPC.

7. *Rule 10(d)*, which is proposed *Rule 5.2* of the Task Force draft, regarding the form of documents filed with the court. Approved by the CPPC, subject to an alternative version included in the CPPC materials that had been proposed by a Task Force workgroup, but not yet considered by the full Task Force. The alternative version includes additional provisions regarding electronic filing. A CPPC member also requested the Task Force to specify a 13-point font size; see further Maricopa County Local Rule 2.16 ("size of print").

8. *Rule 7.2(h)*, a new provision concerning a certification of "good faith" when a good faith consultation is required by other rules. Approved by the CPPC.

9. *Rule 6(d)*, which is proposed Rule 7.4 of the Task Force draft, and which will become Rule 7.3 in the next Task Force draft, regarding orders to show cause. Approved by the CPPC.

10. *Rule 7.5*, a new rule proposed by the Task Force regarding the parties' obligations when preparing a joint filing. Approved by the CPPC.

11. *Rule 7.5*, and the issue of whether this rule should be moved to Rule 5.1 ("duties of counsel"). CPPC members agreed that moving the provision was unwarranted because it would apply to self-represented litigants as well as counsel.

12. *Rules 11(b) and (c)* regarding verifications, and moving language concerning verifications generally to Rule 80(g). Approved by the CPPC.

13. *Rule 17(d)*, which would include a provision moved from Rule 25(e)(2) concerning actions against public officers. Approved by the CPPC.

14. *Rule 23(1)(c)*, concerning certification of class actions. A member of the CPPC opposed the proposed language because it failed to include certain requirements specified in A.R.S. § 12-1871. Mr. Pollock explained why the Task Force omitted those requirements from the draft rule. The Task Force version was approved by the CPPC, but conditional on the Task Force's consideration of adding the statutory requirements into the content of the amended rule.

15. *Rules 26(b) and 26.1(a)(10)*, which deal with disclosure of insurance agreements and related documents, such as reservation of rights letters. The CPPC had a lengthy discussion of this item, which concluded with two recommendations to the Task Force. First, regarding Rule 26.1(a)(10), paragraph A, the CPPC by motion

recommended changing the words “the existence and contents of the insurance policy, [etc.]” to “the existence and a copy (or the substance if no copy is available) of the insurance policy, [etc.]” Second, regarding Rule 26.1(a)(1), paragraph B, the CPPC by motion recommended changing the words “the existence and contents of any disclaimer, [etc.]” to “the existence, basis, and a copy of any disclaimer, [etc.]”

16. Rule 27, concerning pre-litigation discovery. In response to questions concerning the appointment of counsel for pre-litigation discovery, Mr. Pollock advised that the current rule already provides for this; the Task Force draft simply adds a cost-shifting provision for appointed counsel. The CPPC then approved the proposed draft, but asked that the Task Force consider the following two recommendations. First, that section (a) should contain the words shown with underline: “A person who wants to perpetuate testimony, including his own...” Second, that section (a)(2) (“hearing required”) provide for an expedited hearing, including one without notice, based on exigent circumstances.

17. Rule 30(c)(2), a provision concerning objections at depositions. Approved by the CPPC.

18. Rule 33(b)(2-3), regarding answers and objections to interrogatories. Approved by the CPPC.

19. Rule 34(b)(3)(C), concerning objections to requests for production. Approved by the CPPC.

20. Rule 35(a), expanding those persons who may conduct independent medical examinations. CPPC members were split on the Task Force draft. Some supported the draft, which aligns the Arizona rule with its federal rule counterpart. Others were reluctant to broaden the categories of professional persons who could conduct these exams. A majority of CPPC members approved the Task Force draft, but only with the addition that the rule add a presumptive limit of one physical exam, one mental exam, and one vocational exam.

21. Rules 39, 39.1, and 40. Ms. Feuerhelm explained that the content of these three rules was folded into two rules, and Rule 39.1 was deleted. Approved by the CPPC.

22. Rule 52, where the Task Force diverged from the federal rule requirement that findings be made in all nonjury trials, and instead require that findings and conclusions only be made in those cases if requested before trial. Approved by the CPPC.

23. Rule 56, the summary judgment rule as restructured by the Task Force and which would include certain factors required by case law for relief under current Rule 56(f). Approved by the CPPC.

4. Consideration of the CPPC’s “long” agenda. The “long” agenda included the following items:

24. Rule 16(d)(4), regarding judicial determinations of whether the parties should be required to provide reports from expert witnesses, and if so, the content of those reports. A judge member of the CPPC noted that there had been recent amendments to this rule, and requested that if the current amendment is adopted, that the rule be allowed a future period of stability. The proposed change was approved by the CPPC, but with a significant number of members (about one-fourth) opposed.

25. Rules 26(b)(1)(C) and 16(a)(3), which deal with the subject of proportionality, but which use the alternate word “appropriate” rather than “proportional” (i.e., Rule 16(a)(3) says that discovery should be “appropriate to the needs of the action....”) The use of “appropriate” rather than “proportional” diverges from corresponding federal syntax. After considerable discussion, the language proposed by the Task Force was approved by CPPC, but there were a few votes opposed.

26. Rule 26.1(b), 34(b)(3)(E), and 37(g) concerning electronically stored information. Mr. Pollock advised that Rules 26.1(b) and 34(b)(3)(E) adopt an approach used in recent experimental Rule 8.1 for cases in the pilot commercial court. Mr. Rogers explained that Rule 37(b) provides clarity to practitioners about pre-litigation duties to preserve that are already established by case law. Further consideration of this item was deferred to the next meeting.

5. Adjourn. The Task Force meeting adjourned at 6:28 p.m., concurrently with adjournment of the CPPC meeting. The CPPC will reconvene on November 12, 2015 to discuss the remaining items on its October 1 agenda.

Rule 5. Serving ~~and Filing~~ Pleadings and Other Documents

(a) Service Generally.

- (1) **Scope.** This rule governs service on other parties after service of the summons and complaint, counterclaim, or third-party complaint.
- (2) **When Required.** Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in (c):
 - (A) an order stating that service is required;
 - (B) a pleading filed after the original complaint, unless the court orders otherwise under (d) because there are numerous defendants;
 - (C) a discovery document required to be served on a party, unless the court orders otherwise;
 - (D) a written motion, except one that may be heard ex parte; and
 - (E) a written notice, appearance, demand, or offer of judgment, or any similar document.
- (3) **If a Party Fails to Appear.** No service is required on a party who is in default for failing to appear, except as provided in Rule 55. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rules 4, 4.1, or 4.2, as applicable.
- (4) **Seizing Property.** If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

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

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

- (1) **Serving an Attorney.** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party.
- (2) **Service Generally.** A document is served under this rule by:
 - (A) handing it to the person;
 - (B) leaving it:
 - (i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

- (ii) if the person has no office or the office is closed, at the person’s dwelling or usual place of abode with someone of suitable age and discretion who resides there;
- (C) mailing it via U.S. mail to the person’s last known address—in which event service is complete upon mailing;
- (D) delivering it by any other means, including electronic means other than that described in Rule 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner—in which event service is complete upon transmission; or
- (E) transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action—in which event service is complete upon transmission.

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

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

on [insert date] to:

[Name of opposing party or attorney]

[Address of opposing party or attorney]

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

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

(d) Serving Numerous Defendants.

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

- (A) defendants’ pleadings and replies to them need not be served on other defendants;
- (B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

- (C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.
- (2) ***Notifying Parties.*** A copy of every such order must be served on the parties as the court directs.

Rule 5.1. Filing Pleadings and Other Documents

(ga) Filing With the Court Defined. The filing of documents with the court is accomplished by filing them with the clerk. A judge may permit a document to be filed with the judge, who must note the filing date on the document and then transmit it to the clerk for inclusion in the clerk's record.

(b) Effective Date of Filing.

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

(2) Late Filing Because of an Interruption in Service. If a person fails to meet a deadline for filing a document because of a failure in the document's electronic transmission or receipt, and the matter cannot be resolved by the person and the clerk, the person may file a motion asking the court to accept the document as timely filed. On a showing of good cause, the court may enter an order permitting the document to be deemed filed on the date that the person originally attempted to transmit the document electronically.

(fc) Filing; Attachments Service With Filing and Documents Not to Be Filed.

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

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

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

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

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

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

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

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

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

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

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

(~~ie~~) **Proposed Orders; Proposed Judgments.**

(1) *Required Format.* A proposed order or proposed judgment must be prepared and filed as a separate document and may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment must be prepared in accordance with this rule, and must comply with the provisions of Rule 7.1. On the signature page. ~~T~~here must be at least two lines of text ~~on~~ above the signature ~~page~~.

(2) *Service and Filing.* Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed orders or proposed judgment until the court has signed it and authorized its entry. A party may file an unsigned order or judgment only if necessary to preserve the record on appeal.

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

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

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

(~~fe~~) **Sensitive Data.**

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

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

- (B) *Financial Account Numbers.* If financial account numbers are relevant or set forth in a document, only the last four digits of these numbers may be used.
- (2) *Responsibility With Filer.* The responsibility for not including or redacting sensitive data rests solely with the person making a filing with the court. The clerk and the court are not required to review documents for compliance with this rule, or seal or redact documents that contain sensitive data.
- (3) *Request for Relief.* If a document is subject to availability by remote electronic access under Rule 123, Rules of the Supreme Court of Arizona, any party or the party's attorney may ask the court to order, or the court may order on its own, that the document be sealed and/or replaced with an identical document with the sensitive data redacted or removed.
- (4) *Sanctions.* If this rule is violated, the court may impose sanctions against the responsible counsel or party to ensure future compliance.

Rule ~~7.15.2~~. Forms of Documents

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

- (1) To the left of the center of the page starting at line 1, the filing party's typed or printed name, address, telephone number, email address, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third party plaintiff). If the document is being presented by a litigant representing himself or herself, all of this information must be included except the email address and the State Bar of Arizona identification numbers;
- (2) Centered on or below line 6 of the page, the typed or printed title of the court;
- (3) Below the title of the court and to the left of the center of the document, the typed or printed title of the action or proceeding;
- (4) Opposite the title, in the space to the right of the center of the page, the typed or printed case number of the action or proceeding; and
- (5) Immediately below the case number, a brief description of the nature of the document, typed or printed.

(b) Document Format.

- (1) **Generally.** Unless the court orders otherwise on its own or at the request of a party, all documents filed—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:
 - (A) *Text and Background.* The text of every document must be black on a plain white background. All documents filed must be single-sided and must have line numbers at double-spaced intervals along the left side of the page.
 - (B) *Font.* Every typed document must use an easily readable 12-point font. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in 12-point font and must not appear in the space required for the bottom margin.
 - (C) *Page Size.* Each page of a document must be 8 ½ by 11 inches.
 - (i) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.
 - (ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

- (iii) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.
- (D) *Margins and Page Numbers.* Margins must be set as follows: Margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of the page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.
- (E) *Handwritten Documents.* The court strongly encourages the filing of documents that are typed and prepared on a computer. If a document is handwritten, the text must be legible, and be printed and not include cursive writing or script.
- (F) *Line Spacing.* Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.
- (G) *Headings and Emphasis.* Headings must be underlined, or be in italics or bold font. Underlining, italics, or bold font also may be used for emphasis.
- (H) *Citations.* Case names and citation signals must be in italics or underlined.
- (I) *Originals.* Unless filing electronically, only originals may be filed. ~~except that~~ if it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.
- (J) *Court Forms.* Printed court forms may be single-spaced except that those requiring the signature of a judge or commissioner must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming or imaging.

(c) Electronically Filed Documents.

(1) Format.

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

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

(2) Formats of Attachments.

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

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

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

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

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

(3) Bookmarks and Hyperlinks.

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

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

(4) Originals. An electronically filed document (or a scanned copy of a document filed in hard-copy) satisfies the requirements to be an "original" under Arizona Rule of Evidence 1002.

Rule 5.13. Duties of Counsel and Parties

* * *

Rule 6. Computing and Extending Time

* * *

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

(d) Minute Entries and Other Court-Generated Documents. A minute entry, notice, or other court-generated document is entered on the date it is filed. Unless the court orders otherwise, if an order states that an act may or must be done within a specified time, the time period for performing the act begins on the date the order is filed.

Rule 7.1.—Forms of Documents [Moved to Rule 5.2]

* * *

Rule 7.21. Motions

* * *

(b) Effect of Non-compliance or Waiver. The court may summarily grant or deny a motion if:

- (1) the motion, supporting memorandum, or responsive memorandum does not substantially comply with Rule 7.21(a);
- (2) the opposing party does not file a responsive memorandum; or
- (3) counsel for any moving or opposing party fails to appear at the time and place designated for oral argument.

* * *

(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 ground that it is prohibited, or not authorized, by a specific statute, rule, or court order.
- (2) **Procedure.** Unless the motion to strike permitted by Rule 7.21(f)(1) is expressly authorized by rule or statute:
 - (A) it may not exceed 2 pages in length, including its supporting memorandum;
 - (B) any responsive memorandum must be filed within 5 days after service of the motion and may not exceed 2 pages in length; and
 - (C) no reply memorandum may be filed unless the court orders otherwise.

* * *

[Change cross-references to Rule 7.2(h) to Rule 7.1(h)]

Rule 7.32. Motions *in Limine*

(a) Obligation to Confer. Within sufficient time to comply with Rule 7.32(b), the parties must confer to identify any disputed evidentiary issue that they anticipate will be the subject of a motion *in limine*.

* * *

(d) Pretrial Rulings. All motions *in limine* submitted in accordance with Rule 7.32(b) must be ruled on before trial unless the court determines the particular issue of

admissibility is better considered at trial. The court's denial of a motion *in limine* preserves the moving party's objection to the evidence for purposes of appeal.

(e) **Effect of Noncompliance.** Motions *in limine* not filed in accordance with Rule 7.32(b) will be deemed untimely and will not be ruled on before trial unless good cause is shown. The failure to file a motion *in limine* in compliance with this rule does not operate as a waiver of the right to object to evidence at trial.

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Rule 7.43. Orders to Show Cause

* * *

Rule 7.54. Joint Filings

* * *

Rule 8. General Rules of Pleading

* * *

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

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 served or filed with the court 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 document must state the signer's address, e-mail address and telephone number. ~~Unless a rule or statute specifically states otherwise, pleadings need not be verified or accompanied by affidavit.~~ The court must strike an unsigned document unless the omission is promptly corrected after being called to the ~~attorney's or party's~~ 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 the signature of any non-filing party.

Rule 58. Entering Judgment; ~~Minute Entries~~

* * *

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

Rule 80. General Provisions

* * *

(h) Clerk's Distribution of Minute Entries and Other Court Records.

(1) *Minute Entries.* The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties.

(2) *Electronic Distribution.* The clerk may distribute minute entries, notices and other court-generated documents to a party or a party's attorney by electronic means. Electronic distribution of a document is complete when the clerk transmits it to the email address that the party or attorney has provided to the clerk.

REDLINE OF WORKGROUP NUMBER 2'S RULE SET

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(i)(6); 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);
 - (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) service of 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) disclosure of non-expert witnesses;
- (F) completion of depositions;
- (G) completion of 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 Forms 11-13, Rule 84, Appendix of Forms.
- (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(i)(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 (1) a trial date or (2) 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 moving for an order relating to discovery. 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;
 - (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 non-expert witnesses and the order of their disclosure;
- (7) determine a deadline for the filing of dispositive motions;
- (8) resolve any discovery disputes;
- (9) eliminate non-meritorious 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;
- (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 notebook on 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 any 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)(B), (C), or (D)—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.

* * *

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 Rules of Civil Procedure 16(a)(3) and 26(b)(1)(C).

Rule 21. Improper Joinder and Non-joinder of Parties; Severance

Joinder of a party that is not permitted under Rule 20(a) is not a ground to dismiss an entire action. At any time—on just terms—the court may dismiss an improperly joined party or join any party who may be properly joined under Rule 20(a). The court may also sever any claim against a party, and that severed claim may proceed as a separate and independent action.

Rule 22. Interpleader

(a) Grounds.

(1) **Generally.** Interpleader is a procedure where one holding money or property subject to adverse claims may seek to avoid multiple liability by joining in a single action anyone who asserts or may assert claims to the money or property.

(2) **By a Plaintiff.** A plaintiff may join as defendants anyone who asserts or may assert claims to the money or property.

(3) **By a Defendant.** A defendant may seek interpleader through a crossclaim or counterclaim.

(4) **Propriety of Interpleader.** Interpleader is proper even though:

(A) the claims, or the titles on which the claims depend, lack a common origin or are adverse and independent rather than identical; or

(B) the party requesting interpleader denies liability in whole or in part to any or all of the claimants.

(b) **Release from Liability Upon Deposit or Delivery.** A party requesting interpleader under (a) may move the court for an order discharging that party from liability to the claimants. The court may discharge the party upon:

- (1) the party's deposit in court of the money claimed; or
 - (2) the party's delivery of the property as the court directs.
- (c) **Relation to Other Rules.** This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

Rule 23. Class Actions

(a) **Prerequisites.** One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

(b) **Types of Class Actions.** A class action may be maintained if Rule 23(a) is satisfied and if:

- (1) prosecuting separate actions by or against individual class members would create a risk of:
 - (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
 - (B) adjudications with respect to individual class members that—as a practical matter—would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede the other members' ability to protect their interests;
- (2) the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate for the class as a whole; or
- (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses.

(1) Certification Order.

(A) *Time to Issue.* At an early practicable time after a person sues or is sued as a class representative, the court must hold a hearing and determine by order whether to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must:

- (i) define the class and the class claims, issues, or defenses; ~~and~~
- (ii) appoint class counsel under Rule 23(g);
- (iii) set forth the court's reasons for maintaining the case as a class action; and
- (iv) describe the evidence supporting the court's determination.

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be conditioned, altered, ~~or~~ 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) A claim for an award must be made by motion under Rule 54(g)—subject to the provisions of this rule—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).

~~(4) The court may refer issues related to the amount of the award to a special master, as provided in Rule 53.~~

Rule 23.1. Derivative Actions

(a) **Applicability.** This rule applies when one or more shareholders, members, or partners—as applicable—of a corporation, limited liability company, limited partnership, or unincorporated association bring a derivative action to enforce a right that the corporation, limited liability company, limited partnership, or unincorporated association may properly assert but has failed to enforce.

(b) **Pleading Requirements.** The complaint must:

(1) be verified;

(2) allege facts sufficient to show that the plaintiff has standing to maintain the derivative action; and

(3) allege facts sufficient to show that the plaintiff satisfies all statutory and other requirements under the law for maintaining the derivative action.

(c) **Settlement, Voluntary Dismissal, and Compromise.** A derivative action may not be settled, voluntarily dismissed, or compromised without court approval. Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders, members, or partners—as applicable—in the manner that the court orders. If the court determines that a proposed settlement, voluntary dismissal, or compromise will substantially affect the interests of the shareholders, members, or partners—or a class of shareholders, members, or partners—the court must order that notice be given to the affected shareholders, members or partners.

Rule 23.2. Actions Relating to Unincorporated Associations

This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action

may be maintained only if it appears that those parties will fairly and adequately protect the interests of the association and its members. In conducting the action, the court may enter any appropriate orders corresponding with those in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise must correspond with the procedure in Rule 23(e).

Rule 24. Intervention

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

- (1)** has an unconditional right to intervene under a statute; or
- (2)** claims an interest relating to the subject of the action, and is so situated that disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention.

(1) Generally. On timely motion, the court may permit anyone to intervene who:

- (A)** has a conditional right to intervene under a statute; or
- (B)** has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Officer or Agency. On timely motion, the court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on:

- (A)** a statute administered by the officer or agency; or
- (B)** any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency.

(3) Delay or Prejudice. In exercising its discretion over permissive intervention, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Procedure.

(1) Requirements of Motion. Anyone moving to intervene must:

- (A) serve the motion on the parties as provided in Rule 5; and
- (B) attach as an exhibit to the motion a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought.

(2) ***Filing and Service of Pleading in Intervention.*** Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene.

(3) ***Response to Pleading in Intervention.*** If the pleading in intervention is one to which a party must respond, that party must plead in response to the pleading in intervention within 20 days after it is served. If the pleading in intervention does not require a party to file a responsive pleading, that party may plead in response to the pleading in intervention within 20 days after it is served.

Rule 25. Substitution of Parties

(a) Death.

(1) ***Substitution if the Claim Is Not Extinguished.*** If a party dies and the claim is not extinguished, the court may order substitution of the proper party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made within 90 days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

(2) ***Statement Noting Death.*** A party or the decedent's successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedent's successor or representative if one exists and is known by the party filing the statement. Anyone filing a statement noting death must serve the statement on the parties as provided in Rule 5 and on nonparties in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(3) ***Service of Motion to Substitute.*** Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 5 and on the decedent's successor or representative in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(4) ***Continuation Among the Remaining Parties.*** After a party's death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(b) Incompetency. If a party becomes incompetent, the court may—on motion or on stipulation of the parties and the incompetent party’s representative—permit the action to be continued by or against the party’s representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5 and on the representative of the incompetent party in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(c) Transfer of Interest. If a party’s interest is transferred, the action may be continued by or against that party, unless the court—on motion or on stipulation of the parties and the transferee—orders the transferee to be substituted in the action or joined with the original party. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5 and on the transferee in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d) Public Officers; Death or Separation from Office. An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Counsel for the public officer must file a notice of the substitution and later proceedings should be in the substituted party’s name, but any misnomer not affecting the parties’ substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

V. DISCLOSURE AND DISCOVERY

Rule 26. General Provisions Governing Discovery

(a) Discovery Methods. A party may obtain discovery by any of the following methods:

- (1)** depositions by oral examination or written questions under Rules 30 and 31, respectively;
- (2)** written interrogatories under Rule 33;
- (3)** 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. It is not a ground for objection that the information sought will be inadmissible at the trial if that information appears reasonably calculated to lead to the discovery of admissible evidence.

~~**(B) 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. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 26(b)(1)(C). The court may specify conditions for the disclosure or discovery.~~

(C) 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) Insurance Agreements.** Disclosure of insurance agreements is required under Rule 26.1(a)(10).~~ **(B) 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. If a party makes that showing, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the limits of Rule 26(b)(1)(C). 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.* Any party or other person may—on request and without the showing required under Rule 26(b)(3)(A)—obtain the party’s or other person’s 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)(4) 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.

(43) *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(b); 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 spends preparing for deposition.

(D) *Number of Experts Per Issue.*

(i) *Generally.* Unless the parties agree or the court orders otherwise for good cause, each side is presumptively entitled to call only one retained or specially employed expert to testify on an issue. When there are multiple parties on a side and those parties cannot agree on which expert to call on an issue, the court may designate the expert to be called or—for good cause—allow more than one expert to be called.

(ii) *Standard-of-Care Experts in Medical Malpractice Actions.* Notwithstanding the limits of Rule 26(b)(4)(D)(i), a defendant in a medical malpractice action may—in addition to that defendant's standard-of-care expert witness—testify on the issue of that defendant's standard-of-care. In such an instance, the court is not required to allow the plaintiff an additional expert witness on the issue of the standard-of-care.

(54) *Notice of Non-party at Fault.* No later than 150 days after filing its answer, a party must serve on all other parties—and may 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: (A) disclose the identity and location of the non-party allegedly at fault; and (B) disclose the facts supporting the allegation of fault. 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. A party who has served a notice of non-party 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 non-party 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.

(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 just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(4) 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.

(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, on motion, the court orders otherwise for the parties' and witnesses' convenience and in the interests of justice:

(1) methods of discovery may be used in any sequence; and

(2) discovery by one party does not require any other party to delay its discovery.

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

(f) Sanctions. The court may impose an appropriate sanction—including any order under Rule 16(i)—against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(g) Discovery Motions. Any discovery motion must attach a good faith consultation certificate complying with Rule 7.2(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, 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 the disclosing party believes may be relevant to the subject matter of the action; and

(10) For any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, (A) ~~the existence and contents a copy—or if no copy is available, the existence and substance—~~ of the insurance policy, indemnity agreement, or suretyship agreement; (B) ~~the existence and contents a copy—or if no copy is available, the existence and basis—~~ of any disclaimer, limitation or denial of coverage or reservation of rights under the insurance policy, indemnity agreement, or suretyship agreement; and (C) the remaining dollar limits of coverage under the insurance policy, indemnity agreement or suretyship agreement. A party need only supplement its disclosure regarding the remaining dollar limits of coverage upon another party's written request made within 30 days before a settlement conference or mediation or within 30 days before trial. Within 10 days after such a request is served, a party must supplement its disclosure of the remaining dollar limits of coverage. For purposes of this rule, an insurance policy means a contract of or agreement for or effecting insurance, or the certificate memorializing it—by whatever name it is called—and includes all clauses, riders, endorsements, and papers attached to, or a part of, it, but does not include an application for insurance. Information concerning an insurance policy, indemnity agreement, or suretyship agreement is not admissible in evidence merely because it is disclosed under this rule.

(b) Disclosure of Hard Copy Documents and Electronically Stored Information.

(1) **Hard Copy Documents.** Unless there is 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 production is not so made, the party must provide with its disclosure the name and address of the custodian of the documents. 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 may 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).

(C) *Production of Electronically Stored Information.* Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule 26.1(a)(8) and (9). Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) *Presumptive Form of Production.* Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the producing party.

(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 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 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)(2) or (c)(3).

(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 from disclosure or discovery on a claim that it is privileged or subject to protection as work product, the party must:

(A) expressly make the claim; and

(B) describe the nature of the information not produced or disclosed in a manner that—without revealing information that is itself privileged or protected—will enable other parties to assess the claim.

(2) ***Information Produced.*** If a party contends that information subject to a claim of privilege or of protection as work product material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party who received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

Rule 26.2. Exchange of Records and Discovery Limits in Medical Malpractice Actions

(a) **Exchange of Medical Records.**

(1) **By Plaintiff.** Within 5 days after the date that plaintiff notifies the court under Rule 16(e) that all served defendants have either answered or filed motions, plaintiff must serve on defendants copies of all of plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(2) **By Defendants.** Within 10 days after the date plaintiff serves medical records under Rule 26.2(a)(1), each defendant must serve on plaintiff copies of all of plaintiff's available medical records relevant to the condition that is the subject matter of the action.

(3) **By Request.** In lieu of serving copies of the above-described medical records, counsel may—before the deadline for service of the records—inquire of opposing counsel concerning the records that opposing counsel wishes produced and may then serve by the deadline copies of only those records specifically requested.

(b) Discovery Limits Before Comprehensive Pretrial Conference.

(1) **Generally.** Unless the parties agree or the court orders otherwise for good cause, the parties are limited to the following discovery before the Comprehensive Pretrial Conference under Rule 16(e) is held:

(A) Service of the uniform interrogatories set forth in Rule 84, Form 4;

(B) Service of 10 additional non-uniform interrogatories under Rule 33, with any subpart to a non-uniform interrogatory counting as a separate interrogatory;

(C) Service of a request for production of documents under Rule 34, limited to the following items:

(i) a party's wage information if relevant;

(ii) written or recorded statements by any party or witness, including reports or statements of experts;

(iii) any exhibits the party intends to use at trial; and

(iv) incident reports; and

(D) Depositions of the parties and any known liability experts.

(2) **Stipulations for Additional Discovery.** A party may not unreasonably withhold a stipulation for additional discovery under Rule 26.2(b)(1). A party or counsel who unreasonably withholds a stipulation for additional discovery is subject to sanctions under Rule 26(f).

Rule 27. Discovery Before an Action Is Filed or During an Appeal

(a) Before an Action Is Filed.

(1) **Petition.** A person who wants to perpetuate testimony—including their own—or to obtain discovery to preserve evidence about any matter cognizable in any Arizona state court 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 Arizona state court 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 the petitioner’s 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.** At least 20 days before the hearing date, 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. If an expected adverse party is a minor or incompetent, Rule 17(g) applies. The petition and notice may be served either inside or outside Arizona in the manner provided in Rules 4, 4.1, or 4.2 for serving a summons and pleading. 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.* At least 7 calendar days before the hearing date, any expected adverse party may file an opposition to the petition. 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 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.

(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 provided in Rules 4, 4.1, or 4.2 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 may move for leave to conduct discovery. The moving party must provide the

same notice and serve the motion in the same manner as if the action was still pending in superior court. The motion must:

(A) identify the name and address of each person to be deposed or from whom discovery under the rules is sought, and the expected substance of the testimony or other discovery; and

(B) show the reasons for perpetuating the testimony or other discovery.

(3) **Order and Effect.** If satisfied that perpetuating the testimony or preserving the other evidence may prevent a failure or delay of justice, the court may order the requested discovery to be taken. Discovery authorized by the court must be conducted, and may be used, as provided in these rules.

Rule 28. Persons Before Whom Depositions May Be Taken; Depositions in Foreign Countries; Letters of Request and Commissions

(a) Deposition in the United States.

(1) **Generally.** Within the United States or a territory or insular possession subject to United States jurisdiction, a deposition must be taken before:

(A) an officer authorized to administer oaths by federal law, Arizona law, or the law in the place of examination;

(B) a person appointed by the court where the action is pending to administer oaths and take testimony; or

(C) any certified reporter designated by the parties under Rule 29.

(2) **Definition of “Officer”.** The term “officer” as used in Rules 30, 31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29.

(b) Deposition in a Foreign Country.

(1) **Generally.** A deposition may be taken in a foreign country:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a “letter rogatory”;

(C) on notice, before a person authorized to administer oaths by federal law, Arizona law, or the law in the place of examination; or

(D) before a person commissioned by the court where the action is pending to administer any necessary oath and take testimony.

(2) **Form of a Request, Notice or Commission.** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed “To the Appropriate Authority in [name of country].” A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(3) **Letter of Request—Admitting Evidence.** Evidence obtained in response to a letter of request need not be excluded because it is not a verbatim transcript, because the testimony was not taken under oath, or because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) **Letters of Request and Commissions.**

(1) **Not Required.** A deposition in a pending superior court action may be taken anywhere upon notice prescribed by these rules without a letter of request, commission, or other like writ.

(2) **Issuing Letter of Request or Commission.** The clerk may issue a letter of request—whether or not captioned a “letter rogatory”—a commission, or both:

(A) on appropriate terms after an application and one full day’s notice to the other parties; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) **Objections; Waiver.** A party waives any error in the form of a letter of request or commission if it does not file a written objection before the clerk issues the letter of request or commission. The court must rule on any timely filed objection before the clerk may issue a letter of request or commission.

(d) **Disqualification.** A deposition may not be taken before a person who is:

(1) any party’s relative, employee, or attorney;

(2) related to or employed by any party’s attorney; or

(3) financially interested in the action.

Rule 29. Modifying Discovery Procedures and Deadlines

(a) By Stipulation.

(1) Generally. Unless the court orders otherwise, the parties may stipulate to:

(A) take a deposition before any certified reporter, at any time or place, on any notice, and in any manner specified—in which event it may be used in the same way as any other deposition; and

(B) modify other procedures in these rules governing or limiting discovery.

(2) Court Order. Unless it interferes with court-ordered deadlines, the time set for a hearing, or the time set for trial, a stipulation under Rule 29(a)(1) is effective without court order.

(b) By Motion. A party may move to modify any procedure governing or limiting discovery. The motion must:

(1) set forth the modification sought;

(2) show good cause for the modification; and

(3) comply with Rule 26(g).

Rule 30. Depositions by Oral Examination

(a) When a Deposition May Be Taken.

(1) Depositions Permitted. A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold 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 Documents.*** If a subpoena duces tecum 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 and 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 stipulate 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)(1), 45(b)(3)(B), and 45(f), 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 were in the officer's physical presence.

(5) *Officer's Duties.*

(A) *Before Deposition.* Unless the parties stipulate otherwise, 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)-(iii) (A) through (C) 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 party who asked the question, an objecting person may 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 may impose an appropriate sanction—including any order under Rule 16(i)—against a party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct in connection with a deposition, including an unreasonable refusal to agree to extend the 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)(4) 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—except that 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 of any party, 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 consequently did not attend.

Rule 31. Depositions by Written Questions

(a) When a Deposition May Be Taken.

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

(2) ***Service of Written Questions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.*** Unless a defendant has served a deposition notice or otherwise sought discovery under these rules, a plaintiff must obtain leave of court to serve written questions under Rule 31(b) earlier than 30 days after serving the summons and complaint on that defendant.

(3) ***Incarcerated Deponents.*** Subject to Rule 31(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court 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; Service of Questions and Objections; Questions Directed to an Entity.

(1) ***Service of Written Questions; Required Notice.*** A party who wants to depose a person by written questions must serve them on all parties, with a notice stating, if known, the deponent's name and address. If the deponent's name is unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs. The notice must also state the name or descriptive title and the address of the officer before whom the deposition will be taken.

(2) ***Service of Additional Questions.*** Unless the parties agree or the court orders otherwise, any additional questions to the deponent must be served on all parties as follows: cross-questions, within 30 days after being served with the notice and direct questions; redirect questions, within 10 days after being served with cross-questions; and recross-questions, within 10 days after being served with redirect questions.

(3) **Service of Objections.** A party who objects to the form of a written question served under Rule 30(b)(1) or (2) must serve the objection in writing on all parties within the time allowed for serving the succeeding cross-, redirect, or recross-questions, or, if to a recross-question, within 5 days after service of the recross-questions.

(4) **Questions Directed to an Entity.** In accordance with Rule 30(b)(6), a party may depose by written questions a public or private corporation, a limited liability company, a partnership, an association, a governmental agency, or another entity.

(c) **Delivery to the Officer; Officer's Duties.** The party who noticed the deposition must deliver to the officer designated in the notice a copy of the notice and copies of all the questions and objections served under Rule 30(b). The officer must promptly proceed in the manner provided in Rule 30(c), (e), and (f) to:

(1) take the deponent's testimony in response to the questions;

(2) prepare and certify the deposition; and

(3) deliver it to the party who noticed the deposition, attaching a copy of the notice, the questions, and the objections.

Rule 32. Using Depositions in Court Proceedings

(a) Using Depositions.

(1) **In the Same or Similar Action.** At a hearing or trial, all or part of a deposition taken in the action—or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest—may be used against a party if:

(A) the testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying;

(B) the party or its predecessor in interest was present or represented at the deposition or had reasonable notice of it; and

(C) the party, its representative or its predecessor in interest had an opportunity and similar motive to develop the testimony by examination at the deposition.

(2) **In a Different Action.** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) ***Deponent's Availability at Trial.*** Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent's availability to testify at trial. Use of a deposition at trial does not limit, in any way, any party's right to call the deponent to testify in person.

(4) ***Using Part of a Deposition.*** If a party offers in evidence only part of a deposition, the court may require the offeror to introduce contemporaneously other parts that in fairness should be considered with the part offered.

(5) ***Substituted Party.*** Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

(b) **Objections to Admissibility.** Subject to Rules 28(b) and 32(d)(3), an objection may be made at a hearing or trial to the admission of any deposition testimony that would be inadmissible if the witness were present and testifying.

(c) **Form of Presentation.** Unless the court orders otherwise, a party must provide a transcript of any deposition testimony the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony offered in a jury trial for any purpose other than impeachment must be presented in nontranscript form, if available, unless the court orders otherwise for good cause. If the testimony is not available in audio or audiovisual form, the court may require a single presenter to read the designated portions of the deposition testimony to the jury.

(d) **Waiver of Objections.**

(1) ***To the Notice.*** An objection to an error or irregularity in a deposition notice is waived unless promptly served in writing on the party giving the notice.

(2) ***To the Officer's Qualifications.*** An objection to the qualification of the officer before whom a deposition is to be taken is waived if not made:

(A) before the deposition begins; or

(B) promptly after the basis for disqualification becomes known or, with reasonable diligence, could have been known.

(3) ***To the Taking of the Deposition.***

(A) ***Objection to Competence, Relevance, or Materiality.*** An objection to a deponent's competence—or to the competence, relevance, or materiality of testimony—is not waived by a failure to make the objection before or during the deposition, unless the ground for the objection could have been corrected at that time.

(B) *Objection to an Error or Irregularity at an Oral Deposition.* An objection to an error or irregularity at an oral deposition is waived if:

(i) the objection related to the manner of taking the deposition, the form of a question or answer, the oath or affirmation, a party's conduct, or other matters that could have been corrected at that time; and

(ii) the objection is not timely made during the deposition.

(C) *Objection to a Written Question.* An objection to the form of a written question under Rule 31 is waived if it is not served under Rule 31(b)(3).

(4) *To the Officer's Completion and Return of Deposition.* An objection to how the officer transcribed the testimony—or to how the officer prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.

Rule 33. Interrogatories to Parties

(a) Generally.

(1) Definition. Interrogatories are written questions served by a party on another party.

(2) Number. Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories, including all subparts. A uniform interrogatory and its subparts count as one interrogatory.

(3) Scope. An interrogatory may ask about any matter allowed under Rule 26(b). An interrogatory is not improper merely because it asks for an opinion. An interrogatory may ask for a party's contention about facts or the application of law to facts. On motion, the court may order that such a contention interrogatory need not be answered until a later time.

(4) Uniform Interrogatories. Forms 4, 5, and 6 of Rule 84 contain uniform interrogatories, which a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular action, regardless of how the action or claims are designated. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by

requesting a response only as to particular persons, events, or issues—without converting it into a non-uniform interrogatory.

(b) Answers and Objections.

(1) *Time to Respond.* Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant.

(2) *Answers Under Oath.* An answering party must—to the extent it does not state an objection—answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party—including a public or private entity—must furnish the information available to it. It also must reproduce the text of an interrogatory immediately above its answer to that interrogatory.

(3) *Objections.* The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.

(4) *Signature.* The party who answers the interrogatories must sign them under oath. If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath. An attorney who objects to any interrogatories must sign the objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) Option to Produce Business Records. If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes

(a) **Generally.** A party may serve on any other party a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(B) any designated tangible things; or

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) **Procedure.**

(1) **Number.** Unless the parties agree or the court orders otherwise, a party may not serve requests for more than 10 items or distinct categories of items on any other party.

(2) **Contents of the Request.** The request:

(A) must describe with reasonable particularity each item or distinct category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(3) **Responses and Objections.**

(A) *Time to Respond.* Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served. But a defendant may serve its responses and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant.

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or state the grounds for objecting with specificity, including the reasons.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party must state the form or forms it intends to use.

(E) *Producing the Documents or Electronically Stored Information.* Unless the parties agree or the court orders otherwise, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a native form or in another reasonably usable form that will enable the requesting party to have the same ability to access, search and display the information as the producing party; and

(iii) Absent good cause, a party need not produce the same electronically stored information in more than one form.

(c) **Nonparties.** As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

Rule 35. Physical and Mental Examinations

(a) Examination on Order.

(1) *Generally.* The court where the action is pending may order a party whose physical or mental condition is in controversy to submit to a physical or mental

examination by a ~~suitably licensed or certified examiner~~ physician or psychologist. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) ***Motion and Notice; Contents of the Order.*** An order under Rule 35(a)(1):

(A) may be entered only on motion for good cause and on notice to all parties and the person to be examined;

(B) must specify the time, place, manner, conditions, and scope of the examination; and

(C) must specify the person or persons who will perform the examination.

(b) **Examination on Notice; Motion Objecting to Examiner; Failure to Appear.**

(1) ***Notice.*** When the parties agree that an examination is appropriate but do not agree as to the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:

(A) identify the party or person to be examined;

(B) specify the time, place, and scope of the examination; and

(C) identify the examiner(s).

(2) ***Motion Objecting to Examiner.*** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a ~~suitably licensed or certified examiner~~ physician or psychologist other than the one specified in the notice.

(3) ***Failure to Appear.*** Unless the party has filed a motion under Rule 36(b)(2), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may on motion make such orders concerning the failure as are just, including those under Rule 37(f).

(c) **Attendance of Representative; Recording.**

(1) ***Attendance of Representative.*** Unless his or her presence may adversely affect the examination's outcome, the person to be examined has the right to have a representative present during the examination.

(2) Recording.

(A) Audio Recording. The person to be examined may audio-record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio-record any mental examination.

(B) Video Recording. On order for good cause—or on stipulation of the parties and the person to be examined—an examination may be video-recorded.

(C) Copy of Recording. A copy of a recording made of an examination must be provided to any party upon request.

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

(1) Contents. The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(2) Request by the Party or Person Examined. The party who is examined—or who produces the person examined—may request the examiner's report, like reports of the same condition, and written or recorded notes from the examination. On such request, the party who moved for or noticed the examination must, within 20 days, deliver to the requestor copies of:

(A) the examiner's report;

(B) like reports of all earlier examinations of the same condition; and

(C) all written or recorded notes made by the examiner and the person examined at the time of the examination, and must provide access to the original written or recorded notes for purposes of comparing same with the copies.

(3) Request by the Examining Party. After delivering the materials required by Rule 35(d)(2), the party who moved for or noticed the examination is entitled, on its request, to receive from the party who was examined—or who produced the person examined—like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(4) Waiver of Privilege. By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(5) ***Failure to Deliver a Report as Ordered.*** The court on motion may order—on just terms—that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examiner’s testimony at trial.

(6) ***Scope.*** This Rule 35(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude obtaining an examiner’s report or deposing an examiner under other rules.

Rule 36. Requests for Admission

(a) Scope and Procedure.

(1) ***Scope.*** A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 26(b) relating to:

(A) facts, the application of law to fact, or opinions about either; and

(B) the genuineness of any described documents.

(2) ***Form; Copy of a Document.*** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.

(3) ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.

(4) ***Time to Respond; Effect of Not Responding.*** A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant. A shorter or longer time for responding may be stipulated to or be ordered by the court.

(5) ***Answer.*** If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has

made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(6) *Objections.* The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial.

(7) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. If the court finds that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. [Rule 37\(e\)](#) applies to an award of expenses.

(b) *Effect of an Admission; Withdrawing or Amending It.* A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. Subject to Rule 16, the court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this rule is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(a) *Motion for Order Compelling Disclosure or Discovery.*

(1) *Generally.* A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.2(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(a)(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.

(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.

(4) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this rule, the court may treat an evasive or incomplete disclosure, answer, or response as a failure to disclose, answer, or respond.

(5) ***Payment of Expenses; Protective Orders.***

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court may, after giving an opportunity to be heard, require the party or person whose conduct necessitated the motion, the party or attorney advising that conduct, or both, to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees. But the court 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
- (iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or person who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney’s fees. But the court 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 may be treated as contempt of court.

(2) *Sanctions by the Court Where the Action Is Pending.*

(A) *For Not Obeying a Discovery Order.* If a party or a party's officer, director, or managing agent—or a witness designated under Rule 30(b)(6) or 31(a)(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 may enter further just orders. They may include the following:

- (i)** directing that the matters described in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii)** prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii)** striking pleadings in whole or in part;
- (iv)** staying further proceedings until the order is obeyed;
- (v)** dismissing the action or proceeding in whole or in part;
- (vi)** rendering a default judgment 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)-(vi), unless the disobedient party shows that it cannot produce the other person.

(C) *Payment of Expenses.* Instead of or in addition to the orders above, the court may order the disobedient party, the attorney advising that party, or both to pay the reasonable

expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.

(1) Failure to Timely Disclose. Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 26.1 may not, unless such failure is harmless, use the information, witness, or document as evidence at trial, at a hearing, or on a motion.

(2) Inaccurate or Incomplete Disclosure. On motion, the court may order a party or attorney who makes a disclosure under Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete to reimburse the opposing party for the reasonable cost, including attorney's fees, of any investigation or discovery caused by the inaccurate or incomplete disclosure.

(3) Other Available Sanctions. In addition to or instead of the sanctions under Rule 37(c)(1) and (2), the court, on motion and after giving an opportunity to be heard:

(A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure;

(B) may inform the jury of the party's failure; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(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 (A) the deadline set in a Scheduling Order, or (B) in the absence of such a deadline, 60 days before trial, must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the information, witness, or document would be allowed under the standards of Rule 37(c)(1); and

(B) the party disclosed the information, witness, or document as soon as practicable after its discovery.

(5) Use of Information, Witness, or Document Disclosed During Trial. A party seeking to use information, a witness, or a document that it first disclosed during trial

must obtain leave of court by motion. The motion must be supported by affidavit and must show that:

(A) the party, acting with due diligence, could not have earlier discovered and disclosed the information, witness, or document; and

(B) the party disclosed the information, witness, or document immediately upon its discovery.

(d) **Failure to Timely Disclose Unfavorable Information.** If a party or attorney knowingly fails to make a timely disclosure of damaging or unfavorable information required under Rule 26.1, the court may impose serious sanctions, up to and including dismissal of the action—or rendering of a default judgment—in whole or in part.

(e) **Expenses on Failure to Admit.** If a party fails to admit what is requested under Rule 36 and if the requesting party later proves the matter true—including the genuineness of a document—the requesting party may move that the non-admitting party pay the reasonable expenses, including attorney’s fees, incurred in making that proof. The court must so order unless:

(1) the request was held objectionable under Rule 36(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had a reasonable ground to believe that it might prevail on the matter; or

(4) there was other good reason for the failure to admit.

(f) **Party’s Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.**

(1) **Generally.**

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

(i) a party or a party’s officer, director, or managing agent—or a person designated under Rules 30(b)(6) or 31(a)(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 7.2(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)-(vi). Instead of or in addition to these sanctions, the court may require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses—including attorney’s fees—caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

(g) Failure to Preserve Electronically Stored Information.

(1) Duty to Preserve.

(A) Generally. A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action’s commencement, whichever first occurs. A court order or statute also may impose a duty to preserve certain information.

(B) Reasonable Anticipation. A person reasonably anticipates an action’s commencement if:

- (i)** it knows or reasonably should know that it is likely to be a defendant in a specific action; or
- (ii)** it seriously contemplates commencing an action or takes specific steps to do so.

(C) Reasonable Steps to Preserve.

(i) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(ii) Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information’s probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system, the timeliness of the party’s actions, and the relative burdens and

costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) **Remedies and Sanctions.** If electronically stored information that should have been preserved is lost because a party—either before or after an action's commencement—failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order under Rule 26(b)(1)(B). If the information cannot be restored or replaced through additional discovery, the court:

(A) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(i) presume that the lost information was unfavorable to the party;

(ii) instruct the jury that it may or must presume the information was unfavorable to the party; or

(iii) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

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 at least 30 days' notice of the trial date to the parties 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) ~~sufficient~~ cause exists to do so, supported by affidavit or other evidence; (B) the parties consent; or (C) postponement is required by operation of law. Trial also may be postponed as authorized or required by local rule.

(2) **Motion and Certification.** A party seeking postponement of a trial must file a motion setting forth the basis for the request and the supporting evidence ~~supporting it~~.

~~Moving counsel~~The party must attach a separate statement ~~to the motion~~ 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 unavailability or absence of the witness, the moving party must submit an affidavit stating or showing:

- (i)** the name and address of the witness—if known;
- (ii)** the witness's expected testimony;
- (iii)** the expected testimony's materiality;
- (iv)** the reason for the witness's unavailability or absence;
- (v)** the party's diligence in procuring such testimony and efforts to make the witness available; and
- (vi)** the testimony cannot be obtained from any other source.

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

(c) *Scheduling Conflicts Between Courts.*

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

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

(A) whether the other action is a criminal matter, and, if so, whether apostponement of that matter will deprive a defendant of a speedy trial ~~problem exists~~;

- (B) each action's relative urgency or importance;
 - (C) whether either action involves out-of-town witnesses, parties or counsel;
 - (D) the actions' respective agesfiling 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 ~~if~~:

- (A) in an action other than a medical malpractice action or an action assigned to arbitration, the parties have not filed a Joint Report and a Proposed Scheduling Order under Rule 16(b) or Rule 16.3;
- (B) in a medical malpractice action, the court has not set a date for a Comprehensive Pretrial Conference under Rule 16(e) and the parties have not filed a proposed scheduling order; or
- (C) in actions assigned to arbitration, the arbitrator has not filed a notice of decision under Rule 76.

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

- (A) the parties file a Joint Report and a Proposed Scheduling Order under Rule 16(b) or Rule 16.3;
- (B) in a medical malpractice action, the court sets a date for a Comprehensive Pretrial Conference under Rule 16(e) or the parties file a proposed scheduling order;
- (C) in an action assigned to arbitration, the arbitrator files a notice of decision under Rule 76; or

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

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

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

- (a) **Signature.** Every pleading, written motion, and other document ~~served or~~ 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 document must state the signer's address, e-mail address and telephone number. Unless a rule or statute specifically states otherwise, pleadings need not be verified or accompanied by affidavit. The court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party's attention.
- (b) **Representations to the Court.** By signing a pleading, motion, or other document, the attorney or party certifies that to the best of the person's knowledge, information and belief formed after reasonable inquiry:
- (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
 - (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.
- (c) **Sanctions.**
- (1) **Generally.** If a pleading, motion or other document is signed in violation of this rule, the court, on motion or on its own, must impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.
 - (2) **Consultation.** Before filing a motion for sanctions under this rule, the moving party must:
 - (A) attempt to resolve the matter by good faith consultation as provided in Rule 7.2(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 7.2(h) good faith consultation certificate; and
- (D) attach a copy of the written notice provided to the opposing party under Rule 11(c)(3)(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 shall make an independent reasonable inquiry into the facts.

VI. TRIALS

Rule 38. Right to a Jury Trial; Demand; Waiver

- (a) Right Preserved.** The right of trial by jury is preserved to the parties inviolate.
- (b) Demand.** On any issue triable of right by a jury, a party may obtain a jury trial as follows:
 - (1) Non-Medical Malpractice Actions.** In all actions other than a medical malpractice action, a party may obtain demand a jury trial by filing and serving a written demand at any time after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed, whichever first occurs. ~~The A-demand for a jury trial~~ may not be combined with any other motion or pleading filed with the court.
 - (2) Medical Malpractice Actions.** In a medical malpractice action, ~~it is presumed that one or more of the parties demand a jury trial and~~ no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing ~~and serving~~ a written stipulation ~~waiving the right to a jury trial~~, signed by all parties, at any time after the action is commenced, but no later than 30 days before

the trial is scheduled to begin. The stipulation ~~waiving the right to a jury trial~~ may not be combined with any other motion or pleading. ~~filed with the court.~~

- (c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may—within 10 days after the demand is served or within a shorter time ordered by the court—serve a demand for jury trial on any other or all factual issues triable by jury.
- (d) **Waiver; Withdrawal.** A party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if the parties consent.

Rule 39. Trial by Jury or by the Court

- (a) **If a Demand Is Made.** If a jury trial is demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:
- (1) the parties ~~or their attorneys~~ file a stipulation to a nonjury trial or so stipulate on the record; or
 - (2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.
- (b) **If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. ~~The, but the~~ court may, on motion, order a jury trial on any issue for which a jury might have been demanded.
- (c) **Advisory Jury; Jury Trial by Consent.** In an action not triable of right by a jury, the court, on motion or on its own:
- (1) may try any issue with an advisory jury; or
 - (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

Rule 40. Trial Procedures

- (a) **Scope.** ~~This rule Rule 40~~ governs jury trials and, to the extent applicable, trials to the court.

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

- (1) impose time limits and allocate trial time;
- (2) sequence the presentation of claims, evidence and arguments;
- (3) allow advance scheduling of witnesses and other evidence;
- (4) order pretrial admission of exhibits or other evidence;
- (5) allow electronic presentation of evidence; and
- (6) adopt other means of managing or expediting trial.

(c) **Order of Trial.** A trial should proceed in the following order, unless the court orders otherwise for good cause:

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

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

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

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

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

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

(A) plaintiff;

(B) defendant;

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

(D) plaintiff's rebuttal evidence;

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

- (F) rebuttal evidence from other parties or with respect to cross-claims or third party complaints, as the court permits and in the order it directs.
- (4) **Final Instructions.** Final jury instructions, as provided in Rule 51, may be given before or after counsel's closing arguments.
- (5) **Closing Argument.** The party with the burden of proof on the whole case under the pleadings should make the first and last argument in closing. If the remaining parties have different claims or defenses and are represented by different counsel, the court should prescribe the order in which they will make their respective closing arguments.
- (d) **Supplementing Testimony.** At any time before closing arguments begin and if justice requires, the court may allow a party to introduce omitted testimony on such terms as the court orders.
- (e) **Jury Deliberations.**
- (1) **Place.** During deliberations, jurors ~~must should~~ be kept together in a convenient place in the charge of an officer that the court designates. The court may permit jurors to separate while not deliberating, or, on motion or on its own, it may require them to be sequestered in the charge of a designated officer whenever they leave the courtroom or place of deliberation.
 - (2) **Time.** Juror deliberations should take place during normal work hours unless the court, after consulting the jury and the parties, determines that the interests of justice require evening or weekend deliberations and it will not impose an undue hardship on the jurors.
- (f) **Juror Notes and Notebooks.**
- (1) **Juror Notes.** The court should instruct ~~that~~ the jurors that they may take notes during the trial for their use and keep notes on the evidence to help refresh their memory during recesses, discussions and deliberations. The court should provide suitable writing materials for this purpose. ~~When After~~ the jury is discharged~~has rendered its verdict~~, the notes ~~must should~~ be collected and promptly destroyed.
 - (2) **Juror Notebooks.** The court may allow documents and exhibits to be included in notebooks for each juror's use during trial to help the jurors perform their duties.
 - (3) **Access.** During recesses, discussions and deliberations, jurors should have access to their notes and to any juror notebooks allowed by the court.
- (g) **Officer Duties.** Unless the court orders otherwise, the officer in charge of the jurors should not:

- (1) allow any improper communication ~~to be made to them, or make any, except to ask them if they have agreed on their verdict;~~ or
- (2) communicate with any person about ~~the status of~~ the jury's deliberations or any verdict the jury may have reached.

(h) Juror Admonitions.

(1) Discussions.

- (A) The court should admonish the jury that until deliberations are completed, and at all times when the jurors are allowed to separate during trial, they must not converse among themselves or with anyone else on any subject connected with the trial while not deliberating.
- (B) Subject to such limitations as the court may impose for good cause, the jurors should be instructed that they are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, so long as they reserve judgment about the action's outcome until deliberations begin.

- (2) **Other Influences.** The court should admonish jurors that they should not read or view any media stories or accounts from any other sources regarding the action, or view the place or places where the events at issue occurred.

(i) Juror Communications.

- (1) **The Court.** The officer in charge of the jurors should notify the court of any juror request to communicate with the court during deliberations. If the jury is brought into court, their foreman should state to the court, either orally or in writing, what they desire to communicate.
- (2) **Witnesses.** Jurors may submit to the court written questions directed to witnesses or to the court. Counsel must be allowed to object to such questions on the record and out of the jury's presence. For good cause, the court may prohibit or limit jury questions to witnesses.

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

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

- (1) **Discharge Before Verdict.** After the action is submitted to them, the jurors may be discharged if the court determines that they are unlikely to reach a verdict, or if a calamity, sickness or accident requires it. If a jury is discharged without having rendered a verdict, the action may be tried again.
- (2) **Dismissal After Verdict.** When dismissing a jury after the action's conclusion, the court should inform the jurors that they are discharged from service and, if appropriate, it may release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.

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

- (1) in support of or in opposition to a motion under Rules 50(b), 52(b), 59 or 60; or
- (2) as ordered by the court.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal.

(1) By the Plaintiff.

(A) *On Notice or Order on Stipulation.* Subject to Rules [23\(c\)](#), [23.1\(c\)](#), [23.2](#), [66\(d\)](#) and any applicable statute, ~~41(a)(1)(A)(iii)~~, the plaintiff may dismiss an action:

- (i) by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or
- (ii) by order based on a stipulation of dismissal signed by all parties who have appeared. The order may be signed by a judge, an authorized court commissioner, the court clerk or a deputy clerk.

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

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

- (2) **By Other Court Order; Effect.** Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the

defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this Rule 41(b) and any dismissal not under this rule—except one excepting dismissals for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.‡

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

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

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

(1) before a responsive pleading is served; or

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

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

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

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

Rule 42. Consolidation; Separate Trials

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

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

(2) consolidate the actions; or

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

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

Rule 42.1. Change of Judge as of Right

- (a) **When Available.** In any action in superior court, except an action in the Tax Court, each side is entitled as a matter of right to a change of one judge. Each action, whether single or consolidated, must be treated as having only two sides. If two or more parties on a side have adverse or hostile interests, the presiding judge may allow additional changes of judge as a matter of right, but each side must have the right to the same number of such changes. The term “judge” as used in this rule refers to any judge, judge pro tem, or court commissioner. The term “presiding judge” as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge’s designee.
- (b) **Notice Requirements.** A party seeking a change of judge as a matter of right must either file a written notice, or make an oral request on the record, in the manner provided below:
- (1) **Written Notice.** A written notice of change of judge must be served on all other parties, the presiding judge, the noticed judge and the court administrator, if any, by any method provided in Rule 5(c). The notice must not specify grounds, but must contain:
- (A) the name of the judge to be changed;
 - (B) a statement that:
 - (i) the notice is timely under Rule 42.1(c);
 - (ii) no waiver has occurred under Rule 42.1(d); and
 - (iii) the party has not been granted a change of a judge as a matter of right previously in the action.
- (2) **Oral Notice.** An oral request for change of judge must include the information required by Rule 42.1(b)(1)(A) and (B). When made, it is deemed to be an “oral notice of change of judge” for purposes of this rule. The judge must enter on the record the date of the oral notice, the name of the requesting party and the judge’s disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 42.1(a). For purposes of this rule, an oral notice is deemed “filed” on the date that it is made on the record.
- (c) **Time Limitations.** A party is precluded from changing judge as a matter of right unless timely notice is filed. The following time periods govern the timeliness of any notice of change of judge:

- (1) Notice must be filed within 90 days after the party giving notice first appears in the case.
 - (2) If an assignment identifies a judge for the first time after the time period set forth in Rule 42.1(c)(1) has expired, or fewer than 10 days before that time period will expire, a notice is timely if filed within 10 days after the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.
 - (3) A notice of change of judge is ineffective if filed within 3 days of a scheduled proceeding, unless the parties have received fewer than 5 days' notice of that proceeding or the judge's assignment. The filing of an ineffective notice neither requires a change of judge nor bars the party who filed it from later filing a notice of change of judge that satisfies this rule's requirements.
- (d) **Waiver.** A party waives the right to change of a judge assigned to preside over any proceeding in the action, if:
- (1) the party agrees to the assignment;
 - (2) the judge rules on any contested issue, or grants or denies a motion to dispose of any claim or defense, if provided the party had an opportunity to file a ~~written or oral~~ notice of change of judge before the ruling is made;
 - (3) the judge grants or denies a motion to dispose of one or more claims or defenses in the action;
 - (4) a scheduling, pretrial, trial-setting or similar conference begins;
 - (5) a scheduled contested hearing begins; or
 - (6) trial begins.
- (e) **Actions Remanded from an Appellate Court.** The right to a change of judge in actions remanded by an appellate court is renewed, and no event connected with the first trial constitutes a waiver:
- (1) if the appellate decision requires a new trial or reverses summary judgment on one or more issues; and
 - (2) the party seeking a change of judge—or the side on which the party belongs—has not previously exercised its right to a change of judge in the action.
- (f) **Procedures on Notice.**
- (1) **On Proper Notice.** If a notice is timely filed and no waiver has occurred, the judge named in the notice or affidavit should proceed no further in the action except to

make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge. ~~However, if the named judge is the only judge in the county, where the action is pending, that judge also may~~ also reassign the case, perform the functions of the presiding judge.

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

(3) **Reassignment.**

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

(B) **Absent Stipulation.** If no judge is agreed on, the presiding judge must promptly reassign the action.

Rule 42.2. Change of Judge for Cause

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

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

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

(d) **Timeliness and Waiver.** An affidavit seeking a change of judge for cause must be filed within 20 days after discovering that grounds exist for a change of judge. Case

events or actions taken before that discovery do not waive a party's right to a change of judge for cause.

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

- (1) Within 5 days after the affidavit is served, any other party may file an opposing affidavit or a responsive memorandum of no more than two pages in length. No reply memorandum or affidavits are permitted unless authorized by the presiding judge.
- (2) The presiding judge may hold a hearing to determine the issues raised in the affidavit, or may decide the issues based on any affidavits and memoranda filed by the parties.
- (3) On filing of the affidavit for cause, ~~The named judge named in the affidavit~~ should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable harm injury, loss or damage from occurring before the request is decided and the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge may also perform the functions of the presiding judge.
- (4) The presiding judge must decide the issues by the preponderance of the evidence. Under § 12-409(B)(5), the sufficiency of any "cause to believe" must be determined by an objective standard, not by reference to the affiant's subjective belief. If grounds for disqualification are found, the presiding judge must promptly reassign the action, to the original judge or make a new assignment. Any new assignment must comply with A.R.S. § 12-411.
- (5) If the court determines that the party who filed the affidavit is not entitled to a change of judge, then the judge named in the notice may proceed with the action.

Rule 43. Taking Testimony

- (a) **Definition of Witness.** A witness is a person whose testimony under oath or affirmation is offered as evidence for any purpose, whether by oral examination, deposition or affidavit.
- (b) **Affirmation Instead of Oath.** When these rules require an oath, a solemn affirmation suffices.

- (c) **Interpreter.** The court may appoint an interpreter of its choosing and may set the interpreter's reasonable compensation, to be paid from funds provided by law or by one or more parties. The compensation may be taxed as costs.
- (d) **Limitation on Examining Witness.** Except as allowed by the court, only one attorney for each party may examine a witness.
- (e) **In Open Court.** At trial, witness testimony must take place in open court, unless a statute, these rules, or the Arizona Rules of Evidence provide otherwise. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.
- (f) **Evidence on a Motion.** If a motion relies on facts outside the record, the court may decide ~~hear~~ the matter on affidavits or on ~~may hear it wholly or partly on oral or deposition~~ testimony. ~~or on depositions.~~
- (g) **Preserving Recording of Court Proceedings.**
 - (1) **Transcripts and Other Recordings.** The official verbatim recording of any court proceeding is an official record of the court. The original recording must be kept by the person who recorded it, a court-designated custodian, or the clerk, in a place designated by the court. The recording must be retained according to the records retention and disposition schedules adopted by the Arizona Supreme Court, unless the court specifies a different retention period.
 - (2) **Transcription.** If a court reporter's verbatim recording is to be transcribed, the court reporter who made the recording must be given the first opportunity to make the transcription, unless that court reporter no longer serves in that position or is unavailable for any other reason.

Rule 44. Proving an Official Record

(a) Authenticating an Official Record—Generally.

- (1) **Domestic Record.** A record—or an entry in it—may be authenticated as an official record if it is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States and it is:
 - (A) an official publication of the record; or
 - (B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal, or its equivalent:

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

(2) Foreign Record.

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

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

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

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

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

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

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

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

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

Rule 44.1. Determining Foreign Law

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

Rule 45. Subpoena

(a) Generally.

(1) Requirements—Generally. Every subpoena must:

- (A)** state the name of the Arizona court from which it 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 or forms.

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

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

(3) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands attendance 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 cost. The objection must state the basis for the objection, and must include the name, address, and telephone number of the person, or the person's attorney, serving the objection.

- (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 portions of the subpoena that are the subject of the objection, unless ordered to do so by the issuing court.
- (ii) The party serving the subpoena may move under Rule 37(a) to compel compliance with the subpoena. The motion must comply with Rule 37(a)(2)(C), and must be served on the subpoenaed person and all other parties 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 must expressly make the claim and describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the demanding party to assess the claim.

(ii) If 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 may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. A receiving party may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(6) ***Production to Other Parties.*** Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information or tangible things in response to a subpoena must promptly make such materials available to all other parties for inspection and copying, 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 should not be filed except as allowed by Rule 5(g)(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 may impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.

(2) *Quashing or Modifying a Subpoena.*

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

- (i)** fails to allow a reasonable time to comply;
- (ii)** requires a person who is neither a party nor a party’s officer to travel to a location other than the places specified in Rule 45(b)(3)(B);
- (iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv)** subjects a person to undue burden.

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

- (i)** it requires disclosing a trade secret or other confidential research, development, or commercial information;
- (ii)** it requires disclosing an unretained expert’s opinion or information that does not describe specific occurrences in dispute and results from the expert’s study that was not requested by a party;
- (iii)** it requires a person who is neither a party nor a party’s officer to incur substantial travel expense; or
- (iv)** justice so requires.

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

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

- (ii) if the person’s travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.
- (D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.
- (E) *Service of Motion.* Any motion to quash or modify a subpoena must be served on the party or the attorney serving the subpoena. The party or attorney who served the subpoena must serve a copy of any such motion on all other parties.
- (f) **Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party’s officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

Rule 45.1. Interstate Depositions and Discovery

(a) Definitions. In this rule:

- (1) Foreign jurisdiction means a state other than Arizona;
- (2) Foreign subpoena means a subpoena issued under a foreign court’s authority;
- (3) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States;
- (4) Subpoena means a document issued under court authority requiring a person to:
 - (A) attend and testify at a deposition;
 - (B) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person’s possession, custody, or control; or
 - (C) permit the inspection of premises.

(b) Issuing Subpoena.

- (1) ***Presenting the Foreign Subpoena.*** To obtain a subpoena under this Rule 45.1, a party must present a foreign subpoena to the court clerk in the county where the discovery will be conducted. The foreign subpoena should ~~must~~ include the following phrase below the case number: “For the Issuance of an Arizona

Subpoena Under Ariz. R. Civ. P. 45.1.” A request for a Rule 45.1 subpoena does not constitute an appearance in an Arizona court.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) **Objections.** Rule 45 governs the time and manner for objecting to subpoenas issued under this rule. Objections to a subpoena commanding attendance at a deposition must be made by timely motion under Rule 45(e)(2). Unless excused

from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rules 45 or 45.1, a person who is properly served with a deposition subpoena must attend and testify at the date, time and place specified in the subpoena.

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

- (A)** must comply with Rule 45 and other applicable Arizona rules and statutes;
- (B)** must be filed with the court clerk in the county where the discovery is to be conducted; and
- (C)** must be filed as a separate civil action bearing the same caption as appears on the subpoena. The following phrase must appear below the case number of the newly filed action: “Motion or Application Related to a Subpoena Issued Under Ariz. R. Civ. P. 45.1.” Any later motion or application relating to the same subpoena must be filed in the same action.

Rule 46. Objecting to a Ruling or Order

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

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

(a) Jury Selection. ~~If an action is to be tried by jury, t~~The initial jury panel ~~for the action~~ will consist of persons summoned for jury service who have appeared. The clerk will randomly select, ~~—~~either manually or by electronic means, ~~—~~a sufficient number of persons from this group for consideration as jurors ~~in the action~~. The clerk will then prepare a list of these prospective jurors’ names in random order, and deliver it to the court. The clerk will read the names of prospective jurors in the order in which they appear on the list until a jury is fully selected or the ~~names on the list is are~~ exhausted. If the ~~names on the list is are~~ exhausted before a jury is ~~fully~~ selected, the clerk will prepare an additional list of prospective jurors in the same manner as provided in this rule.

(b) Juror Information.

- (1) ***Personal Information.*** Before jury selection and voir dire examination starts, the clerk must provide the parties with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury experience, and felony conviction status. The clerk must keep all prospective jurors' home, business and telephone numbers confidential and may not disclose them unless good cause is shown.
- (2) ***Questionnaires.*** The court may order prospective jurors to complete a written questionnaire prepared by the parties and submitted to the court for approval before trial. Unless the court orders otherwise, the clerk must provide copies of any such juror questionnaire and answers to the parties and their respective counsel. Any party or counsel receiving a copy of the questionnaire and answers must keep the information strictly confidential and must not disclose the information to any other person. When jury selection is done, each recipient must return all copies of the juror questionnaires and answers to the clerk.

(c) Voir Dire Oath and Procedure.

- (1) ***Voir Dire Oath.*** The prospective jurors must take an oath administered by the clerk before they are examined about their qualifications. The oath's substance must be as follows: "You do solemnly swear (or affirm) that you will truthfully answer all questions about your qualifications to serve as a trial juror in this action, so help you God." If a prospective juror elects to affirm rather than swear the oath, the clause "so help you God" must be omitted.
- (2) ***Brief Opening Statements.*** Before voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.
- (3) ***Extent of Voir Dire.***
 - (A) ***Questioning by Court and Parties.*** The court must thoroughly question the jury panel to ensure that prospective jurors are qualified and are fair and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limitations on the questioning. Written questions also may be used as provided in Rule 47(b)(2).
 - (B) ***Extent of Questioning.*** Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a peremptory challenge.

(d) Challenges for Cause.

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

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

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

(i) family member;

(ii) guardian or ward;

(iii) master or servant;

(iv) employer or employee;

(v) principal or agent;

(vi) business partner or associate; or

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

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

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

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

(e) Peremptory Challenges.

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

(2) Number. Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action—whether a single action or two or more actions consolidated for trial—must be treated as having only two sides. If it appears that two or more

parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.

(f) Alternate Jurors.

- (1) **Generally.** The court may order that up to 6 additional jurors be called and impaneled in the same manner as other jurors under this rule, to allow the court to later designate some of the jurors as alternates.
- (2) **Instructions.** The court should explain to the jury why alternate jurors are needed and how they will be selected at the end of trial.
- (3) **Selecting and Excusing an Alternate Juror.** The court will determine the identities of the alternate jurors by a drawing held in open court after closing arguments and final jury instructions are given but before deliberations begin. If an alternate juror is excused, the court must instruct him or her to continue to observe the juror admonitions until a verdict is returned or the jury is discharged.
- (4) **Substituting an Alternate Juror.** If a deliberating juror is disqualified or unable to perform the required duties, the court may substitute an alternate juror in the juror's place. If an alternate juror joins the deliberations, the court must instruct the jury to start over in its deliberations.
- (5) **Additional Peremptory Challenges.** In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.

Rule 48. Stipulations on Jury Size and Verdict

- (a) **Jury Size.** The parties may stipulate to a jury of fewer than 8 but not fewer than 3 members, exclusive of any alternate jurors who are permitted to deliberate.
- (b) **Verdict.** The parties may stipulate that a verdict or a finding of a stated number of jurors be taken as the verdict or finding of the jury.

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

(a) Special Verdict.

- (1) **Generally.** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:
 - (A) submitting written questions susceptible of a brief answer;
 - (B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or
 - (C) using any other method that the court considers appropriate.
- (2) **Instructions.** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.
- (3) **Issues Not Submitted.** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

(b) General Verdict With Answers to Written Questions.

- (1) **Generally.** The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.
- (2) **Verdict and Answers Consistent.** If the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.
- (3) **Answers Inconsistent With the Verdict.** If the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:
 - (A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;
 - (B) direct the jury to further consider its answers and verdict; or
 - (C) order a new trial.

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

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

(d) **Return of Verdict.**

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

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

(e) **Proceedings on Return of Verdict.**

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

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

(B) if any juror disagrees that it is their verdict, the judge must poll the jury under Rule 49(e)(2); jury must retire to consider the case further; and

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

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

(f) Form of Verdict.

- (1) *Defective, Informal, or Nonresponsive Verdict.*** On request of a party or on its own, the court may order that an informal or defective verdict be reformed. Any such reformation of the verdict should take place before the jury is discharged and with their assent. If the verdict is not responsive to the issue submitted to the jury, the court should inform the jury of the issue and require further deliberations.
- (2) *No Special Form of Verdict Required.*** No special form of verdict is required. If the jury's verdict is in substantial compliance with the law, the court should enter judgment thereon, notwithstanding a defect in form.
- (3) *Fixing Net Recovery Amount.*** If two opposing parties have claims against each other for the recovery of money, and each of those parties obtains a jury verdict awarding money, the jury must separately find the amount of recovery on each claim. The court may enter judgment for the party who has the greater recovery, in an amount reflecting the difference in the amounts awarded to the two parties.

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

(a) Judgment as a Matter of Law.

- (1) *Generally.*** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:
 - (A)** resolve the issue against the party; and
 - (B)** grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.
- (2) *Motion.*** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

- (b) *Renewing the Motion After Trial; Alternative Motion for a New Trial.*** If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 15 days after the entry of judgment—or if the trial ends without a verdict or with an incomplete verdict that does not decide an issue raised by the motion, no later than 15 days after the jury was

discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

- (1) allow judgment on the verdict, if the jury returned a verdict;
- (2) order a new trial; or
- (3) direct the entry of judgment as a matter of law.

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

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

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

(d) Time for a Losing Party’s New-Trial Motion. Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 15 days after the entry of the judgment.

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

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

(a) Requests.

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

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

- (A) file requests for instructions on issues that could not reasonably have been anticipated by any earlier filing deadline ordered by the court; and
- (B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions.

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

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

- (A) its duties and conduct;
- (B) the order of proceedings;
- (C) the procedure for submitting written questions to witnesses or to the court;
- (D) the procedure for note-taking;
- (E) the nature of the evidence and its evaluation;
- (F) any issues to be addressed; ~~and~~
- (G) the legal principles that will govern the trial; and
- (H) the procedures to be followed in the event of any problem or difficulty experienced by the jury or its members during the course of trial.

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

- (A) may give an instruction as proposed, refuse to give the instruction, or modify the instruction, indicating on the record the modifications made;
- (B) must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;
- (C) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered;
- (D) may instruct the jury at any time before the jury is discharged; and
- (E) must make a record of its rulings.

(c) Objections.

- (1) **How to Make.** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.
- (2) **When to Make.** An objection is timely if:
 - (A) a party objects at the opportunity provided under Rule 51(b)(3)(C); or
 - (B) a party was not informed of an instruction or action on a request before having an opportunity to object under Rule 51(b)(3)(C), and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Fundamental Error.

- (1) **Assigning Error.** A party may assign as error:
 - (A) an error in an instruction actually given, if that party properly objected; or
 - (B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.
- (2) **Fundamental Error.** A court may consider a fundamental error as allowed by law, even if the error was not preserved.

(e) Record.

- (1) **Jury Communications.** All communications between the court and members of the jury panel must be in writing or on the record.
- (2) **Preliminary and Final Instructions.** The court's preliminary and final instructions on the law must be in writing and filed.

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

(a) Findings and Conclusions.

- (1) **Generally.** In an action tried on the facts without a jury or with an advisory jury, if requested before trial, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion, minute entry or memorandum of decision filed by the court. Judgment must be entered under Rule 58.

- (2) ***For an Interlocutory Injunction.*** In granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its action as provided in Rule 52(a)(1).
 - (3) ***For a Motion.*** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.
 - (4) ***Effect of a Master's Findings.*** A master's findings, to the extent adopted by the court, must be considered the court's findings.
 - (5) ***Questioning the Evidentiary Support.*** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.
 - (6) ***Setting Aside the Findings.*** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses.
- (b) **Amended or Additional Findings.** On a party's motion filed no later than 15 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.
- (c) **Judgment on Partial Findings.** If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against that party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law if requested as required by Rule 52(a).
- (d) **Submission on Agreed Statement of Facts.** The parties may submit a matter in controversy to the court on an agreed statement of facts, signed by them and filed with the clerk. The court must render its decision based on the agreed statement unless it finds the statement to be insufficient.

Rule 53. Masters

(a) Appointment.

- (1) *Scope.*** Unless a statute provides otherwise, a court may appoint a master only to:
 - (A)** perform duties consented to by the parties;
 - (B)** hold trial proceedings and make or recommend findings of fact and conclusions of law on issues to be decided without a jury if appointment is warranted by:
 - (i)** some exceptional condition; or
 - (ii)** the need to perform an accounting or resolve a difficult computation of damages; or
 - (C)** address pretrial and post-trial matters that cannot be effectively and timely addressed by an available superior court judge in the county in which the court sits.

(2) *Disqualification; Affidavit.*

- (A)** A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under Rule 81 of the Rules of the Supreme Court of Arizona, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.
 - (B)** Promptly on receiving notice of an appointment or a prospective appointment, and before accepting the appointment, the prospective appointee must file an affidavit disclosing whether there is any ground for disqualification under Rule 53(a)(2)(A).
- (3) *Possible Expense or Delay.*** In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

- (1) *Notice.*** Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.
- (2) *Objection.*** If one or more parties object to the appointment of a master or to a proposed appointee, the court may:
 - (A)** decline to make the appointment; or

- (B) appoint a master based on a finding on the record stating the reasons that:
 - (i) one or more of the circumstances for the appointment specified in Rule 53(a)(1) are present;
 - (ii) the benefit to the parties and the court outweighs the likely expense; and
 - (iii) the appointment is warranted after considering the parties' respective abilities to pay the likely expense.
 - (3) **Contents.** The appointing order must direct the master to proceed with all reasonable diligence and must state:
 - (A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);
 - (B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;
 - (C) the nature of the materials to be preserved and filed as the record of the master's activities;
 - (D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and
 - (E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).
 - (4) **Amending.** The order may be amended at any time after notice to the parties and an opportunity to be heard.
 - (5) **Providing Master With Copy of Order.** When a master is appointed, the clerk must provide the master with a copy of the appointing order in a timely manner.
- (c) **Master's Authority.**
- (1) **Generally.** Unless the appointing order directs otherwise, a master may:
 - (A) regulate all proceedings;
 - (B) take all appropriate measures to perform the assigned duties fairly and efficiently; and
 - (C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.
 - (2) **Sanctions.** The master may by order impose on a party any noncontempt sanction provided in Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

- (3) **Meetings.** Unless the court orders otherwise, on receiving the appointing order the master must promptly set a time and place for the first meeting of the parties or their attorneys. The first meeting should be held within 20 days after the date of the appointing order. If a party fails to appear at the scheduled meeting, the master may proceed ex parte or, in the master's discretion, reschedule the meeting with notice to the parties.
- (4) **Master to Proceed With Reasonable Diligence.** The master must proceed with reasonable diligence. Either party, after notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and, if applicable, make the report.
- (d) **Master's Orders.** A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.
- (e) **Master's Reports.** A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.
- (f) **Action on the Master's Order, Report, or Recommendations.**
- (1) **Opportunity to Object; Action Generally.** In acting on a master's final order, report, or recommendations, the court:
- (A) must consider and rule on any objections and motions filed by the parties; and
 - (B) may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.
- (2) **Time to Object or Move to Adopt or Modify.** A party may file objections to—or a motion to adopt or modify—the master's final order, report, or recommendations no later than 10 days after the master's final order, report, or recommendations are served, unless the court sets a different time.
- (3) **Reviewing Factual Findings.** The court must decide all objections to findings of fact made or recommended by a master under the clearly erroneous standard, unless the parties stipulate with the court's consent that:
- (A) the master's findings will be reviewed de novo; or
 - (B) the findings of a master will be final.
- (4) **Reviewing Legal Conclusions.** The court must decide de novo all objections to conclusions of law made or recommended by a master.

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

(g) Compensation.

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

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

(A) by a party or parties; or

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

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

VII. JUDGMENT

Rule 54. Judgment; Costs; Attorney’s Fees

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

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

motion is filed under Rule 54(g), the court retains jurisdiction to award attorney's fees with respect to that judgment.

- (c) **Judgment as to All Claims and Parties.** A judgment as to all claims and parties is not final unless the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c).
- (d) **Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.
- (e) **Entry of Judgment After Party's Death.** Judgment may be entered on a verdict or decision after a party's death on an issue of fact rendered while the party was alive.
- (f) **Costs.**
 - (1) **Statement of Costs.** A party claiming costs must file a statement of costs within 10 days after judgment is entered, unless the court extends the time for good cause. An opposing party may file objections within 5 days after the statement of costs is served. The court must rule on any objections and may order corrections to the statement of costs as appropriate.
 - (2) **Expert Witness Fees as Costs.** In medical malpractice actions only, a party may claim as a taxable cost under A.R.S. § 12-332(a)(1) the reasonable fees paid to expert witnesses for testifying at trial.
- (g) **Attorney's Fees.**
 - (1) **Generally.** A claim for attorney's fees must be made in the pleadings or in a Rule 12 motion filed before the movant's responsive pleading.
 - (2) **Time for Filing Motion—Rule 54(c) Judgments.** If a decision adjudicates all claims or rights of all of the parties and judgment is to be entered under Rule 54(c), any motion for attorney's fees must be filed within 20 days after the decision is filed.
 - (3) **Time for Filing Motion—Rule 54(b) Decisions or Judgments.**
 - (A) If a decision adjudicates all claims or rights pertaining to a party or parties and a party either moves for entry of a final judgment under Rule 54(b) or includes Rule 54(b) language in a proposed form of judgment:
 - (i) a motion seeking fees must be filed within 20 days after service of the motion or proposed form of judgment seeking Rule 54(b) treatment, or by such other date as the court may order; and

- (ii) if the court does not include Rule 54(b) language in the judgment, a motion for attorney's fees may be brought at any time permitted under Rule 54(g)(3)(B).
- (B) For any other decision or judgment under Rule 54(b), a prevailing party may move for attorney's fees at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.
- (4) **Motion and Proceedings.** Unless a statute or court order provides otherwise, a motion for attorney's fees must be supported by affidavit and is governed by Rule 7.2. ~~If the court so orders,~~ The movant's affidavit must disclose the terms of any fee agreement about fees for the services for which the claim is made.
- (5) **Scope.** Rules 54(g)(1) through (4) do not apply to claims for fees and expenses that may be awarded as sanctions under a statute or rule, or if the substantive law requires fees to be proved at trial as an element of damages.

Rule 55. Default; Default Judgment

(a) Entering a Default.

- (1) **Generally.** If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, the clerk must enter the party's default in accordance with the procedures set forth below.
- (2) **Application for Default.** A party must request entry of default by written application to the court clerk. The filing of the application for default constitutes the entry of default. An application for default must:
 - (A) identify the party against whom default is sought;
 - (B) state that the party has failed to plead or otherwise defend within the time allowed by these Rules;
 - (C) provide a current mailing address for the party claimed to be in default or, if none is known, so state;
 - (D) identify any attorney known to represent the party claimed to be in default in the action in which default is sought or in a related matter, or state that no such attorney is known; and
 - (E) attach a copy of the Rule 4(g) proof of service, establishing the date and manner of service of the complaint on the party claimed to be in default.

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

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

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

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

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

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

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

(b) Default Judgment.

(1) Default Judgment by Motion Without Hearing.

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

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

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

- (i) the amount of the award is supported by affidavit;
- (ii) the award is allowed by law; and
- (iii) the award does not exceed the amount demanded in the claim.

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

- (i) an affidavit establishes the reasonable amount of the fee award;
- (ii) the defendant has not entered an appearance in the action; and
- (iii) the award is allowed by law.

(2) Default Judgment by Hearing.

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

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

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

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

- (i) conduct an accounting;
- (ii) determine the amount of damages;
- (iii) establish the truth of any allegation by evidence; or
- (iv) investigate any other matter.

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

- (c) **Setting Aside a Default or a Final Default Judgment.** The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(c).
- (d) **Judgment Against the State.** A default judgment may be entered against the State of Arizona, a state officer, or a state agency only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfies the court.
- (e) **Plaintiffs, Counterclaimants and Cross-claimants.** The provisions of Rule 55 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

Rule 56. Summary Judgment

- (a) **Motion for Summary Judgment or Partial Summary Judgment.** A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.
- (b) **Time to File a Motion.**
 - (1) **Claimant.** A claimant may move for summary judgment only after:
 - (A) the date when a responsive pleading is due from the party against whom summary judgment is sought; or
 - (B) the filing of a Rule 12(b)(6) motion to dismiss or a summary judgment motion by the party against whom summary judgment is sought.
 - (2) **Other Parties.** Any other party may move for summary judgment at any time after the action is commenced.
 - (3) **Filing Deadline.** A summary judgment motion may not be filed later than the dispositive motion deadline set by the court or local rule, or absent such a deadline, 90 days before the date set for trial.
- (c) **Procedures.**
 - (1) **Hearings.** On timely request by any party, the court must set oral argument, hold a hearing on the motion, unless it determines that the motion should be denied or the motion is uncontested. The court may set oral argument, hold a hearing on the motion even if not requested, party requests one.

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

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

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

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

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

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

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

(4) ***Objections to Evidence.*** Rule 7.1(f)(2)¹ governs objections to the admissibility of evidence on summary judgment motions, except that an objection may be included in a party's response to another party's separate statement of facts in lieu of (or in addition to) including it in the party's responsive memorandum. Any objection presented in the party's response to the separate statement of facts must be stated concisely.

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

¹ [Update cross-reference later.](#)

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

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

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

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

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

(ii) the location of the evidence;

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

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

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

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

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

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

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

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

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

- (B) deny the requested relief and require a response to the summary judgment motion by a date certain; or
 - (C) issue any other appropriate order.
- (e) **Failing to Properly Oppose a Motion.** When a summary judgment motion is made and supported as provided in this rule, an opposing party may not rely merely on allegations or denials of its own pleading. The opposing party must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.
- (f) **Judgment Independent of the Motion.** After giving notice and a reasonable time to respond, the court may:
- (1) grant summary judgment for a nonmoving party, if the grounds for doing so are the same as those underlying the court’s grant of summary judgment to another party;
 - (2) grant summary judgment on grounds not raised by a party; or
 - (3) consider granting summary judgment after identifying for the parties material facts that may not be genuinely in dispute.
- (g) **Failing to Grant All the Requested Relief.** If the court does not grant all the relief requested by the motion, or if judgment is not rendered on the whole case under Rule 56(f), the court may enter an order identifying any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.
- (h) **Affidavit Submitted in Bad Faith.** If a Rule 56 affidavit is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney’s fees, incurred as a result, or may impose other appropriate sanctions.

Rule 57. Declaratory Judgment

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

Rule 57.1. Declaration of Factual Innocence

- (a) Scope of Rule.** This rule governs the determination of factual innocence of a person who claims under A.R.S. § 12-771 that the person's personal identifying information was taken, and, as a result, the person's name was used by another person who was arrested, cited, or charged with a criminal offense, or the person's name was later entered as of record in a judgment of guilt in a criminal action.
- (b) Filing.** A petition brought under this rule must be filed in the superior court in the county in which the other person was arrested for, or cited or charged with, a criminal offense. The petition must be assigned a civil case number. If applicable, the petition should state the specific court location where the underlying charge was filed, or the judgment of guilt was entered, and the case number of that prior filing. The petition must identify, as applicable, the names and mailing addresses of all persons and entities entitled under A.R.S. § 12-771(H) to notice of a finding of factual innocence. The petition should be captioned: In re: (name of petitioner).
- (c) Service.** The petitioner must serve the petition on the individuals and entities identified in A.R.S. § 12-771(D) and (E). Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.
- (d) Redacted Filings and Filings Under Seal.** A person may request, and the court may order, that a filing containing potentially sensitive identifying information such as the person's birth date, social security number, or financial account numbers, be filed or retained in redacted form or under seal.
- (e) Transmission of Records.** If the petition is related to a charge filed in a justice of the peace court or a municipal court, the clerk of the superior court must request the justice of the peace or presiding officer of the municipal court to transmit a copy of the file to the clerk.
- (f) Discovery and Disclosure.** Discovery may be conducted and disclosure under Rule 26.1 may be required only by stipulation of the parties, or by court order.
- (g) Evidence.** The petitioner must establish factual innocence by clear and convincing evidence.
- (h) Hearing and Determination.**

 - (1)** The court may hold a hearing to determine the petitioner's factual innocence.
 - (2)** The court may enter an order under this rule on submission of proof by affidavit.

- (3) At any hearing, the victim of the offense identified in a judgment of guilt, or committed by the person arrested for, or cited or charged with, a criminal offense, has a right to be present and to be heard at the hearing.
- (i) **Order.** On a finding of factual innocence related to an arrest, citation, or charge, the court must notify the following, if applicable: the petitioner; the prosecuting agency that filed the charge; the law enforcement agency that made the arrest or issued the citation; and the defense attorney.

Rule 57.2. Declaration of Factual Improper Party Status

- (a) **Scope of Rule.** This rule governs petitions alleging factual improper party status under A.R.S. § 12-772, if as a result of a person's personal identifying information being taken, the person's name was entered as of record in a civil action or judgment.
- (b) **Filing.** A petition brought under this rule must be filed in the superior court for the county in which the petitioner's name was entered as of record in a civil action or judgment because of alleged improper use of the petitioner's personal identifying information. The petition must be assigned a civil case number. The petition must state the specific court location where the underlying action was filed, and the case number of the prior filing. The petition should be captioned: In re: (name of petitioner).
- (c) **Service.** The petitioner must serve the petition on all parties in the civil action in which the petitioner's identity was allegedly used. Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.
- (d) **Redacted Filings and Filings Under Seal.** A person may request, and the court may order, that a filing containing potentially sensitive identifying information—such as the person's birth date, social security number, or financial account numbers—be filed in redacted form or be filed under seal.
- (e) **Transmission of Records.** If the petition is related to an action filed in a justice of the peace court, the clerk of the superior court must request the justice of the peace to transmit a copy of the file to the clerk's office.
- (f) **Discovery and Disclosure.** Discovery proceedings may be conducted and disclosure under Rule 26.1 may be required only by stipulation of the interested parties, or by court order.
- (g) **Evidence.** The petitioner must establish improper party status by clear and convincing evidence.

(h) Hearing and Determination.

- (1) The court may hold a hearing on the petition.
 - (2) The court may enter an order under this rule upon submission of proof by affidavit.
- (i) Order.** The court must provide notice of the court’s findings to the petitioner and to all parties in the civil action in which the petitioner’s identity was allegedly used.

Rule 58. Entering Judgment ; Minute Entries

(a) Form of Judgment; Objections to Form.

- (1) **Proposed Forms of Judgment.** Proposed forms of judgment must be served on all parties and must comply with Rule 5(j)(1).
- (2) **Objections to Form.**
 - (A) A judgment may not be entered until 5 days after the proposed form of judgment is served, unless:
 - (i) the opposing party endorses on the judgment its approval as to the judgment’s form; or
 - (ii) the court waives or shortens the 5-day notice requirement for good cause; or
 - (iii) the judgment is against a party in default.
 - (B) An opposing party not in default may file an objection to the proposed form of judgment within 5 days after it is served. If an objection is made:
 - (i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and
 - (ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

- (1) **Written Document.** Except as provided in Rule 58(b)(2)(B) regarding habeas corpus proceedings, all judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so.
- (2) **Time and Manner of Entry.**
 - (A) **Generally.** A judgment is not effective before entry, except that a court may direct the entry of a judgment nunc pro tunc in such circumstances and on such notice as justice requires, stating the reasons on the record. A judgment,

including a judgment in the form of a minute entry, is entered when the clerk files it.

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

(3) *Cost or Fee Awards.*

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

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

(ii) if fees are requested, the proposed form of judgment must either state the specific sum of attorney's fees awarded by the court, or include a blank in the form of judgment to allow the court to include an amount. ~~attorney's fees award.~~

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

(c) *Notice of Entry of Judgment.*

(1) *Manner of Notice.*

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

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

(ii) make a record of the distribution.

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

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

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

(B) a minute entry; or

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

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

(d) Remittitur.

- (1) Procedure.** A party in whose favor a verdict or judgment has been rendered may, in open court, or in a writing filed with the court, remit any part of the verdict or judgment. A remittitur announced in open court must be set forth in a minute entry.
 - (2) Effect on Execution.** After remitting a portion of a judgment or verdict, a party may execute on a judgment only for the balance of the judgment or verdict after deducting the amount remitted.
 - (3) Effect of Right of Appeal.** The remittitur does not affect the rights of the opposing party to appeal from the judgment, and for purposes of appeal the amount of the original judgment must be considered the amount in controversy.
- (e) Clerk’s Distribution of Minute Entries.** The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties.

Rule 59. New Trial; Altering or Amending a Judgment

- (a) Generally.** This rule governs motions for a new trial or to alter or amend a judgment, following a trial, the grant of summary judgment, or other proceeding that results in a final judgment.
- (1) Grounds for New Trial.** The court may, on motion, grant a new trial on all or some of the issues—and to any party—on any of the following grounds materially affecting that party’s rights:
 - (A)** any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
 - (B)** misconduct of the jury or prevailing party;
 - (C)** accident or surprise that could not reasonably have been prevented;
 - (D)** newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
 - (E)** excessive or insufficient damages;
 - (F)** error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;
 - (G)** the verdict is the result of passion or prejudice; or
 - (H)** the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

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

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

(1) **Motion.** A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. This deadline may not be extended by stipulation or by court order. The motion may be amended at any time before the court rules on it.

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

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

(d) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 15 days after the entry of the judgment. This deadline may not be extended by stipulation or by court order.

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

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

(1) Conditional Grant of New Trial.

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

(B) **Effect on Grant or Denial of New Trial.** If the party adversely affected by the reduction or increase in damages files a statement as provided in Rule 59(f)(1)(A), the motion for new trial is deemed denied as of the date the statement is filed. If the party adversely affected does not file a statement, the

motion for new trial is deemed granted as of the deadline specified by the court for filing the statement. No further written order is required to make an order granting or denying the new trial final. If the conditional order of the court requires a reduction of or increase in damages, then the new trial may be granted only as to damages, and the verdict must stand in all other respects.

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

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

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

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

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

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

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction or Temporary Restraining Order.

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

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

- (A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.
- (B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.
- (C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

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

(b) Temporary Restraining Order Without Notice.

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

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will likely result to the movant before the adverse party can be heard in opposition, or that prior notice will likely cause the defendant to take action resulting in such injury, loss or damage; and
- (B) the movant's attorney certifies in writing any efforts made to give notice or the reasons why it should not be required.

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

- (A) state the date and hour it was issued;
- (B) describe the injury and state why it is irreparable;
- (C) state why the order was issued without notice; and
- (D) be promptly filed in the clerk's office and entered in the record.

(3) Expiration. A temporary restraining order issued without notice expires at the time after entry—not to exceed 10 days—that the court sets, unless before that time the

court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.

- (4) ***Expediting the Preliminary Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.
- (5) ***Motion to Dissolve.*** On two days' notice to the party obtaining the order without notice—or on shorter notice set by the court—the adverse party may move to dissolve or modify the order. The court must hear and decide any such motion as promptly as justice requires.

(c) **Security.**

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

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

- (A) ***On Dissolution Pending Trial.*** On dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court must require the defendant to give security payable to the plaintiff:
 - (i) in the amount previously enjoined and any additional amount ordered by the court; and
 - (ii) conditioned on refunding to the plaintiff the amount of money, interest and costs that may be collected by the plaintiff if a permanent injunction is ordered on final hearing.
- (B) ***Injunction Made Permanent.*** If a permanent injunction is ordered on final hearing, on the plaintiff's motion, the court must enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

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

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

(A) state the reasons why it issued;

(B) state its terms specifically; and

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

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

(A) the parties;

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

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

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

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

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

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

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

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

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

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

4, 4.1 or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5.

- (5) **Hearing.** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(f). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party charged with criminal contempt may be entitled to a jury trial as provided by law.
- (6) **Sanctions—Generally.** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as otherwise ordered by the court.
- (7) **Sanctions for Failing to Appear.** The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:
- (A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party or person's appearance at any future hearing; and
 - (B) if the party or person charged with contempt is a corporation, the court may attach and sequester assets of the corporation pending further court order.

Rule 54. Judgment; Costs; Attorney's Fees.

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

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

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

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

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

(f) Costs.

(1) Request for Costs.

(A) Time for Filing Request.

(i) If a decision adjudicates all claims and liabilities of any party and that party or another party moves for entry of a final 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) In all other cases, a prevailing party seeking costs must file a verified request for costs with its motion for attorney's fees if a motion for fees is filed, or with its proposed form of judgment if no motion for fees is filed.

(B) *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.

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

(g) Attorney's Fees.

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

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

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

(A) If a decision adjudicates all claims and liabilities of any party and that party or another party moves for entry of a final judgment under Rule 54(b) or includes Rule 54(b) language in a proposed form of judgment:

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

(ii) if the court does not include Rule 54(b) language in the judgment, a prevailing party may move for attorney's fees at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

(B) For any other final judgment under Rule 54(b) (not adjudicating all claims and liabilities of a party), a prevailing party may move for attorney's fees at any time after the

decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

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

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

Rule 54. Judgment; Costs; Attorney's Fees.

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

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

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

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

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

(f) **Costs.**

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

(A) Time for Filing Request.

(i) If a decision adjudicates all claims and liabilities of any party and that party or another party moves for entry of a final 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) In all other cases, a prevailing party seeking costs must file a verified request for costs with its motion for attorney's fees if a motion for fees is filed, or with its proposed form of judgment if no motion for fees is filed.

(B) 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.

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

(g) **Attorney's Fees.**

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

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

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

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

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

(ii) if the court does not include Rule 54(b) language in the judgment, a

~~motion~~ prevailing party may move for attorney's fees ~~may be brought at any time permitted under Rule 54(g)(3)(B)~~ at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

(B) For any other ~~decision or final~~ judgment under Rule 54(b) (not adjudicating all claims and liabilities of a party), a prevailing party may move for attorney's fees at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

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

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

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Rendering set	perkins

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Format change	
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Total changes	44

31408824.1

Rule 58. Entering Judgment; Minute Entries

(a) Form of Judgment; Objections to Form.

(1) **Proposed Forms of Judgment.** Proposed forms of judgment must be served on all parties and must comply with Rule 5(j)(1) [and Rule 54\(a\)](#).

(2) *Objections to Form.*

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

- (i) the opposing party endorses on the judgment its approval as to the judgment's form; or
- (ii) the court waives or shortens the 5-day notice requirement for good cause; or
- (iii) the judgment is against a party in default.

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

- (i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and
- (ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

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

(2) *Time and Manner of Entry.*

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

(B) **In Habeas Corpus Proceedings.** A judgment in habeas corpus proceedings need not be

signed, and is final when set forth in a minute entry that is filed.

(3) *Cost and Fee Awards.* Except as permitted by Rule 54(g)(3):

(A) claims for attorney's fees and costs must be resolved before any judgment may be entered under Rule 54(c), or under Rule 54(b) if the judgment adjudicates all of the claims and liabilities of any party;

(B) any such award of attorney's fees or costs must be included in the judgment; and

(C) the form of judgment must include a blank for the court to include any attorney's fees award, and a blank for the court to include any costs award.

(c) Notice of Entry of Judgment.

(1) *Manner of Notice.*

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

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

(ii) make a record of the distribution.

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

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

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

(B) a minute entry; or

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

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

(d) Remittitur.

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

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

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

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

Rule 58. Entering Judgment; Minute Entries

(a) Form of Judgment; Objections to Form.

(1) **Proposed Forms of Judgment.** Proposed forms of judgment must be served on all parties and must comply with Rule 5(j)(1) [and Rule 54\(a\)](#).

(2) *Objections to Form.*

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

- (i) the opposing party endorses on the judgment its approval as to the judgment's form; or
- (ii) the court waives or shortens the 5-day notice requirement for good cause; or
- (iii) the judgment is against a party in default.

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

- (i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and
- (ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

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

(2) *Time and Manner of Entry.*

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

(B) **In Habeas Corpus Proceedings.** A judgment in habeas corpus proceedings need not be

signed, and is final when set forth in a minute entry that is filed.

(3) **Cost ~~or~~and Fee Awards.** ~~(A) Fees.~~ Except as permitted by Rule 54(g)(3):

~~(i) a judgment may not be entered until~~(A) claims for attorney's fees ~~have been resolved and are addressed in the judgment; and~~and costs must be resolved before any judgment may be entered under Rule 54(c), or under Rule 54(b) if the judgment adjudicates all of the claims and liabilities of any party;

~~(ii) (B) any such award of attorney's fees or costs must be included in~~ the judgment ~~must include a blank in;~~ and

(C) the form of judgment ~~to allow~~must include a blank for the court to include ~~an~~any attorney's fees award. ~~(B) Costs. Entry of judgment must not be delayed nor the time for appeal extended to tax,~~ and a blank for the court to include any costs award.

(c) **Notice of Entry of Judgment.**

(1) **Manner of Notice.**

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

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

(ii) make a record of the distribution.

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

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

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

(B) a minute entry; or

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

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

(d) Remittitur.

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

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

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

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

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Document comparison by Workshare Compare on Thursday, October 22, 2015
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Rendering set	perkins

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31408825.1

Work Group 4
Redline Changes to
Original Vetting Draft

Proposed Rule 59. New Trial; Altering or Amending a Judgment

- (a) **Generally.** This rule governs motions for a new trial or to alter or amend a judgment, following a trial, the grant of summary judgment, or other proceeding that results in a final judgment.
- (1) **Grounds for New Trial.** The court may, on motion, grant a new trial on all or some of the issues—and to any party—on any of the following grounds materially affecting that party’s rights:
- (A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
 - (B) misconduct of the jury or prevailing party;
 - (C) accident or surprise that could not reasonably have been prevented;
 - (D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
 - (E) excessive or insufficient damages;
 - (F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;
 - (G) the verdict is the result of passion or prejudice; or
 - (H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.
- (2) **Further Action After a Nonjury Trial.** After a nonjury trial, the court may, on motion for a new trial, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.
- (b) **Time to File a Motion; Response and Reply.**
- (1) **Motion.** A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. The motion may be amended at any time before the court rules on it.
- (2) **Response and Reply.** Rule 7.2 governs responses and replies to a motion for new trial.
- (c) **New Trial on the Court’s Initiative or for Reasons Not in the Motion.** No later than 15 days after the entry of judgment, the court, on its own, may order a new trial for any reason set forth in Rule 59(a). After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
- (d) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 15 days after the entry of the judgment.
- (e) **Scope of New Trial.** A new trial, if granted, must be limited to the question or questions found to be in error, if separable. If a new trial is ordered solely because the damages are excessive or inadequate and if the issue of damages is separable from all other issues in the action, the verdict may be set aside only on damages, and must stand in all other respects.

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

(1) Conditional Grant of New Trial.

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

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

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

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

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

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

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

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

Redline – CPPC Suggestions

Rule 59. New Trial; Altering or Amending a Judgment

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

- (1) **Grounds for New Trial.** The court may, on motion, grant a new trial on all or some of the issues—and to any party—on any of the following grounds materially affecting that party’s rights:
 - (A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
 - (B) misconduct of the jury or prevailing party;
 - (C) accident or surprise that could not reasonably have been prevented;
 - (D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
 - (E) excessive or insufficient damages;
 - (F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;
 - (G) the verdict is the result of passion or prejudice; or
 - (H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.
- (2) **Further Action After a Nonjury Trial.** After a nonjury trial, the court may, on motion for a new trial, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

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

- (1) **Motion.** A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. The motion may be amended at any time before the court rules on it.
 - (2) **Response and Reply.** Rule 7.2 governs responses and replies to a motion for new trial.
- (c) **New Trial on the Court’s Initiative or for Reasons Not in the Motion.** No later than 15 days after the entry of judgment, the court, on its own, may order a new trial for any reason set forth in Rule 59(a). After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
 - (d) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 15 days after the entry of the judgment.
 - (e) **Scope of New Trial.** A new trial, if granted, must be limited to the question or questions found to be in error, if separable. If a new trial is ordered solely because the damages are excessive or inadequate and if the issue of damages is separable from all other issues in the action, the verdict may be set aside only on damages, and must stand in all other respects.
 - (f) **Motion on Ground of Excessive or Inadequate Damages.**
 - (1) **Conditional Grant of New Trial.**
 - (A) **Generally.** When a motion for new trial is based on the ground that the awarded damages are either excessive or insufficient, the court may grant the new trial

conditionally if, within the time set by the court, the party adversely affected by the reduction or increase in damages files a statement accepting the amount of damages as designated by the court.

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

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

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

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

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

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

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

New Rule 59. New Trial; Altering or Amending a Judgment

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

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

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

(B) misconduct of the jury or prevailing party;

- (C) accident or surprise that could not reasonably have been prevented;
- (D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
- (E) excessive or insufficient damages;
- (F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action;
- (G) the verdict is the result of passion or prejudice; or
- (H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law.

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

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

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

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

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

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

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

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

(1) Conditional Grant of New Trial.

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

(B) **Effect on Grant or Denial of New Trial.** If the party adversely affected by the reduction or increase in damages files a statement as provided in Rule 59(f)(1)(A), the motion for new trial is deemed denied as of the date the statement is filed. If the party adversely affected does not file a statement, the motion for new trial is deemed

granted as of the deadline specified by the court for filing the statement. No further written order is required to make an order granting or denying the new trial final. If the conditional order of the court requires a reduction of or increase in damages, then the new trial may be granted only as to damages, and the verdict must stand in all other respects.

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

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

- (1) ***Generally.*** When judgment has been rendered on service by publication, and the defendant has not appeared, the court may grant a new trial if the defendant—within one year after entry of judgment—files an application establishing good cause for a new trial.
- (2) ***Bond Required to Stay Execution.*** Execution of judgment should not be stayed unless the defendant posts a bond in double the amount of the judgment or the value of the property that is the subject of the judgment. The bond must be conditioned on the defendant's prosecution of the application for new trial and on satisfaction of the judgment in full should the court deny the application.

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

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

Proposed Rule 60. Relief from Judgment or Order

- (a) **Corrections Based on Clerical Mistakes; Oversights; and Omissions.** A court may correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave.
- (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(d);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason justifying relief.
- (c) **Timing and Effect of the Motion.**
- (1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later.
 - (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.
- (d) **Other Powers to Grant Relief.** This rule does not limit the court's power to:
- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief to a defendant served by publication as provided in Rule 59(j); or
 - (3) set aside a judgment for fraud upon the court.
- (e) **Correction of Error in Record of Judgment.**
- (1) After a mistake in a judgment is corrected as provided in Rule 60(a), execution must conform to the corrected judgment.
 - (2) On motion and after notice, the court must correct a judgment if there is a mistake, miscalculation, or misrecital of a sum of money, or a mistake about, or a misspelling of, a name.
- (f) **Reversed Judgment of Foreign State.** If a judgment was rendered on a foreign judgment from another state or country and the court of such state or country reverses or sets

aside the foreign judgment, the Arizona court that rendered judgment must set aside, vacate, and annul its judgment.

Redline – CPPC Suggestions

Rule 60. Relief from Judgment or Order

- (a) **Corrections Based on Clerical Mistakes; Oversights; and Omissions.** A court may correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave.
- (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(d);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason justifying relief.
- (c) **Timing and Effect of the Motion.**
- (1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later.
 - (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.
- (d) **Other Powers to Grant Relief.** This rule does not limit the court's power to:
- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief to a defendant served by publication as provided in Rule 59(jg); or
 - (3) set aside a judgment for fraud upon the court.
- (e) **Correction of Error in Record of Judgment.**
- (1) After a mistake in a judgment is corrected as provided in Rule 60(a), execution must conform to the corrected judgment.

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

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

New Rule 60. Relief from Judgment or Order

- (a) **Corrections Based on Clerical Mistakes; Oversights; and Omissions.** A court may correct a clerical mistake or a mistake arising from oversight or omission if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be corrected only with the appellate court's leave.
- (b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
 - (1) mistake, inadvertence, surprise or excusable neglect;
 - (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(d);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason justifying relief.
- (c) **Timing and Effect of the Motion.**
 - (1) **Timing.** A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2) and (3) no more than 6 months after the entry of the judgment or order or date of the proceeding, whichever is later.
 - (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.
- (d) **Other Powers to Grant Relief.** This rule does not limit the court's power to:
 - (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;
 - (2) grant relief to a defendant served by publication as provided in Rule 59(g); or
 - (3) set aside a judgment for fraud upon the court.

(e) Correction of Error in Record of Judgment.

- (1)** After a mistake in a judgment is corrected as provided in Rule 60(a), execution must conform to the corrected judgment.
- (2)** On motion and after notice, the court must correct a judgment if there is a mistake, miscalculation, or misrecital of a sum of money, or a mistake about, or a misspelling of, a name.

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

Proposed Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction or Temporary Restraining Order.

- (1) **Notice.** Except as provided in Rule 65(b), the court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.
- (2) **Consolidating the Hearing With the Trial on the Merits.**
 - (A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.
 - (B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.
 - (C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (3) **Motion to Dissolve or Modify.** After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction with notice to the opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are not sufficient grounds for the injunction, or that it is overbroad, the court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

- (1) **Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the adverse party only if:
 - (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will likely result to the movant before the adverse party can be heard in opposition, or that prior notice will likely cause the defendant to take action resulting in such injury, loss or damage; and
 - (B) the movant's attorney certifies in writing any efforts made to give notice or the reasons why it should not be required.
- (2) **Contents.** Every temporary restraining order issued without notice must:
 - (A) state the date and hour it was issued;
 - (B) describe the injury and state why it is irreparable;
 - (C) state why the order was issued without notice; and
 - (D) be promptly filed in the clerk's office and entered in the record.
- (3) **Expiration.** A temporary restraining order issued without notice expires at the time after entry—not to exceed 10 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.
- (4) **Expediting the Preliminary Injunction Hearing.** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible

time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

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

(c) **Security.**

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

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

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

- (i) in the amount previously enjoined and any additional amount ordered by the court; and
- (ii) conditioned on refunding to the plaintiff the amount of money, interest and costs that may be collected by the plaintiff if a permanent injunction is ordered on final hearing.

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

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

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

- (A) state the reasons why it issued;
- (B) state its terms specifically; and
- (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

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

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

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

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

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

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

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

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

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

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

(4) **Service.** No later than 10 days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading under Rules 4, 4.1 or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5.

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

(6) **Sanctions—Generally.** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as otherwise ordered by the court.

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

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

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

Redline – CPPC Suggestions

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction or Temporary Restraining Order.

- (1) *Notice.* Except as provided in Rule 65(b), the court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.
- (2) *Consolidating the Hearing With the Trial on the Merits.*
 - (A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.
 - (B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.
 - (C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (3) *Motion to Dissolve or Modify.* After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction with notice to the opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are not sufficient grounds for the injunction, or that it is overbroad, the court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

- (1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party only if:
 - (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will likely result to the movant before the adverse party can be heard in opposition, or that prior notice will likely cause the defendant to take action resulting in such injury, loss or damage; and
 - (B) the movant's attorney certifies in writing any efforts made to give notice or the reasons why it should not be required.
- (2) *Contents.* Every temporary restraining order issued without notice must:
 - (A) state the date and hour it was issued;
 - (B) describe the injury and state why it is irreparable;
 - (C) state why the order was issued without notice; and
 - (D) be promptly filed in the clerk's office and entered in the record.
- (3) *Expiration.* A temporary restraining order issued without notice expires at the time after entry—not to exceed 10 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.

- (4) ***Expediting the Preliminary Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.
- (5) ***Motion to Dissolve.*** On two days' notice to the party obtaining the order without notice—or on shorter notice set by the court—the adverse party may move to dissolve or modify the order. The court must hear and decide any such motion as promptly as justice requires.

(c) **Security.**

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

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

- (A) ***On Dissolution Pending Trial.*** On dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court must require the defendant to give security payable to the plaintiff:
 - (i) in the amount previously enjoined and any additional amount ordered by the court; and
 - (ii) conditioned on refunding to the plaintiff the amount of money, interest and costs that may be collected by the plaintiff if a permanent injunction is ordered on final hearing.
- (B) ***Injunction Made Permanent.*** If a permanent injunction is ordered on final hearing, on the plaintiff's motion, the court must enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

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

- (1) ***Contents.*** Every order granting an injunction and every restraining order must:
 - (A) state the reasons why it issued;
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 - (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.
- (2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:
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- (B) the parties' officers, agents, servants, employees, and attorneys; and
 - (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).
- (e) **Venue of a Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment.** A motion or application seeking an injunction or order to stay an action, or to stay execution of judgment, must be filed in the court where the action is pending or the judgment was rendered.
- (f) **Procedure for Obtaining Sanctions; Order to Show Cause.**
- (1) **Generally.** The court may issue sanctions for civil contempt, or for criminal contempt as allowed by law, against a party or person who violates an injunction.
 - (2) **Application; Affidavit.** A party alleging that any party or person has violated an injunction may file an application for an order to show cause. The application must be accompanied by a supporting affidavit describing the acts that violate the injunction.
 - (3) **Order to Show Cause.** The court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:
 - (A) may set a date for any written response to the application, and
 - (B) before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the court.
 - (4) **Service.** No later than 10 days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading under Rules 4, 4.1 or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5.
 - (5) **Hearing.** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(f). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party charged with criminal contempt may be entitled to a jury trial as provided by law.
 - (6) **Sanctions—Generally.** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as otherwise ordered by the court.
 - (7) **Sanctions for Failing to Appear.** The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:
 - (A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party or person's appearance at any future hearing; and

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

New Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction or Temporary Restraining Order.

- (1) **Notice.** Except as provided in Rule 65(b), the court may issue a preliminary injunction or a temporary restraining order only with notice to the adverse party.
- (2) **Consolidating the Hearing With the Trial on the Merits.**
 - (A) Before or after beginning the hearing on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may advance the trial on the merits and consolidate it with the hearing on the motion.
 - (B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.
 - (C) Even if consolidation is not ordered, and subject to any party's right to a jury trial, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (3) **Motion to Dissolve or Modify.** After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction with notice to the opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are not sufficient grounds for the injunction, or that it is overbroad, the court may dissolve or modify the preliminary injunction.

(b) Temporary Restraining Order Without Notice.

- (1) **Issuing Without Notice.** The court may issue a temporary restraining order without written or oral notice to the adverse party only if:
 - (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or damage will likely result to the movant before the adverse party can be heard in opposition, or that prior notice will likely cause the defendant to take action resulting in such injury, loss or damage; and
 - (B) the movant's attorney certifies in writing any efforts made to give notice or the reasons why it should not be required.
- (2) **Contents.** Every temporary restraining order issued without notice must:
 - (A) state the date and hour it was issued;
 - (B) describe the injury and state why it is irreparable;
 - (C) state why the order was issued without notice; and
 - (D) be promptly filed in the clerk's office and entered in the record.
- (3) **Expiration.** A temporary restraining order issued without notice expires at the time after entry—not to exceed 10 days—that the court sets, unless before that time the court, for

good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for the extension must be entered in the record.

- (4) ***Expediting the Preliminary Injunction Hearing.*** If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.
- (5) ***Motion to Dissolve.*** On two days' notice to the party obtaining the order without notice—or on shorter notice set by the court—the adverse party may move to dissolve or modify the order. The court must hear and decide any such motion as promptly as justice requires.

(c) **Security.**

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

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

- (A) ***On Dissolution Pending Trial.*** On dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court must require the defendant to give security payable to the plaintiff:
 - (i) in the amount previously enjoined and any additional amount ordered by the court; and
 - (ii) conditioned on refunding to the plaintiff the amount of money, interest and costs that may be collected by the plaintiff if a permanent injunction is ordered on final hearing.
- (B) ***Injunction Made Permanent.*** If a permanent injunction is ordered on final hearing, on the plaintiff's motion, the court must enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

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

- (1) ***Contents.*** Every order granting an injunction and every restraining order must:
 - (A) state the reasons why it issued;
 - (B) state its terms specifically; and
 - (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

- (2) **Persons Bound.** The order binds only the following who receive actual notice of it by personal service or otherwise:
 - (A) the parties;
 - (B) the parties' officers, agents, servants, employees, and attorneys; and
 - (C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).
- (e) **Venue of a Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment.** A motion or application seeking an injunction or order to stay an action, or to stay execution of judgment, must be filed in the court where the action is pending or the judgment was rendered.
- (f) **Procedure for Obtaining Sanctions; Order to Show Cause.**
 - (1) **Generally.** The court may issue sanctions for civil contempt, or for criminal contempt as allowed by law, against a party or person who violates an injunction.
 - (2) **Application; Affidavit.** A party alleging that any party or person has violated an injunction may file an application for an order to show cause. The application must be accompanied by a supporting affidavit describing the acts that violate the injunction.
 - (3) **Order to Show Cause.** The court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:
 - (A) may set a date for any written response to the application, and
 - (B) before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the court.
 - (4) **Service.** No later than 10 days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading under Rules 4, 4.1 or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5.
 - (5) **Hearing.** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(f). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party charged with criminal contempt may be entitled to a jury trial as provided by law.
 - (6) **Sanctions—Generally.** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as otherwise ordered by the court.
 - (7) **Sanctions for Failing to Appear.** The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:

- (A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party or person's appearance at any future hearing; and
- (B) if the party or person charged with contempt is a corporation, the court may attach and sequester assets of the corporation pending further court order

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

- (a) **Commencement of Action.** The county attorney may bring an action under A.R.S. § 23-212 or § 23-212.01 by filing a verified complaint with the clerk. The attorney signing the complaint must verify that he or she believes the assertions in the complaint to be true based on a reasonably diligent inquiry.
- (b) **Contents of Complaint.** The complaint must include the following:
- (1) The employer's name and address(es);
 - (2) The employer's business licenses subject to suspension or revocation, and the licensing agency(ies)' identity and address, including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service;
 - (3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;
 - (4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and
 - (5) If the action is for a second violation, the first action's case number and the date of the order or judgment. The complaint must also attach a copy of the court's order or judgment finding a first violation.
- (c) **Nature of Proceedings.** The action must be denominated as a civil action and assigned a specific sub-category code for case tracking purposes. It must be heard and decided by the court sitting without a jury, except as otherwise permitted under Rule 39(m).
- (d) **Venue.** Venue is proper in any county in which the employee is or was employed by the employer.
- (e) **Expedited Proceedings.** The court must expedite the proceedings.
- (f) **Scheduling Conference.** At the same time the complaint is filed, the county attorney must file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order must be served on the employer and may be served with the complaint. At the scheduling conference, the court may address Rule 16(d) matters and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer must file and serve a written disclosure identifying all business licenses that it holds in Arizona.
- (g) **Evidentiary Hearing; Summary Judgment.** The court may not suspend or revoke a license without first affording the parties the opportunity for an evidentiary hearing unless all parties waive the hearing. Rule 56 does not apply to these proceedings unless all parties agree.
- (h) **Standard of Proof.** The court must determine all required factual issues by a preponderance of the evidence.

- (i) **Applicability of Rules of Evidence.** Except as provided in A.R.S. § 23-212(H) and § 23-212.01(H), the Arizona Rules of Evidence apply these proceedings.
- (j) **Enforcement of Court Orders.**
- (1) **Application for Order to Show Cause.** After an order finding a first violation under A.R.S. § 23-212(F)(1) or § 23-212.01(F)(1), if the employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d), the county attorney must file an application for an order to show cause why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application must be accompanied by an affidavit or other proof demonstrating that the employer failed to file the required sworn affidavit and must set forth the appropriate licensing agency's identity and address, including the identity and mailing address of the agency official authorized to accept service under this rule.
 - (2) **Opposition.** Within 5 days after service of an order to show cause application, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that it has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If an opposition is timely filed, the court must hold a hearing and may not order any further license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court must order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.
 - (3) **Relief from License Suspension.** After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, on motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or § 23-212.01(F)(1)(c), the court must enter an order terminating any further license suspension.
 - (4) **Distribution of Order.** The clerk must distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.
- (k) **Action for Second Violation.** An action alleging a second violation under A.R.S. § 23-212(F)(2) or § 23-212.01(F)(2) must be filed and served as a new action.
- (l) **Requirement of Electronic or Facsimile Service.** After a party has appeared in a proceeding brought under this rule, any papers served on that party by mail under Rule 5(c) also must be served at the same time by electronic mail or by facsimile, or as agreed to by the parties, or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service must be made as otherwise provided in Rule 5(c).
- (m) **Fees.** The court must assess such fees as may be prescribed under A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

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

- (a) **Commencement of Action.** The county attorney may bring an action under A.R.S. § 23-212 or § 23-212.01 by filing a verified complaint with the clerk. The attorney signing the complaint must verify that he or she believes the assertions in the complaint to be true based on a reasonably diligent inquiry.
- (b) **Contents of Complaint.** The complaint must include the following:
- (1) The employer’s name and address(es);
 - (2) The employer’s business licenses subject to suspension or revocation, and the licensing agency(ies)’ identity and address, including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service;
 - (3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;
 - (4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and
 - (5) If the action is for a second violation, the first action’s case number and the date of the order or judgment. The complaint must also attach a copy of the court’s order or judgment finding a first violation.
- (c) **Nature of Proceedings.** The action must be denominated as a civil action and assigned a specific sub-category code for case tracking purposes. It must be heard and decided by the court sitting without a jury, except as otherwise permitted under Rule 39(~~mc~~).
- (d) **Venue.** Venue is proper in any county in which the employee is or was employed by the employer.
- (e) **Expedited Proceedings.** The court must expedite the proceedings.
- (f) **Scheduling Conference.** At the same time the complaint is filed, the county attorney must file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order must be served on the employer and may be served with the complaint. At the scheduling conference, the court may address Rule 16(d) matters and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer must file and serve a written disclosure identifying all business licenses that it holds in Arizona.
- (g) **Evidentiary Hearing; Summary Judgment.** The court may not suspend or revoke a license without first affording the parties the opportunity for an evidentiary hearing unless all parties waive the hearing. Rule 56 does not apply to these proceedings unless all parties agree.
- (h) **Standard of Proof.** The court must determine all required factual issues by a preponderance of the evidence.
- (i) **Applicability of Rules of Evidence.** Except as provided in A.R.S. § 23-212(H) and § 23-212.01(H), the Arizona Rules of Evidence apply to these proceedings.

(j) Enforcement of Court Orders.

- (1) *Application for Order to Show Cause.*** After an order finding a first violation under A.R.S. § 23-212(F)(1) or § 23-212.01(F)(1), if the employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d), the county attorney must file an application for an order to show cause why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application must be accompanied by an affidavit or other proof demonstrating that the employer failed to file the required sworn affidavit and must set forth the appropriate licensing agency's identity and address, including the identity and mailing address of the agency official authorized to accept service under this rule.
 - (2) *Opposition.*** Within 5 days after service of an order to show cause application, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that it has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If an opposition is timely filed, the court must hold a hearing and may not order any further license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court must order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.
 - (3) *Relief from License Suspension.*** After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, on motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or § 23-212.01(F)(1)(c), the court must enter an order terminating any further license suspension.
 - (4) *Distribution of Order.*** The clerk must distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.
- (k) Action for Second Violation.** An action alleging a second violation under A.R.S. § 23-212(F)(2) or § 23-212.01(F)(2) must be filed and served as a new action.
- (l) Requirement of Electronic or Facsimile Service.** After a party has appeared in a proceeding brought under this rule, any papers served on that party by mail under Rule 5(c) also must be served at the same time by electronic mail or by facsimile, or as agreed to by the parties, or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service must be made as otherwise provided in Rule 5(c).
- (m) Fees.** The court must assess such fees as may be prescribed under A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

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

- (a) **Commencement of Action.** The county attorney may bring an action under A.R.S. § 23-212 or § 23-212.01 by filing a verified complaint with the clerk. The attorney signing the complaint must verify that he or she believes the assertions in the complaint to be true based on a reasonably diligent inquiry.
- (b) **Contents of Complaint.** The complaint must include the following:
 - (1) The employer's name and address(es);
 - (2) The employer's business licenses subject to suspension or revocation, and the licensing agency(ies)' identity and address, including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service;
 - (3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;
 - (4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and
 - (5) If the action is for a second violation, the first action's case number and the date of the order or judgment. The complaint must also attach a copy of the court's order or judgment finding a first violation.
- (c) **Nature of Proceedings.** The action must be denominated as a civil action and assigned a specific sub-category code for case tracking purposes. It must be heard and decided by the court sitting without a jury, except as otherwise permitted under Rule 39(c).
- (d) **Venue.** Venue is proper in any county in which the employee is or was employed by the employer.
- (e) **Expedited Proceedings.** The court must expedite the proceedings.
- (f) **Scheduling Conference.** At the same time the complaint is filed, the county attorney must file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order must be served on the employer and may be served with the complaint. At the scheduling conference, the court may address Rule 16(d) matters and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer must file and serve a written disclosure identifying all business licenses that it holds in Arizona.
- (g) **Evidentiary Hearing; Summary Judgment.** The court may not suspend or revoke a license without first affording the parties the opportunity for an evidentiary hearing unless all parties waive the hearing. Rule 56 does not apply to these proceedings unless all parties agree.
- (h) **Standard of Proof.** The court must determine all required factual issues by a preponderance of the evidence.
- (i) **Applicability of Rules of Evidence.** Except as provided in A.R.S. § 23-212(H) and § 23-212.01(H), the Arizona Rules of Evidence apply to these proceedings.

(j) Enforcement of Court Orders.

- (1) *Application for Order to Show Cause.*** After an order finding a first violation under A.R.S. § 23-212(F)(1) or § 23-212.01(F)(1), if the employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d), the county attorney must file an application for an order to show cause why the employer's licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application must be accompanied by an affidavit or other proof demonstrating that the employer failed to file the required sworn affidavit and must set forth the appropriate licensing agency's identity and address, including the identity and mailing address of the agency official authorized to accept service under this rule.
 - (2) *Opposition.*** Within 5 days after service of an order to show cause application, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that it has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If an opposition is timely filed, the court must hold a hearing and may not order any further license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court must order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.
 - (3) *Relief from License Suspension.*** After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, on motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or § 23-212.01(F)(1)(c), the court must enter an order terminating any further license suspension.
 - (4) *Distribution of Order.*** The clerk must distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer's license.
- (k) Action for Second Violation.** An action alleging a second violation under A.R.S. § 23-212(F)(2) or § 23-212.01(F)(2) must be filed and served as a new action.
- (l) Requirement of Electronic or Facsimile Service.** After a party has appeared in a proceeding brought under this rule, any papers served on that party by mail under Rule 5(c) also must be served at the same time by electronic mail or by facsimile, or as agreed to by the parties, or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service must be made as otherwise provided in Rule 5(c).
- (m) Fees.** The court must assess such fees as may be prescribed under A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

Proposed Rule 75. Hearing Procedures

- (a) Issuing Subpoenas.** Subpoenas may be issued, served and enforced as provided by these rules or other law.
- (b) Initial Disclosure.** Unless the parties agree or the arbitrator orders otherwise, the parties must make their initial disclosures required under Rule 26.1 by no later than the deadline provided in Rule 26.1(b).
- (c) Pre-Hearing Statement.**
 - (1) Requirement.** No later than 10 days before the hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written pre-hearing statement. In preparing this pre-hearing statement, the parties and their counsel must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive resolution of claims and the parties are encouraged to agree on facts and issues.
 - (2) Content.** The statement must contain the following:
 - (A)** a brief statement of the nature of each party's claims or defenses;
 - (B)** a witness list including the subject matter of witness testimony for each witness who will be called to testify;
 - (C)** an exhibit list; and
 - (D)** the estimated time required for the arbitration hearing.
 - (3) Evidence Exclusion.** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.
- (d) Evidence.** The Arizona Rules of Evidence apply to arbitration hearings, except as provided in Rule 74(e). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.
- (e) Documentary Evidence.** The arbitrator must admit into evidence—and give them the weight to which the arbitrator deems they are entitled—the following documents without further proof, if relevant, and if listed in the pre-hearing statement, unless the document is not what it appears to be and an objection is stated in the pre-hearing statement:
 - (1)** hospital bills, if on the hospital's official letterhead or billhead, dated, and itemized;
 - (2)** bills of doctors and dentists, if dated and stating the date of each visit and the incurred charges;
 - (3)** bills of registered nurses, licensed practical nurses, or physical therapists, if dated and stating the date and hours of service, and the incurred charges;
 - (4)** bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, if dated and itemized;
 - (5)** property repair bills or estimates setting forth the costs or estimates for labor and material if dated, itemized, and stating whether the property was, or is estimated to be, repaired in full or in part;

- (6) a witness's deposition testimony, whether or not the witness is available to appear in person;
 - (7) an expert's sworn written statement, other than a doctor's medical report, whether or not the expert is available to appear in person, but only if:
 - (A) the statement is signed by the expert and summarizes the expert's qualifications; and
 - (B) the statement contains the expert's opinions, and the facts on which each opinion is based;
 - (8) in a personal injury action, a doctor's medical report, but only if a copy of the report was disclosed at least 20 days before the hearing, unless the offering party shows good cause;
 - (9) records of regularly conducted business activity qualified under Rule 803(6) of the Arizona Rules of Evidence; and
 - (10) a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, but only if listed in the pre-hearing statement.
- (f) **Assessing Damages Against Defaulted Parties.** In actions involving multiple defendants, if default has been entered against one or more, but fewer than all, of the defendants before the arbitration hearing, the arbitrator must refer all further proceedings involving the defaulted defendant(s) to the judge assigned to the action. The arbitrator must continue to serve and proceed with the arbitration for the remaining parties.
- (g) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a court reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.
- (h) **Failure to Appear or Participate in Good Faith at a Hearing.** Absent good cause, a party waives the right to appeal if the party fails to appear or to participate in good faith at a hearing that has been set under Rule 74(b).

Redline – CPPC Suggestions

Rule 75. Hearing Procedures

- (a) **Issuing Subpoenas.** Subpoenas may be issued, served and enforced as provided by these rules or other law.
- (b) **Initial Disclosure.** Unless the parties agree or the arbitrator orders otherwise, the parties must make their initial disclosures required under Rule 26.1 by no later than the deadline provided in Rule 26.1(bd).
- (c) **Pre-Hearing Statement.**
 - (1) **Requirement.** No later than 10 days before the hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written pre-hearing statement. In preparing this pre-hearing statement, the parties and their counsel must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive resolution of claims and the parties are encouraged to agree on facts and issues.

- (2) **Content.** The statement must contain the following:
- (A) a brief statement of the nature of each party's claims or defenses;
 - (B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;
 - (C) an exhibit list; and
 - (D) the estimated time required for the arbitration hearing.
- (3) **Evidence Exclusion.** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.
- (d) **Evidence.** The Arizona Rules of Evidence apply to arbitration hearings, except as provided in Rule 74(e). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.
- (e) **Documentary Evidence.** The arbitrator must admit into evidence—and give them the weight to which the arbitrator deems they are entitled—the following documents without further proof, if relevant, and if listed in the pre-hearing statement, unless the document is not what it appears to be and an objection is stated in the pre-hearing statement:
- (1) hospital bills, if on the hospital's official letterhead or billhead, dated, and itemized;
 - (2) bills of doctors and dentists, if dated and stating the date of each visit and the incurred charges;
 - (3) bills of registered nurses, licensed practical nurses, or physical therapists, if dated and stating the date and hours of service, and the incurred charges;
 - (4) bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, if dated and itemized;
 - (5) property repair bills or estimates setting forth the costs or estimates for labor and material if dated, itemized, and stating whether the property was, or is estimated to be, repaired in full or in part;
 - (6) a witness's deposition testimony, whether or not the witness is available to appear in person;
 - (7) an expert's sworn written statement, other than a doctor's medical report, whether or not the expert is available to appear in person, but only if:
 - (A) the statement is signed by the expert and summarizes the expert's qualifications; and
 - (B) the statement contains the expert's opinions, and the facts on which each opinion is based;
 - (8) in a personal injury action, a doctor's medical report, but only if a copy of the report was disclosed at least 20 days before the hearing, unless the offering party shows good cause;
 - (9) records of regularly conducted business activity qualified under Rule 803(6) of the Arizona Rules of Evidence; and

- (10) a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, but only if listed in the pre-hearing statement.
- (f) **Assessing Damages Against Defaulted Parties.** In actions involving multiple defendants, if default has been entered against one or more, but fewer than all, of the defendants before the arbitration hearing, the arbitrator must refer all further proceedings involving the defaulted defendant(s) to the judge assigned to the action. The arbitrator must continue to serve and proceed with the arbitration for the remaining parties.
- (g) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a court reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.
- (h) **Failure to Appear or Participate in Good Faith at a Hearing.** Absent good cause, a party waives the right to appeal if the party fails to appear or to participate in good faith at a hearing that has been set under Rule 74(b).

New Rule 75. Hearing Procedures

- (a) **Issuing Subpoenas.** Subpoenas may be issued, served and enforced as provided by these rules or other law.
- (b) **Initial Disclosure.** Unless the parties agree or the arbitrator orders otherwise, the parties must make their initial disclosures required under Rule 26.1 by no later than the deadline provided in Rule 26.1(d).
- (c) **Pre-Hearing Statement.**
- (1) **Requirement.** No later than 10 days before the hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written pre-hearing statement. In preparing this pre-hearing statement, the parties and their counsel must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive resolution of claims and the parties are encouraged to agree on facts and issues.
- (2) **Content.** The statement must contain the following:
- (A) a brief statement of the nature of each party's claims or defenses;
- (B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;
- (C) an exhibit list; and
- (D) the estimated time required for the arbitration hearing.
- (3) **Evidence Exclusion.** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged.
- (d) **Evidence.** The Arizona Rules of Evidence apply to arbitration hearings, except as provided in Rule 74(e). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.
- (e) **Documentary Evidence.** The arbitrator must admit into evidence—and give them the weight to which the arbitrator deems they are entitled—the following documents without

further proof, if relevant, and if listed in the pre-hearing statement, unless the document is not what it appears to be and an objection is stated in the pre-hearing statement:

- (1) hospital bills, if on the hospital's official letterhead or billhead, dated, and itemized;
 - (2) bills of doctors and dentists, if dated and stating the date of each visit and the incurred charges;
 - (3) bills of registered nurses, licensed practical nurses, or physical therapists, if dated and stating the date and hours of service, and the incurred charges;
 - (4) bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, if dated and itemized;
 - (5) property repair bills or estimates setting forth the costs or estimates for labor and material if dated, itemized, and stating whether the property was, or is estimated to be, repaired in full or in part;
 - (6) a witness's deposition testimony, whether or not the witness is available to appear in person;
 - (7) an expert's sworn written statement, other than a doctor's medical report, whether or not the expert is available to appear in person, but only if:
 - (A) the statement is signed by the expert and summarizes the expert's qualifications; and
 - (B) the statement contains the expert's opinions, and the facts on which each opinion is based;
 - (8) in a personal injury action, a doctor's medical report, but only if a copy of the report was disclosed at least 20 days before the hearing, unless the offering party shows good cause;
 - (9) records of regularly conducted business activity qualified under Rule 803(6) of the Arizona Rules of Evidence; and
 - (10) a sworn witness statement, except from an expert witness, whether or not the witness is available to appear in person, but only if listed in the pre-hearing statement.
- (f) **Assessing Damages Against Defaulted Parties.** In actions involving multiple defendants, if default has been entered against one or more, but fewer than all, of the defendants before the arbitration hearing, the arbitrator must refer all further proceedings involving the defaulted defendant(s) to the judge assigned to the action. The arbitrator must continue to serve and proceed with the arbitration for the remaining parties.
- (g) **Record of Proceedings.** The arbitrator is not required to make a record of the hearing. If any party wants a court reporter to transcribe the hearing, the party must pay for and provide the reporter. The reporter's charges are not considered costs in the action.
- (h) **Failure to Appear or Participate in Good Faith at a Hearing.** Absent good cause, a party waives the right to appeal if the party fails to appear or to participate in good faith at a hearing that has been set under Rule 74(b).

Working Group One provides this chart and e-mail as materials for the October 30 meeting. The chart summarizes our recommendations as to comments, subject to three changes: (1) the comment to Rule 19 at page 68 of Arizona Rules of Court should be saved and not removed; (2) this chart does not note that we folded the content of the State Bar Committee Note into Rule 64.1(a), thus eliminating that comment; and (3) our group decided in the last week that it would like to save the comment to Rule 12(h), viewing it as helpful in explaining practice under a difficult rule, and not easily combinable with the main rule's text.

Andrew

<u>Comments to Retain</u>	<i>Page of Arizona Rules of Court (page of 1-20 REVISED)</i>
Note to 4.1 (last two paragraphs only, as concerns service by publication)	15
Ct. cmt. to 4.2(f)	17
Comm. Note to 4.2 (keeping paragraphs 5 [service by publication] and 7 [service overseas]. Note refers to Rule 4.2(h) when it should refer to current Rule 4.2(i).	19
State Bar Committee Note to 5(c) (portions of, as revised)	21
Cmt. 2011 Amendment to 6(c) (was 6(e))	27
Cmt. and Historical Notes re 7.2	32
Supp. State Bar Comm. Note to 15(c)	43
Comm. Note to 15(c)	43
Cmt. to 16.2 (was 16.3)	65
State Bar Comm. Note re 1966 Amendment 17(a)(1)	66
<u>Comments to Remove</u>	<i>Page of Arizona Rules of Court</i>
Ct. cmt. to 4(e)	11
Applicability, notes, comments re 4	12
Ct. cmt. to 4.2(e)	17
Comm. Notes to 5(a)	20
5(e) and Comm. Note	22
Comm. Note to 5(f)	22
Ct. Note to 5(g)	23
Comm. Note to 5.1	25
Comm. Notes to 6(a)	26
Comm. Notes to 6(a)	26
Comm. Notes/Ct. cmt. to 6(b)	27
Comm. Note re 2006 Am. 6(e)	28-29
Comm. Note to 7(a)	29
Comm. Note to 7(b)	29
Comm. Note to 7.1	31
Comm. Note to 8(h)	33-34
Cmt. To 8(i)	35
Comm. Notes to 12(b)	39
Comm. Note to 12(g)	39
Comm. Note to 12(h)	40
Comm. Note to 13(a)	40
Comm. Note to 13(h)	41
Comm. Note to 14(a)	42
Comm. Note to 15(d)	43-44
Historical Notes to Rule 16.1 and Comm. Note re 16.1	63
Comm. Note to 18(a)	67
Comm. Note to 19	68
Comm. Note to 20(a)	69

COMMENTS FOR WORKGROUP NUMBER TWO'S RULE SET

RULE 16

State Bar Committee Note

2008 Amendment

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

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

Document retention and preservation issues are especially likely to arise with electronically stored information because the “ordinary operation of computers involves both the automatic creation and the automatic deletion or overwriting of certain information.” Fed. R. Civ. P. 26(f), Advisory Committee Notes on 2006 Amendment. A court has the power under this Rule to incorporate into an order any agreement the parties might reach regarding preservation issues or, absent an agreement, to enter an order in appropriate circumstances imposing such requirements and limitations. In considering such an order, a court should take into account not only the need to preserve potentially relevant evidence, but also any adverse effects such an order may have on a party's ongoing activities and computer operations. A preservation order entered over objections should be narrowly tailored to address specific evidentiary needs in a case, and ex parte preservation orders should issue only in exceptional circumstances. Cf. *id.* (stating that preservation orders should be narrowly tailored where objections are made and cautioning against “blanket” or ex parte preservation orders); CONFERENCE OF CHIEF JUSTICES, GUIDELINES FOR STATE TRIAL COURTS REGARDING DISCOVERY

OF ELECTRONICALLY-STORED INFORMATION 10 (approved August 2006) (“When issuing an order to preserve electronically stored information, a judge should carefully tailor the order so that it is no broader than necessary to safeguard the information in question.”).

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

Comment

2014 Amendment

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

Comment

2017 Amendment

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)(~~BE~~) 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 Rules of Civil Procedure 16(a)(3) and 26(b)(1)(~~BE~~).

Rule 25

State Bar Committee Note

1963 Amendment

Present Rule 25(a)(1), together with present Rule 6(b), results in an inflexible requirement that an action be dismissed as to a deceased party if substitution is not carried out within a fixed period measured from the time of the death. The hardships and inequities of this unyielding requirement plainly appear from the cases.

The amended rule establishes a time limit for the motion to substitute based not upon the time of the death, but rather upon the time information of the death is provided by means of a suggestion of death upon the record, i.e. service of a statement of the fact of the death. Cf. Ill. Ann. Stat., c. 110, section 54(2) (Smith-Hurd 1956). The motion may not be made later than 90 days after the service of the statement unless the period is extended pursuant to Rule 6(b), as amended.

A motion to substitute may be made by any party or by the representative of the deceased party without awaiting the suggestion of death. Indeed, the motion will usually be so made. If a party or the representative of the deceased party desires to limit the time within which another may make the motion, he may do so by suggesting the death upon the record.

A motion to substitute made within the prescribed time will ordinarily be granted, but under the permissive language of the first sentence of the amended rule (“the court may order”) it may be denied by the court in the exercise of a sound discretion if made long after the death--as can occur if the suggestion of death is not made or is delayed--and circumstances have arisen rendering it unfair to allow substitution. Accordingly, a party interested in securing substitution under the amended rule should not assume that he can rest indefinitely awaiting the suggestion of death before he makes his motion to substitute.

Since the change eliminates the two-year provision and substitutes therefor the ninety-day period after the suggestion of death, it of course follows that the two-year cases are rendered obsolete. An example is *Shire v. Superior Court*, 63 Ariz. 420, 169 P.2d 909 (1945). The amendment will not affect such a case as *Jasper v. Batt*, 76 Ariz. 328, 264 P.2d 409 (1953), which requires substitution in tort cases, since this decision deals with the right of substitution and not with the timing or technique of it, and the latter matters are the only ones within the rule revision.

Rule 26

State Bar Committee Note

1984 Amendment

The 1984 amendments to Rule 26 are aimed at preventing both excess discovery and evasion of reasonable discovery devices. Deletion of “the frequency of use” from Rule 26(a) is intended to deal directly with the problems of duplicative and needless discovery. This change and others in Rule 26(b) should encourage judges to identify instances of unnecessary discovery and to limit the use of the various discovery devices accordingly.

New standards are added in Rule 26(b)(1) which courts will use in deciding whether to limit the frequency or extent of use of the various discovery methods. Subdivision (i) is intended to reduce redundancy in discovery and require counsel to be sensitive to the comparative costs of different methods of securing information. Subdivision (ii) also seeks to minimize repetitiveness and to oblige lawyers to think through their discovery activities in advance so that full utilization is made of each deposition, document request, or set of interrogatories. Subdivision (iii) addresses the problem of discovery that is disproportionate to the individual lawsuit as measured by various factors, e.g., its nature and complexity, the importance of the issues at stake, the financial position of the parties, etc. These standards must be applied in an even-handed manner to prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether affluent or financially weak.

Acknowledging that discovery cannot always be self-regulating, the Rule contemplates earlier and greater judicial involvement in the discovery process. The court may act on motion or its own initiative.

Committee Comment

1991 Amendment

The amendment to Rule 26(b)(4) must be read in conjunction with the amendment to [\[former\]](#) Rule 43(g). The purpose of these two rules is to avoid unnecessary costs inherent in the retention of multiple independent expert witnesses. The words “independent expert” in this rule refer to a person who will offer opinion evidence who is retained for testimonial purposes and who is not a witness to the facts giving rise to the action. As used in this rule, the word “presumptively” is intended to mean that an additional expert on an issue can be used only upon a showing of good cause. Where an issue cuts across several professional disciplines, the court should be liberal in allowing expansion of the limitation upon experts established in the rule.

[\[Former\]](#) Rule 43(g) is intended to reinforce Rule 403 of the Arizona Rules of Evidence which gives the court discretion to exclude relevant evidence which represents ... “needless presentation of cumulative evidence.” By use of the word “shall” in [\[former\]](#)

Rule 43(g) it is the intent of the Committee to strongly urge trial judges to exclude testimony from independent experts on both sides which is cumulative except in those circumstances where the cause of justice requires.

There is no intent to preclude witnesses who in addition to their opinion testimony are factual witnesses. Under Rule [\[former\] 43\(g\)](#), however, the court would exclude an independent expert witness whose opinion would simply duplicate that of the factual expert witness, except for good cause shown.

This amendment to Rule 26(b)(4) in combination with [\[former\] Rule 43\(g\)](#) and Rule 16(c)(3) [\[current Rules 16\(d\)\(5\) and 16\(e\)\(4\)\]](#) is intended to discourage the unnecessary retention of multiple independent expert witnesses and the discovery costs associated with listing multiple cumulative independent experts as witnesses. The Committee does not intend any change in the present rule regarding specially retained experts.

State Bar Committee Note

2000 Amendment

As part of the effort to consolidate formerly separate sets of procedural rules into either the Arizona Rules of Civil Procedure or the Rules of the Arizona Supreme Court, the Uniform Rules of Practice of the Superior Court were effectively transferred to one or the other of those existing sets of Rules. The provisions of former Rule V(a) of the Uniform Rules of Practice of the Superior Court, which required the filing, in certain counties, of a list of witnesses and exhibits as a predicate for submitting a Motion to Set and Certificate of Readiness, however, were not retained in that process. The Committee was of the view that this requirement had been rendered obsolete by the provisions of Rule 26.1, which requires the voluntary and seasonable disclosure of, *inter alia*, the identities of trial witnesses and exhibits. This necessitated the amendment of Rule 26(b)(5) to eliminate the former reference to Rule V(a) and to substitute in its place a reference to new Rule 38.1(b)(2) of the Arizona Rules of Civil Procedure.

Rule 26(b)(4) was amended to incorporate, as a new separate paragraph, the provisions of former Rule 1(D)(4) of the Uniform Rules of Practice for Medical Malpractice Cases. The Comment to that former Rule had observed that, if a medical malpractice case involved issues of nursing care, anesthesia, and general surgery, the plaintiff should be entitled to three standard-of-care experts and, similarly, if the hospital employed the nurse, anesthesiologist and surgeon and was the sole defendant, it would also be entitled to three standard-of-care experts. The addition of the phrase “except upon a showing of good cause” merely incorporates the standards of former Rule 43(g), which addressed the same subject and was abrogated as unnecessary. Finally, the provisions of Rule 26(e) were amended to reflect prior amendments to Rules 26.1 and 37 which require the disclosure of such information by no later than sixty (60) days prior to trial, without leave of court.

Comment

2002 Amendment

The amendment to Rule 26(c) does not limit the discretion of trial judges to issue confidentiality orders in the appropriate case. Trial judges should look to federal case law to determine what factors, including the three listed in the rule, should be weighed in deciding whether to grant or modify a confidentiality order where parties contest the need for such an order. Trial judges also should look to federal case law to determine whether to permit nonparties to intervene and obtain access to information protected by such orders.

~~The amendment to Rule 26(c) does not limit the discretion of trial judges to issue confidentiality orders in the appropriate case. Trial judges should look to federal case law to determine what factors, including the three listed in the rule, should be weighed in deciding whether to grant or modify a confidentiality order where parties contest the need for such an order. Trial judges also should look to federal case law to determine whether to permit nonparties to intervene and obtain access to information protected by such orders.~~

Rule 30

Committee Comment

1991 Amendment

Rule 30(a) is intended to address the problem of overuse of expensive and unnecessary depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6), the deposition of any disclosed expert, and the depositions of the custodian of documents without agreement or leave of court. Treating physicians are regarded as disclosed experts for purposes of this rule. Depositions of custodian taken as a matter of right shall be limited to questions necessary to secure the documents and to provide evidentiary foundation for their admissibility. The rule, along with Rule 26.1 and Rule 16, is intended to encourage voluntary disclosure of information between the parties and is further intended to require at a minimum consultation between counsel prior to the setting of depositions. Any party may take the deposition of any other party, including depositions taken under Rule 30(b)(6) and the deposition of any disclosed expert, without agreement or leave of court. Any other depositions must be taken either by agreement of the parties, upon motion and order of the court, or pursuant to an order of the court following a Comprehensive Pretrial Conference under Rule 16. Refusing to agree to the taking of a reasonable and necessary deposition should subject counsel to sanctions under Rule 26(f).

Rule 33

State Bar Committee Note

1970 Amendment

~~Rule 33(e): This Subdivision (c)~~ [current subdivision (d)] is a new subdivision, adapted from Calif.Code Civ.Proc. § 2030(c), relating especially to interrogatories which require a party to engage in burdensome or expensive research into his own business records in order to give an answer. The subdivision gives the party an option to make the records available and place the burden of research on the party who seeks the information. The interrogating party is protected against abusive use of this provision through the requirement that the burden of ascertaining the answer be substantially the same for both sides. A respondent may not impose on an interrogating party a mass of records as to which research is feasible only for one familiar with the records. At the same time, the respondent unable to invoke this subdivision still has the protection available to him under new Rule 26(c) against oppressive or unduly burdensome or expensive interrogatories. And even when the respondent successfully invoke the subdivision, the court is not deprived of its usual power, in appropriate cases, to require that the interrogating party reimburse the respondent for the expense of assembling his records and making them intelligible.

State Bar Committee Note

1983 Amendment

~~Subdivision (e):~~ A party who is permitted by the terms of ~~this~~ subdivision (c) [current subdivision (d)] to offer records for inspection in lieu of answering an interrogatory should offer them in a manner that permits the same direct and economical access that is available to the party. If the information sought exists in the form of compilations, abstracts or summaries then available to the responding party, those should be made available to the interrogating party. The final sentence [current subdivision (d)(1)] is added to make it clear that a responding party has the duty to specify by category and location, the records from which answers to interrogatories can be derived or ascertained.

Committee Comment

2009 Amendment to Rule 33(a)(4) (former Rule 33.1)

The uniform interrogatories stated in the Appendix of Forms under Rule 84 are for use in any litigation brought under the civil rules, and the category heading for each Form is suggestive in nature and not restrictive; no uniform interrogatory is limited by the nature of the cause of action. Further, in light of Rules 26.1 and 26.2 and their comments, use of the uniform interrogatories is presumptively deemed to not be harassing or overly broad, and their language is presumptively not vague or ambiguous. Disputes arising from the

use of the interrogatories should be considered in light of the standard stated in Rule 26(b)(1).

Rule 34

Supplemental Note

Rule 34 provides for the inspection and, if desired, copying of discoverable documents. The costs of copying should be borne by the party that requests that copies be made. If a party designates documents to be copied after a permitted inspection, or specifies in the request that copies of documents may be provided in response, that party should be responsible for any copying costs involved. If a party, in response to a request made under this rule, elects to furnish copies in lieu of permitting an inspection, that party should bear any copying or related costs incurred. Reference should be made to A.R.S. § 12-351 (costs of compliance with subpoena for production of documentary evidence; payment by requesting party; definitions) for guidelines as to what constitutes reasonable copying charges.

Rule 40

Comment

**1995 Amendment to Rule 40(j) (Assisting Jurors at Impasse)
[Formerly Rule 39(h)]**

Many juries, after reporting to the judge that they have reached an impasse in their deliberations, are needlessly discharged very soon thereafter and a mistrial declared when it would be appropriate and might be helpful for the judge to offer some assistance in hopes of improving the chances of a verdict. The judge's offer would be designed and intended to address the issues that divide the jurors, if it is legally and practically possible to do so. The invitation to dialogue should not be coercive, suggestive or unduly intrusive.

The judge's response to the jurors' report of impasse could take the following form:

"This instruction is offered to help your deliberations, not to force you to reach a verdict.

"You may wish to identify areas of agreement and areas of disagreement. You may then wish to discuss the law and the evidence as they relate to areas of disagreement.

"If you still have disagreement, you may wish to identify for the court and counsel which issues or questions or law or fact you would like counsel or court to assist you with. If you elect this option, please list in writing the issues where further assistance might help bring about a verdict.

"I do not wish or intend to force a verdict. We are merely trying to be responsive to your apparent need for help. If it is reasonably probable that you could reach a verdict as a result of this procedure, it would be wise to give it a try."

If the jury identifies one or more issues that divide them, the court, with the help of the attorneys, can decide whether and how the issues can be addressed. Among the obvious options are the following; giving additional instructions; clarifying earlier instructions; directing the attorneys to make additional closing argument; reopening the evidence for limited purposes; or a combination of these measures. Of course, the court might decide that it is not legally or practically possible to respond to the jury's concerns.

Rule 44.1

Comment

Historically, laws of foreign nations and even laws of some United States jurisdictions were treated as matters which had to be proved as facts are proved. With modern availability of sources of law, this is no longer appropriate. Arizona has, for some time, treated matters of the law of foreign nations as questions of law rather than questions of fact. Since the law of foreign nations can be much more difficult to ascertain than the law of United States jurisdictions, a separate rule stating that law of other United States jurisdictions should also be treated as a question of law, rather than fact, is considered unnecessary.

Rule 45

State Bar Committee Note

1996 Amendment

To the extent that a person who is not a party or an officer of a party is commanded by subpoena only to produce documents, the reimbursement to which that person is entitled for the costs incurred in complying with the subpoena is governed by A.R.S. § 12-351. The provisions of Rule 45(c)(1) and [Rule 45(e)(2)(C) (formerly Rule 45(c)(2)(B))] do not alter the statutory provisions of A.R.S. § 12-351, but rather apply to subpoenas commanding testimony (in the case of Rule 45(c)(1)) and to non-monetary measures to protect against “significant expense” resulting from a subpoena commanding production of documents (in the case of [Rule 45(e)(2)(C) (formerly Rule 45(c)(2)(B)]).

Rule 45.1

Comment

2013 Amendment

This rule derives from the Uniform Interstate Depositions and Discovery Act, 13 Pt.2 Uniform Laws Annotated 59 (West 2011 Supp.). In applying and construing this rule, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that adopt or enact it.

Rule 47

Comment

1995 Amendment to Rule 47(a) and (e) [Formerly Rule 47(a)]

Prior to the 1995 amendment, [Rule 47(a) and (e) (Jury Selection and Peremptory Strikes) (formerly Rule 47(a)(1))] was read to require trial judges to use the traditional “strike and replace” method of jury selection, where only a portion of the jury panel is examined, the remaining jurors being called upon to participate in jury selection only upon excusal for cause of a juror in the initial group. Challenges for cause are heard and decided with the jurors being examined in the box. A juror excused for cause leaves the courtroom in the presence and view of the other panel members, after which the excused juror’s position is filled by a panel member who responds to all previous and future questions of the potential jurors.

The purpose of this amendment is to allow the trial judge to use the “struck” method of selection if the judge chooses. This procedure is thought by some to offer more advantages than the “strike and replace” method. See T. Munsterman, R. Strand and J. Hart, *The Best Method of Selecting Jurors*, *The Judges’ Journal* 9 (Summer 1990); A.B.A. Standards Relating to Juror Use and Management, Standard 7, at 68-74 (1983); and “The Jury Project,” Report to the Chief Judge of the State of New York 58-60 (1984).

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken, and all legal issues arising therefrom have been resolved, the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

Comment

1961 Amendment to Rule 47(e) [Formerly Rule 47(a)(3)]

[Rule 47(e) (formerly Rule 47(a)(3))] now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate this inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.

Rule 50

State Bar Committee Note

2010 Amendment

This amendment eliminates the need to make a motion for judgment as a matter of law at the close of all the evidence as a prerequisite to renewing a motion made earlier during trial, as the former rule had been interpreted by cases such as *Ash v. Flieger*, 118 Ariz. 547, 578 P. 2d 628 (App. 1978).

Rule 51

Comment

2017 Amendment

The 2017 amendment adopts the provisions of Rule 51 of the Federal Rules of Civil Procedure governing the required timing of objections to jury instructions. Under the amended rule, with some exceptions, objections must now be made before the instructions and arguments are delivered to the jury. This departs from Arizona's former rule, which allowed parties to object to jury instructions at any time before the jury retires to consider its verdict.

Rule 53

Comment

2005 Amendment

Rule 53 was extensively revised to incorporate most, but not all, of the December 2003 amendments to Rule 53 of the Federal Rules of Civil Procedure. Where the provisions of this rule are similar to those found in Federal Rule 53, a court may look to federal precedent and the advisory committee notes to Federal Rule 53 for guidance in interpreting this Rule.

The subdivision (d) [now Rule 53(c)(1)(3)] provisions for evidentiary hearings are reduced from the extensive provisions previously set forth in Rule 53. This simplification of the rule is not intended to diminish the authority that may be delegated to a master. Reliance is placed on the broad and general terms of the master's authority set forth in amended Rule 53(c).

The amendments to the rule require in several places that a court must give the parties "an opportunity to be heard" before taking a specified action. This requirement can be satisfied by giving the parties an opportunity to make written submissions to the court and does not require the court to hold a hearing before taking action.

Rule 55

Comment

2015 Amendment to Rule 55(b)

This amendment clarifies when a defendant has a right to notice and a hearing if the plaintiff's claim is for a sum certain or for a sum that can be made certain by computation. Under the amendment, a defendant who has been defaulted on such a claim under Rule 55(b)(1), but who makes a post-default appearance, is not entitled to notice and a hearing before judgment may be entered.

State Bar Committee Note

1984 Amendment to Rule 55(b)

The amendment to Rule 55(b)(1) is intended to avoid the result suggested by dicta in *Monte Produce, Inc. v. Delgado*, 126 Ariz. 320, 614 P.2d 862 (App. 1980), that a default judgment including attorneys' fees may not be obtained by motion without a hearing unless the amount of attorneys' fees is liquidated. The amendment is intended to permit the court to consider and rule upon the issue of attorneys' fees by motion, even though it may be an unliquidated claim, where the complaint gives notice of an amount sought in the event of default [or if the award is allowed by law and supported by affidavit, and the defendant has not entered an appearance in the action.] The amendment does not attempt to change the substantive law in regard to liquidated or unliquidated damages.

Rule 56

Comment

2013 Amendments (as Modified by 2017 Amendments)¹

Rule 56 is revised in several respects. The language of some subdivisions is updated and simplified to conform to the 2010 restyling of Rule 56 of the Federal Rules of Civil Procedure, with no intended substantive change to Arizona’s rule or summary judgment procedure. These revisions are selective and reflect a determination that fundamental differences between Arizona’s rule and the counterpart federal rule weigh against wholesale adoption of the federal rule amendments. In addition, a number of other changes have been made to improve or clarify Arizona’s summary judgment practice.

Subdivision (a). The standard for granting summary judgment has been moved from subdivision (c) to subdivision (a). In addition, the language of new subdivision (a) has been modified to conform to the language of Federal Rule of Civil Procedure 56(a). These changes are stylistic and are not intended to alter the substantive requirements for obtaining summary judgment as developed in Arizona case law, including *Orme School v. Reeves*, 166 Ariz. 301, 802 P.2d 1000 (1990), and its progeny. Likewise, the new language, which recognizes the availability of partial summary judgment, is not intended to change existing Arizona law.

Subdivision (b). Subdivision (b) incorporates aspects of former subdivisions (a) and (b), governing when a claimant and defending party, respectively, may move for summary judgment. Former subdivision (a) restricted a claimant’s ability to move for summary judgment until after the answer was due or the adverse party moved for summary judgment, while former subdivision (b) allowed a defending party to move for summary judgment at any time. The amendment additionally authorizes a claimant to move for summary judgment after an opposing party moves to dismiss under Rule 12(b)(6). Subdivision (3) is modified to clarify that any dispositive motion cut-off established by the court will control over the 90-day period provided in the rule.

¹ I tried updating the 2013 to simply add bracketed references to the new rule sections, but it got messy (some subdivisions ended up in multiple places; we made slight tweaks to what was done in 2013 that made the comment text inaccurate in places). Ultimately, I decided it is better to retain the guts of the 2013 comment text, but to modify the narrative and subdivision order as necessary to conform to the 2017 amendments. Because most of the changes described were adopted in 2013, though, and not in 2017, I’ve suggested a slightly revised comment title: “2013 Amendments (as modified by 2017 Amendments).” References to “sections” of Rule 56 in the 2013 Comment have been changed to “subdivision(s).” Other than slight modifications to reflect changes made in 2017, I resisted the temptation to rewrite the 2013 Comment, thinking that it will go down easier if it is modified only in essential respects to conform to the 2017 Amendments.

Subdivision (c). Subdivision (c) is modified to clarify certain hearing and briefing requirements. Subdivision(c)(2) is modified to cross-reference Rule 7.1(g),² which governs stipulations extending briefing schedules on motions. The standard for granting summary judgment has been moved to subdivision (a). Portions of former subdivision (e), governing the form of affidavits, have been moved to subdivision (c)(5) and (6).

Subdivision (d) [formerly subdivision (f)]. Subdivision (f) of the current rule has been moved to subdivision (d), to align the Arizona Rule's structure with that of the corresponding federal rule. Subdivision (1) has been modified to set forth a uniform procedure requiring the filing of a request for Rule 56(f) relief and expedited hearing, along with a supporting Rule 56(d) affidavit. The specificity requirements developed in Arizona case law are now set forth in subdivision(d)(1)(A). *See Simon v. Safeway, Inc.*, 217 Ariz. 330, 173 P.3d 1031 (Ct. App. 2007). Subdivision (1) also requires that the request be accompanied by a certification of the party's good faith efforts to resolve the matter as required by Rule 7.2(h). Subdivision (2) clarifies that absent a court order extending the time for response, filing a request for Rule 56(d) relief does not extend the date for opposing a motion for summary judgment. Subdivision (3) provides that the party moving for summary judgment is generally not required to file a response to the request for Rule 56(d) relief; but, if it chooses to do so, it must file the response within two days of the scheduled hearing. Finally, subdivision (4) adopts an expedited hearing procedure, requiring courts to hold a telephonic or in-person hearing within seven days after any hearing request filed by the party seeking the relief. These procedures are intended to facilitate resolution of subdivision (d) disputes and minimize the need for court intervention.

Subdivision (e). Former subdivision (e)(4) is retained as subdivision (e), with stylistic revisions.

Subdivision (f) [formerly subdivision (h)]. New subdivision (f) [formerly subdivision (h)] is based on counterpart Federal Rule of Civil Procedure 56(f), with some stylistic changes. The subdivision recognizes the court's inherent authority to dispose of matters on summary judgment on the court's own initiative, where appropriate. The subdivision (f) procedure strikes a balance between the court's inherent power and the rights of litigants, by requiring notice and a hearing before the court may grant summary judgment for a nonmovant, grant a motion on grounds not raised by a party, or otherwise consider summary judgment on the court's own initiative.

Subdivision (g) [formerly subdivision (d)]. Subdivision (f) [formerly subdivision (d)] is modified to conform to the stylistic revisions to Federal Rule of Civil Procedure 56(g), which simplified the language of this subdivision and made it more concise. No substantive change is intended. Subdivision (g) cross-references new subdivision (f), which allows the court to grant summary judgment on independent consideration in appropriate circumstances.

² This cross-reference may change and will need to be checked/updated as appropriate.

Subdivision (h) [formerly subdivision (g)]. Subdivision (h) [formerly subdivision (g)] is modified to conform to the stylistic revisions to counterpart Federal Rule of Civil Procedure 56(h), which simplified the language of this subdivision and made it more concise. Additionally, subdivision (h)'s reference to the sanction of "contempt" has been eliminated. The rule allows "other appropriate sanctions," leaving it to the court to determine whether a sanction of contempt is warranted by the applicable substantive law. The language of subdivision (h) also has been modified to make clear that notice and an opportunity to respond are required before the court may impose any sanctions.

Rule 59

Comment

2017 Amendments

In *State v. Tucson Title*, 101 Ariz. 415, 420 P.2d 286 (1966), the Arizona Supreme Court held that under the former Rule 59(i) a consent to a remittitur was binding, notwithstanding a later appeal by the moving party. Thus, the court held that the consent to the remittitur estopped the party in whose favor the judgment had been entered from taking a cross-appeal from the order. In many cases one of the primary reasons for consenting to a remittitur is the hope of thereby ending the litigation and avoiding an appeal by the moving party. If, despite the opposing party's consent to the remittitur, the moving party nevertheless perfects an appeal, the party consenting to the remittitur should have the right to cross-appeal from the order. To address this concern, Rule 59(i)(2) was amended in 1967 to provide that the party consenting to the remittitur or additur "may nonetheless cross-appeal and the perfecting of a cross-appeal shall be deemed to revoke the consent to the decrease or increase in damages."³

The 2017 Amendments eliminate the provision of former Rule 59(i)(2) providing that the cross-appeal is "deemed to revoke" a cross-appealing party's consent to an additur or remittitur. Subdivision (f)(2) of the amended rule instead provides that if the court's ruling on damages is affirmed, the cross-appealing party's prior acceptance will remain in effect, unless the appeal's final disposition requires otherwise. This approach is consistent with *Plesko v. City of Milwaukee*, 120 N.W. 2d 130 (Wis. 1963).

³ This portion of the new comment is taken from the existing comment to the rule, with minor changes.

Rule 65

State Bar Committee Note

1966 Amendment

In view of the possibly drastic consequences of a temporary restraining order, the opposition should be heard, if feasible, before the order is granted. Many judges have properly insisted that, when time does not permit formal notice of the application to the adverse party, some expedient, such as telephonic notice to the attorney for the adverse party, be resorted to if this can reasonably be done. On occasion, however, temporary restraining orders have been issued without any notice when it was feasible for some fair, although informal, notice to be given.

Heretofore the first sentence of subdivision (b), in referring to a notice “served” on the “adverse party” on which a “hearing” could be held, perhaps invited the interpretation that the order might be granted without notice if the circumstances did not permit of a formal hearing on the basis of a formal notice. The subdivision is amended to make it plain that informal notice, which may be communicated to the attorney rather than the adverse party, is to be preferred to no notice at all.

Before notice can be dispensed with, the applicant’s counsel must give his certificate as to any efforts made to give notice and the reasons why notice should not be required. This certificate is in addition to the requirement of an affidavit or verified complaint setting forth the facts as to the irreparable injury which would result before the opposition could be heard.

The amended subdivision continues to recognize that a temporary restraining order may be issued without any notice. In domestic relations cases, there may be a reasonable fear of bodily harm, and this is expressly regarded as one kind of irreparable injury which, if supported by affidavit and certificate, justifies a temporary restraining order without notice.

Work Group 4
Proposed Changes
Regarding Existing and
New Comments

Rule 60

Workgroup 4 proposes deleting the existing comment to Rule 60(c) in its entirety and adding the following:

Rule 60(a) – (d) were combined into one rule to conform to Rule 60, Federal Rules of Civil Procedure. Former Rules 60(b) and (d) are now Rules 60(e) and (f)

Rule 62

The only comment to Rule 62 relates to Rule 62(j). Workgroup 4 would like input from the Task Force as to whether or not to retain the existing comment.

Rule 63

Workgroup 4 recommends deleting the existing State Bar Committee note in its entirety.

Rule 65.1

Workgroup 4 recommends deleting the State Bar Committee note in its entirety.

Rule 65.2

Work group 4 recommends retaining the existing comment but seeks input from the Task Force concerning the possible deletion of the “Historical Notes” regarding this Rule.

Rule 66

Workgroup 4 recommends deletion of the existing State Bar Committee notes and the addition of the following comment: Rule 66(a) previously allowed an application for receiver to be included in a verified complaint or made by separate verified application. Amended Rule 66(a) no longer permits this. A request for receiver must be filed as a separate application and must be accompanied by a supporting affidavit.

Rule 68

Workgroup 4 requests input from the Task Force concerning the State Bar Committee notes relating to four prior amendments of this Rule.

Rule 69

Workgroup 4 recommends deletion of the State Bar Committee note.

Rule 72-77 (Arbitration Rules)

Workgroup 4 recommends removing all State Bar Committee notes and Historical Notes related to these Rules.

Rule 83

Workgroup 4 recommends deletion of the existing State Bar Committee note in its entirety.

Rule 84

Workgroup 4 recommends deletion of paragraph 1 of the exiting State Bar Committee note and retention of paragraph 2 of that note as follows:

~~The 1996 adoption of Rule 84 was part of a comprehensive set of rule revisions proposed by the State Bar of Arizona. Such comprehensive revisions were intended to bring the Arizona Rules of Civil Procedure in line with the 1991 and 1993 amendments to the Federal Rules of Civil Procedure. Specifically, Rule 84 was adopted to conform to the 1995 amendment of Rule 4.1(c) and Rule 4.2(e) concerning the promulgation of Form 1 (“Notice of Lawsuit and Request for Waiver of Service of Summons”) and Form 2 (“Waiver of Service and Summons”).~~

Consistent with 1946 Advisory Committee Note, which accompanies Rule 84 of the Federal Rules of Civil Procedure, the forms contained in the Appendix of Forms are sufficient to withstand attack under the rules which they are drawn, and, to that event, the practitioner using them may rely upon them. A practitioner is not required, however, to use such forms.

WORKGROUP TWO'S PORTION OF PETITION

Rule 16 (Scheduling and Management of Actions):

The proposed amendments to Rule 16 include a number of stylistic and organizational changes. In addition, a handful of substantive changes also would be made to the rule.

1. Limiting Discovery to that Appropriate to the Case

In amendments to the Federal Rules of Civil Procedure that became effective on December 1, 2015, Rule 26(b)(1) was amended to more explicitly limit discovery to that “proportional” to the needs of the case. The changes included the explicit use of the phrase “proportional to the needs of the case” in Fed. R. Civ. P. 26(b)(1) and moving the factors for limiting discovery that had been found in Fed. R. Civ. P. 26(b)(2)(C)—namely that a court must limit discovery if its burden or expense outweighs its likely benefit considering the needs of the case, the amount in controversy, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues—to Fed. R. Civ. P. 26(b)(1).

The Task Force disagrees with moving the factors currently found in Rule 26(b)(2)(C) [Rule 26(b)(2)(B) of the proposed amended rule] into Rule 26(b)(1) because Rule 26(b)(1) is a standard that has worked well in Arizona. In addition, it is a standard that already differed from the federal standard even before the latest federal amendments. For example, the federal rule limits the scope of discovery to that relevant to any party’s claim or defense, while Arizona’s rule slightly more broadly permits discovery relevant to the subject matter involved in the action.

While agreeing that the factors for consideration in determining whether to limit discovery should be consistent between Arizona’s rule and the federal rule, the Task Force was concerned that use of the new, overarching federal phrase, “proportional to the needs of the case,” could be misconstrued to place undue weight on two of the factors—namely, the amount in controversy and the cost of the discovery—over all the other

factors. In fact, this already appears to be happening in some jurisdictions. *See, e.g.*, Utah R. Civ. P. 26(c) (setting forth different limits on discovery based solely on the dollar amount in controversy in the case). Thus, rather than simply wholesale adopting the federal amendments regarding the scope of discovery, the Task Force proposes the following changes to Rules 16 and 26:

a. Adding to the objectives of case management found in Rule 16(a) an objective of “ensuring that discovery is appropriate to the needs of the case 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.” The Task Force believes that the phrase “appropriate to the needs of the case” better encapsulates the overall standard that a court is to apply in determining whether to permit given discovery in the confines of a particular case.

b. Modifying the language found in Rule 26(b)(2)(C) (which would be redesignated as Rule 26(b)(2)(B)) regarding the factors that the court must consider in determining whether to limit discovery to include as a factor “the importance of the discovery in resolving the issues and achieving a just resolution of the case on the merits.” This is one of the factors under the federal rule and is a consideration that the Task Force believes a court should consider in determining whether to permit given discovery in a case.

c. Modifying the same subdivision of Rule 26 so that the court must limit discovery if any of the listed factors is present (e.g., if the discovery is found to be 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). Under the current version of the rule, the court may limit discovery if any of the listed factors is present. The Task Force believed that the court has some discretion in

determining whether any of the listed factors is present, but that if it finds one of those factors present, it then must limit the discovery in question.

d. Adopting a new comment to Rule 16, stating as follows:

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

This comment is intended to convey that while the federal factors for determining whether to limit discovery are appropriate and should themselves be consistently adopted within Arizona’s rules, the overarching standard should not place undue emphasis on cost and amount in controversy factors, which the word “proportional” may suggest due to its mathematical connotations. *See, e.g.,* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at 1819 (2002) (defining “proportional” to mean “having the same or a constant ratio”; “corresponding in size, degree, or intensity”).

2. Recognition of Procedure Requiring Parties to Confer with Court Before Filing Discovery Motions

The Task Force also proposes amending Rule 16(c)(2) to explicitly recognize a procedure already employed by many trial court judges around the state—namely, that the court may include a provision in its the Scheduling Order “direct[ing] that a party must request a conference with the court before moving for an order relating to discovery” (e.g., motion to compel, motion for protective order, etc.). This procedure is oftentimes laid out in an individual judge’s scheduling order, but sometimes the parties need to search elsewhere to determine whether a judge requires such a procedure. The

proposed amendment to Rule 16(c)(2) would formalize the procedure and encourage judges to include it in their scheduling orders so that the parties are aware of it.

3. Recognition that Parties May Agree to, or Court May Order, an Exchange of Expert Reports

An addition would be made to Rule 16(d)(4) allowing the parties to agree to, or the court to order, an exchange of expert reports. Currently, Rule 26.1(a)(6) requires a party to identify any expert it intends to call at trial and disclose “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, [and] a summary of the grounds for each opinion.” Under the Federal Rules of Civil Procedure, a report must be provided from most testifying experts that includes, among other things, “a complete statement of all opinions the witness will express and the basis and reasons for them [and] the facts or data considered by the witness in forming them.” Fed. R. Civ. P. 26(a)(2)(B). The Task Force determined that given the differences in cases filed in federal court versus our state courts, a rule generally requiring such expert reports in all cases was unwise. In many cases, the added cost of requiring expert reports would not make sense. The Task Force, however, believes there are some cases where expert reports may be appropriate, and that the Rules should thus explicitly allow the parties to agree to, or permit the court to order, the exchange of such reports. While not formally recognized under the current rules, this is a practice that already occurs in some cases.

4. Timing of Delivery of Exhibits in Conjunction with Joint Pretrial Statement

Rule 16 also would be amended to make minor changes to the timing of the parties’ delivery of exhibits to each other under Rule 16(g). Under the current rule, the timing works off of the trial management conference (e.g., the plaintiff is to deliver its exhibits to the other parties 20 days before the trial management conference). A trial management conference is not necessarily held in all cases, though. *See* Ariz. R. Civ. P. 16(g)(1). Accordingly, the Task Force proposes amending Rule 16(g) so that the timing

for delivery of exhibits would instead work off of the filing of the Joint Pretrial Statement (e.g., the plaintiff is to deliver its exhibits to the other parties 10 days before the deadline for filing the Joint Pretrial Statement). *See* Proposed Ariz. R. Civ. P. 16(g)(3).

Rule 21 (Improper Joinder and Non-joinder of Parties; Severance):

The proposed amendments are stylistic and organizational and effect no substantive changes to Rule 21.

Rule 22 (Interpleader):

The proposed amendments are stylistic and organization and effect no substantive changes to Rule 22.

Rule 23 (Class Actions):

The Task Force proposes amending Rule 23 to, in large part, adopt the provisions of its federal counterpart governing class actions. The federal rule has been amended multiple times over the last several years to add various provisions, with none of those provisions having made their way into the state rule. For example, the federal rule now includes detailed provisions on class counsel, the award of attorney's fees, and the requisite notice to the class, none of which are currently in Arizona's rule. The Task Force believes it is appropriate to adopt these federal changes, especially in light of the fact that currently the large majority of class actions are filed in federal court. The Task Force conferred with the State Bar's Class Actions Committee, and they agree that the federal provisions should be adopted in the state rule.

The proposed amendments to Rule 23 do retain a few Arizona-specific provisions that come out of Arizona statutes. For example, as opposed to federal court (where the court of appeals may in its discretion permit an interlocutory appeal of an order granting or denying class certification), by statute in Arizona, a party is entitled to take an interlocutory appeal of an order granting or denying class certification. *Compare* A.R.S.

§ 12-1873, with Fed. R. Civ. P. 23(f). Similarly, A.R.S. § 12-1871 requires the inclusion of certain items in an order granting class certifications. These requirements were adopted into Ariz. R. Civ. P. 23 on an emergency basis in 2013. The proposed amendments to Rule 23 retain these provisions.

Rule 23.1 (Derivative Actions):

The current version of Rule 23.1 speaks of derivative actions by “shareholders or members to enforce a right of a corporation or of an unincorporated association.” Derivative actions, however, are also maintainable in Arizona in the cases of both partnerships and limited liability companies. *See* A.R.S. §§ 29-356 (recognizing right of limited partner to bring derivative action) & 29-831 (recognizing right of LLC member to bring derivative action). The Task Force’s proposed amendments to Rule 23.1 explicitly broaden its provisions to apply in these other situations.

In addition, the rule would be simplified to remove many of the current pleading and standing requirements. Those requirements generally come from statutes (e.g., A.R.S. § 10-740 (laying out standing requirements for derivative actions on behalf of corporations)), but the current rule fails to include all of them. In addition, the statutory pleading and standing requirements differ depending on whether the derivative action involves a corporation, limited liability company, or limited partnership. *Compare* A.R.S. §§ 10-741 & 10-742 (setting forth conditions for corporate shareholder to bring derivative action), *with* A.R.S. § 29-831 (setting forth conditions for LLC member to bring derivative action), *with* A.R.S. §§ 29-356 & 29-357 (setting forth conditions for limited partner to bring derivative action). To avoid these issues, the Task Force proposes replacing the various requirements currently included in the rule with a provision that simply states that a plaintiff in a derivative actions must “allege facts sufficient to show that the plaintiff satisfies all statutory and other requirements under the law for maintaining the derivative action.”

Rule 23.2 (Actions Relating to Unincorporated Associations):

The proposed amendments are stylistic and organizational and effect no substantive changes to Rule 23.2.

Rule 24 (Intervention):

The proposed amendments to Rule 24 are primarily stylistic and organizational, but there is one proposed change that is substantive. Under the current rule, the plaintiff and defendant are “allowed a reasonable time, not exceeding twenty days, in which to answer the pleading of the intervener” if a motion to intervene is granted. The rule, however, does not require the successfully intervening party to actually file its pleading once the court grants intervention. In such a situation, it is unclear when the other parties are supposed to file their respective answers. To rectify this issue, the Task Force proposes amending this provision to follow closely the procedure in cases of amended pleadings. Namely, if the motion to intervene is granted, the intervenor would have 10 days to file and serve the pleading in intervention. *Cf.* Ariz. R. Civ. P. 15(a) (requiring party seeking leave to amend to file and serve its amended pleading within 10 days of the order granting leave). The parties would then have 20 days from service to answer the pleading in intervention.

Rule 25 (Substitution of Parties):

The Task Force proposes various stylistic and organizational amendments to Rule 25. In addition, the Task Force proposes three substantive changes to the rule.

1. Clarification Regarding Notices of Death and Substitution After a Party’s Death

Under current Rule 25(a), a party is required to file a motion for substitution for a deceased party no later than 90 days after the death is suggested upon the record by service of a statement of the fact of death. The Task Force believes that that the use of phrase “suggested upon the record” is confusing, and thus proposes to clarify that if one

wishes to trigger this 90-day deadline, they must file and serve a statement noting the death of a party. In addition, the proposed amendments would further clarify who can file and serve the statement noting death (namely, either a party or the deceased party's successor representative), and further clarify that if the statement is filed by a party, they need to identify the deceased party's successor or representative if known to them, as this would serve the purpose of then allowing a substitution of the successor or representative to occur.

2. Deletion of Provision that Wrongful Death and Personal Injury Actions Do Not Abate Upon Defendant's Death

The proposed amendments would delete current Rule 25(b), which provides that wrongful death and personal injury actions do not abate due to the defendant's death. In the Task Force's opinion, the current rule is both unnecessary and unduly limited in its reach. Arizona's survival statute (A.R.S. § 14-3110) already provides that wrongful death and personal injury actions do not abate upon a defendant's death, and thus Rule 25(b) is unnecessary. In addition, while Rule 25(b) is limited to wrongful death and personal injury actions, the survival statute provides for the survival of all causes of action upon a defendant's death except "a cause of action for damages for breach of promise to marry, seduction, libel, slander, separate maintenance, alimony, loss of consortium or invasion of the right of privacy." Thus, in addition to being unnecessary, Rule 25(b) is also too narrow.

3. Provisions for Naming Public Officers as Parties in a Lawsuit Moved to Rule 17

Current Rule 25(e)(2) states that, "A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name...." This provision does not belong in Rule 25, which governs the substitution—not the naming—of parties. The provision instead more appropriately belongs in Rule 17 (governing the naming of parties), which is where it is found in the federal rules. Thus, the Task Force proposes moving it to Rule 17(d).

Rule 26 (General Provisions Governing Discovery):

The Task Force proposes various stylistic and organizational amendments to Rule 26.1. In addition, the Task Force proposes several substantive changes to the rule detailed below.

1. Proportionality and Scope of Discovery

As discussed in relation to Rule 16 above, the Task Force gave extended consideration to the recent federal amendments regarding proportionality and the scope of discovery. In addition to considering the federal rule's move to explicitly use the phrase "proportional" in the rule, the Task Force also considered other existing differences between the scope of discovery under the Arizona and federal rules. For example, the federal rule generally defines the scope of discovery to extend only to matters "relevant to any party's claim or defense." The Arizona rule, on the other hand, generally extends discovery to matters "relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." The Task Force considered these differences, and decided against adoption of the federal language. The Task Force believes that Arizona's standards regarding the scope of discovery generally seem to be working.

As further discussed above with respect to Rule 16, the Task Force is proposing two changes to Rule 26(b)(2)(C) (which would be redesignated as Rule 26(b)(2)(B)) regarding the factors the court must consider in determining whether to limit discovery. Namely, that subdivision would be amended to (1) add as a factor for the court to consider "the importance of the discovery in resolving the issues and achieving a just resolution of the case on the merits"; and (2) require, rather than merely permit, the court to limit discovery if it finds the relevant factors to exist.

2. Deletion of Explicit Provision Regarding Discovery of Insurance

Under the proposed amendments, current Rule 26(b)(2)(“Insurance agreements”) is deleted. As discussed below, the Task Force has strengthened and laid out in more detail the requirements under Rule 26.1 for disclosing matters relating to insurance. In light of those proposed changes, the Task Force believes that an explicit provision regarding discovery of insurance in Rule 26 is unnecessary. The deletion would also be consistent with the federal rules, which deleted a similar provision regarding discovery of insurance when the rules were amended to require disclosure of insurance.

3. Presumptive Limits on Number of Experts

Rule 26(b)(4)(D) sets forth the presumptive limit of one expert per side per issue. The rule currently speaks in terms of “independent experts.” A recent court of appeals decision, *Felipe v. Theme Tech Corp.*, 235 Ariz. 520 (App. 2014), discussed the ambiguities of the phrase “independent experts” and, upon consideration of comments to the rule, determined that the rule was only intended to apply to experts retained by a party to testify, and thus did not apply to an investigating police officer who offered opinions regarding the speed of a vehicle. The Task Force therefore proposes replacing that phrase with the phrase “retained or specially employed expert.” That proposed phrase is consistent with the court of appeals decision in *Felipe*, and is a term already found within the rules. *See* Ariz. R. Civ. P. 26(b)(4)(B); *see also* Fed. R. Civ. P. 26(2)(2)(B).

4. Notices of Non-Parties at Fault

Rule 26(b)(5) currently states that a party who alleges a non-party to be at fault must “provide” certain information regarding the non-party. Based on the wording of the rule, it is unclear whether parties are to file a notice of non-parties at fault, or whether they merely need to serve the notice on the other parties. Given that ambiguity, many parties file their notices of non-parties at fault out of an abundance of caution. The Task Force proposes amending the rule to clearly convey that a party may, but is not required, to file a notice of non-parties at fault. The Task Force considered prohibiting parties

from filing such notices with the court, but determined that there may be cases where a party wishes to make the court aware that the fault of non-parties will be an issue. Similarly, the Task Force also considered requiring parties to file notices of non-parties at fault, but decided this could become a trap for the unwary, where another party might seek to prohibit a non-party at fault defense merely because the defendant failed to file the notice.

The Task Force proposes one additional substantive change to Rule 26(b)(5) regarding supplementation and correction of notices of non-party at fault. A State Bar Committee Note to the 1989 amendment to Rule 26(b) states that “Rule 26(b)(5) is intended to be read in conjunction with the provisions of Rule 26~~(1)~~(D), which requires the reasonable supplementation of responses to discovery requests addressed to the identity, location, and the facts supporting the asserted liability of any nonparty who is claimed to be wholly or partially at fault.” The Task Force agrees that supplementation or correction of notices of non-parties at fault may be required, but believe that this requirement should be contained within the rule itself rather than in a comment. Thus, consistent with the language of Rule 26(e) regarding supplementation and correction of discovery responses, the Task Force proposes adding the following language to Rule 26(b)(5), “A party who has served a notice of non-party 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 non-party 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.”

5. Supplementation and Correction of Discovery Responses

The provisions in Rule 26(e) regarding supplementation and correction of discovery responses would be simplified to more closely follow the federal rule. Many

of the provisions currently found in that subdivision relate to supplementation and correction of specific categories of discovery responses that were rendered irrelevant years ago through the addition of disclosure requirements to the rules. *See, e.g.,* Ariz. R. Civ. P. 26(e) (discussing supplementation of discovery responses “addressed to (A) the identity and location of persons having knowledge of discoverable matters, (B) the identity of each person expected to be called as an expert witness at trial ..., (C) the identity of any person expected to be called as a witness at trial and (D) the identity, location and the facts supporting the liability of any nonparty”). The Task Force proposes simplifying the subdivision to more closely follow its federal counterpart.

6. Certification Required Before Consideration of Discovery Motions

Before the court is to consider a discovery motion, Rule 26(g) currently requires “a separate statement of moving counsel ... certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.” The rule would be amended to instead reference the new proposed Rule 7.2(h) regarding the requirements for good faith consultations. That provision is discussed in more detail above [assuming that is the case in the portion of the petition discussing Rule 7.2].

Rule 26.1 (Prompt Disclosure of Information):

The Task Force proposes various stylistic and organizational amendments to Rule 26.1. In addition, the Task Force proposes several substantive changes to the rule detailed below.

1. Disclosure of Lay Witnesses

Rule 26.1(a)(3) currently provides that one must disclose “a fair description of the substance of each [lay] witness’ expected testimony.” That provision would be amended to incorporate language currently found in the comments regarding the detail that must be provided in disclosing lay witnesses. Namely, the Committee Comment to the 1996 amendment to Rule 26.1(a) provides, with regard to the degree of specificity required in

disclosing the expected testimony of lay witnesses, “that parties must disclose the substance of the witness’ expected testimony. The disclosure must fairly apprise the parties of the information and opinion known by that person. It is not sufficient to describe the subject matter upon which the witness will testify.” On the other hand, Arizona case law makes clear that “scripting” of lay witness testimony is not necessary. To more clearly convey these principles within the rule itself, the Task Force proposes amending Rule 26.1(a)(3) to read in relevant part that a party must disclose, “a description of the substance—and not merely the subject matter—of the testimony sufficient to fairly inform the other parties of each [lay] witness’ expected testimony.”

2. Disclosure of Information Regarding Insurance, Indemnity, and Suretyship Agreements

Under the current version of Rule 26.1, the requirement for disclosing insurance-related information is lumped at the end of Rule 26.1(a)(8)’s requirement for disclosing tangible evidence, documents, or electronically stored information that a party plans to use at trial. The Task Force believes that such treatment can at times lead parties to deemphasize the requirement. Rule 26.1(a)(10) would thus be added to create a separate category for disclosing insurance-related information.

The provision has also been broadened to require disclosure of information regarding indemnity or suretyship agreements. The purpose behind requiring disclosure of insurance information is to facilitate settlement. *See* Committee Comment to 1991 Amendment to Rule 26.1(a) (purpose of disclosure is to “encourage early evaluation, assessment and possible disposition of the litigation between the parties”); see also Committee Note to 1970 Amendment to Rule 26(b) (discovery of insurance information is intended to “aid settlement”). The Task Force believes this purpose would be similarly served by requiring the sharing of information in situations involving indemnity and suretyship agreements.

Finally, Rule 26.1(a)(10) would add greater detail regarding the documentation and information that parties are required to disclose regarding insurance, indemnity, and

suretyship agreements. The provision would require parties to disclose, in addition to the agreement itself, the existence and contents of any denial of coverage or reservation of rights and the remaining dollar limits of coverage. Again, the Task Force believes that such information serves the purpose of aiding settlement. For example, if a plaintiff knows that insurance coverage has been denied or a reservation of rights asserted, the plaintiff may decide not to pursue the case if he or she believes that coverage is unlikely and there is thus no source of recovery. On the other hand, if the plaintiff believes that the denial of coverage denial or reservation of rights is not meritorious, the plaintiff may decide to pursue a *Damron* or *Morris* agreement with the defendant. Similarly, by requiring disclosure of the remaining dollar limits of coverage, the proposed amendments serve the purpose of allowing the parties to properly evaluate and assess the lawsuit. For example, if the plaintiff learns that, though there is a sizable policy limit, in actuality much less of that limit remains available due to another claim(s) and/or defense costs that have eaten away at the limit, the plaintiff may pursue litigation and settlement differently. So that a defendant is not required to supplement its disclosure every month to account for the reduction by defense costs of the remaining policy limits, the proposed rule provides that one must supplement its disclosure of the remaining dollar limits of coverage only “upon another party’s written request made within 30 days before a settlement conference or mediation or within 30 days before trial.”

3. Disclosure of Electronically Stored Information

Rule 26.1 currently lumps the disclosure of electronically stored information with hard copy documents, with parties to disclose and produce both types of information within 40 days after the answer is filed. Rule 26.1(b) would be amended to specifically account for the disclosure of electronically stored information (“ESI”) and to account for the fact that (1) disclosure of ESI differs substantially from hard copy documents and (2) the current rule’s presumption that ESI will be disclosed within 40 days of the filing of the answer is neither feasible nor appropriate in many cases.

Similar to the recent provisions regarding ESI for the new Commercial Court pilot program in Maricopa County, the proposed provisions stress cooperation among the parties in determining what, if any, ESI should be produced and the format of production. The proposed provisions concomitantly provide additional time for the parties to work these issues out before they then disclose and produce ESI. The amendments also provide an abbreviated procedure for the parties to present any ESI disputes to the court if they cannot reach agreement. Namely, the parties are to present any disputes to the court in a single joint motion that includes the parties' positions and the certification from all counsel required under Rule 26(g).

With respect to the format for producing ESI, the amended rule establishes a presumption that ESI will be produced in the format requested by the receiving party. If the producing party believes that the requested format is unreasonable or unworkable, the party can seek a court order for a different format.

4. Purpose of Disclosure Requirements

The Task Force proposes adding a new Rule 26.1(c) to lay out the purpose of the rule's disclosure requirements as "ensur[ing] that all parties are fairly informed of the facts, legal theories, witnesses, documents, and other information relevant to the action." This stated purpose is consistent with the current comments to Rule 26.1 and Rule 37 and with the case law. The Task Force proposes adding the stated purpose to the rule in order to more clearly provide a guiding principle to the parties and the trial court when weighing whether disclosure violations have occurred. The Task Force believes this to be particularly helpful in cases where disclosure issues are raised during the middle of trial and need to be decided quickly.

5. Timing of Initial Disclosures in Multi-Party and Multi-Pleading Cases

Rule 26.1(d) would be amended to provide greater guidance as to when initial disclosure statements are to be served in multi-party and/or multi-pleading cases (e.g.,

where there is both a complaint and a counterclaim and/or a third-party claim). Namely, the subdivision would be amended to read:

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.

Under the current version of the rule—which requires service of disclosure statements “within forty (40) days after the filing of a responsive pleading to the Complaint, Counterclaim, Crossclaim or Third Party Complaint—it is difficult to determine when initial disclosures need to be served in such cases. While the Task Force does not believe that it is possible to clearly lay out the timing of initial disclosures under all the various permutations of multi-party, multi-pleading cases, the Task Force believes that the proposed amendment provides greater guidance to the parties. The amended rule also permits the parties to reach agreement on the timing of initial disclosures in cases where such timing is unclear under the rule.

6. Supplementation of Disclosure

Rule 26.1(d)(2) has also been amended to incorporate a provision from the comments that states that information disclosed in a written discovery response or in a deposition need not be included in a formal disclosure statement so long as the parties have been reasonably informed of the information. *See* State Bar Committee Note to 1996 Amendment to Rule 37(c) (“In keeping with *Bryan v. Riddell*, 178 Ariz. 472 (1994), the committee wishes to reemphasize that the disclosure of the information need not be in a formal disclosure statement but can be in response to an interrogatory, request for production, request for admission, deposition, or an informal process so long as all parties are reasonably apprised of the identity of the witness, the information possessed by the

witness, or other information sought to be admitted.”). The Task Force further believes that this provision is consistent with the purpose of Rule 26.1’s disclosure requirements discussed above.

Rule 26.2 (Exchange of Records and Discovery Limits in Medical Malpractice Actions):

The proposed amendments are stylistic and organizational and effect no substantive changes to Rule 26.2.

Rule 27 (Discovery Before an Action Is Filed or During an Appeal):

The Task Force proposes various stylistic and organizational amendments to Rule 25. In addition, the Task Force proposes substantive changes to the procedures laid out in Rule 27 for gaining discovery before an action is filed.

Currently, under Rule 27, if one wishes to engage in discovery before the action itself is filed, he or she must apply for and obtain an order from the court allowing the discovery. The rule, however, provides no guidance as to what is to be done with that order once it is obtained. The Task Force proposes amending Rule 27 to provide that if the court allows pre-litigation discovery, the court is to enter an order directing the clerk of the court to issue a subpoena for the permitted discovery. The applicant can then serve the subpoena on the person from whom he or she seeks the discovery.

In this way, the person from whom discovery is being sought would have all of the same protections under Rule 45 that they would have if the discovery was sought after a lawsuit was filed. Under the current version of the rule, if the person from whom discovery is sought is not one of the “expected adverse parties,” and thus is not served with the application for discovery, there is no express mechanism in Rule 27 permitting them to object to the discovery. The proposed procedure also recognizes the fact that before a lawsuit is filed, there is no “party” per se from whom discovery can be sought

under, for example, Rule 34, but that instead it makes more sense for all discovery in these circumstances to be conducted under the protections of Rule 45.

No substantive change is intended with respect to the amendments proposed to that portion of Rule 27 dealing with discovery during the pendency of an appeal.

Rule 28 (Persons Before Whom Depositions May Be Taken; Depositions in Foreign Countries; Letters of Request and Commissions):

The proposed amendments are stylistic and organizational and effect no substantive changes to Rule 28.

Rule 29 (Modifying Discovery Procedures and Deadlines):

Rule 29 currently permits the parties to enter into stipulations modifying discovery procedures. The Task Force proposes amending the rule to also allow parties to move for modification of discovery procedures, with the amended rule setting forth the general requirements for such motions—namely, the modification sought, good cause for the modification, and compliance with Rule 26(g).

Currently, , each of the various discovery rules include disparate provisions for parties to modify discovery procedures, especially the procedures for exceeding the presumptive limits for interrogatories, requests for production, and requests for admission. For example, current Rule 33.1(c) sets forth a lengthy paragraph of procedures for gaining leave of court to serve additional interrogatories, while Rule 34(b) includes its own different, and much more truncated, procedure for exceeding the presumptive limit, and Rule 36(b) yet its own set of procedures for exceeding the presumptive limit. The Task Force finds no reasoned basis for having such a widely varying set of procedures to exceed the presumptive discovery limits. Instead, the Task Force believes that Rule 29 should govern all such attempts to modify the discovery procedures—including presumptive limits.

Rule 30 (Depositions by Oral Examination):

The Task Force proposes various stylistic and organizational amendments to Rule 25. In addition, the Task Force proposes four substantive changes to the rule.

1. Presumptive Limitation of a Single Deposition of a Person

Federal Rule of Civil Procedure 30(a)(2) states that a party must obtain leave of court to depose a person more than once in the case. Rule 30 of the Arizona Rules of Civil Procedure does not currently contain such an express limitation on deposing people more than once in a case. The Task Force believes that such a provision is appropriate, and thus proposes adding to Rule 30(a)(1) the following sentence, “Unless all parties agree or the court orders otherwise for good cause, a party may not depose ... a person who has already been deposed in the action.”

2. Depositions of Incarcerated Persons

Rule 30 currently requires a party to obtain a court order if he or she wishes to depose an incarcerated person. The Task Force understands that under current practice parties oftentimes gain approval from the custodian of the incarcerated person without obtaining a court order. In addition, the Task Force does not believe that any reason exists for requiring a court order if the custodian will voluntarily permit the deposition without one. Accordingly, the Task Force proposes amending the rule to provide, “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.”

3. Designation of Additional Recording Method by Non-noticing Party

Under the current rule, a party who did not notice the deposition may request that the deposition be recorded by audio or audio-video means. The rule, however, provides no procedure for a non-noticing party to notice an additional method for recording the deposition. Federal Rule of Civil Procedure 30(b)(3) states that with “prior notice to the deponent and the other parties, any party may designate another method for recording the

testimony in addition to that specified in the original notice.” The Task Force proposes using that language but then adding a requirement of at least two days’ written notice.

4. Objections and Conferences Between Deponent and Counsel

Currently, provisions governing both the method for making objections to questions during a deposition and the permissibility of conferences between the deponent and his or her counsel are found in Rule 32 regarding the use of depositions in court proceedings. In particular, they are included in Rule 32(d)’s discussion of the effect of errors and irregularities in depositions, which mostly pertains to what one needs to do to preserve objections regarding depositions. The Task Force believes these provisions more appropriately belong in Rule 30(c), which pertains to the examination of a deponent. Notably, the federal counterpart to Rule 30(c) follows this approach.. *See* Fed. R. Civ. P. 30(c)(2) (“An objection must be stated concisely in a nonargumentative and nonsuggestive manner.”).

In addition to moving these provisions into Rule 30(c), the Task Force proposes a substantive amendment to the provision regarding conferences between a deponent and his or her counsel. The rule currently states, “Continuous and unwarranted conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited.” Ariz. R. Civ. P. 32(d)(3)(E). The Task Force believes that conferences between deponents and their counsel when a question is pending should be permitted only if needed to protect a privilege. Accordingly, the Task Force proposes amending the provision to read, “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.”

Rule 31 (Depositions by Written Questions):

The Task Force proposes various stylistic and organizational amendments to Rule 31. In addition, the Task Force proposes two substantive changes to the rule.

First, the Task Force proposes including presumptive limits on whom may be deposed by written questions. Unlike Rule 30, Rule 31 currently includes no limits on those who may be deposed by written questions. The Task Force does not believe that such a distinction should be drawn between oral depositions and depositions by written questions. Accordingly, the Task Force proposes amending Rule 31 to presumptively limit its use to the same categories of person who may be deposed orally, namely parties, experts, and document custodians.

Second, the Task Force proposes amending Rule 31 to provide more guidance to parties regarding objections to written questions. Rule 31 currently has no provision regarding objections. Instead, parties need to turn to Rule 32(d)(3)(C), which provides that objections to written questions under Rule 31 are waived unless served in writing on the other party within certain stated time limits. To provide greater clarity for the parties, the Task Force proposes moving the requirements for objections into Rule 31, with Rule 32 amended to simply state that objections to written questions are waived unless served in accordance with Rule 31.

Rule 32 (Using Depositions in Court Proceedings):

The proposed amendments to Rule 32 are stylistic and organizational in nature. With respect to organizational changes, two provisions currently found in Rule 32 would be moved to Rule 30. Rule 32 sets forth the effect of errors and irregularities in depositions and what needs to be done to preserve objections to those errors and irregularities. Currently, however, Rule 32 goes beyond this and also lays out in Rule 32(d)(3)(D) how objections to the form of questions are to be made (e.g., such objections are to be concise) and sets limits in Rule 32(d)(3)(E) on conferences between the deponent and counsel. Under the proposed amendments, these provisions (with some

changes noted in the discussion above regarding Rule 30) would be moved to Rule 30(c). Given that these provisions relate directly to the procedures for examining deponents, the Task Force believes they belong in Rule 30, and moving them there is also consistent with the federal rules. *See* Fed. R. Civ. P. 30(c)(2) (stating that objections “must be stated concisely in a nonargumentative and nonsuggestive manner”).

Rule 33 (Interrogatories to Parties):

The Task Force proposes various stylistic and organizational amendments to the rules governing interrogatories, namely Rules 33 and 33.1. Chief among the organizational amendments is the deletion of Rule 33.1, with the provisions regarding uniform interrogatories being moved into Rule 33. In addition to these stylistic and organizational changes, the Task Force proposes four substantive changes to the rule.

1. Reduced Time for Responding to Interrogatories

To be consistent with federal practice, the Task Force proposes reducing the time for responding to interrogatories from 40 days to 30 days. *See* Fed. R. Civ. P. 33(b)(2) (30 days to respond to interrogatories). The Task Force sees no reasoned basis for giving parties greater time to respond to written discovery under the state rule than the federal rule. In fact, in many situations it makes little or no sense for a party to have more time to respond under the state rule. For example, while in federal cases parties can serve unlimited numbers of requests for production and requests for admission, such requests are presumptively limited under Arizona’s rules. Yet Arizona’s rules give an extra 10 days to respond. In addition, if a good reason exists for having more time to respond, a party would have a mechanism for gaining extra time under Rule 29, either by stipulation or by motion.

2. Simplifying Provisions for Exceeding Presumptive Limit of 40 Interrogatories

Rule 33.1 currently contains lengthy provisions discussing how a party may exceed the presumptive limit of 40 interrogatories. *See* Ariz. R. Civ. P. 33.1(b) (discussing stipulations to exceed the presumptive limit) & 33.1(c) (discussing obtaining

leave of court to exceed presumptive limit). As discussed above with respect to Rule 29, the provisions in Rule 33.1 for exceeding the presumptive limit differ from the provisions currently found in Rules 34 and 36 for exceeding the presumptive limits of RFPs and RFAs. The Task Force accordingly proposes amending the provisions for exceeding the presumptive limit (and moving them into Rule 33) to simply provide, “Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories.” Stipulations and motions to exceed the presumptive limit would then be governed by proposed amended Rule 29.

3. Interrogatory Answers by Entities

Members of the Task Force have encountered situations where entities use persons to verify their interrogatory responses who lack knowledge regarding the responses. A provision has accordingly been added to Rule 33 clarifying that “[i]f the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath.” The Task Force believes that this amendment will help assure that the purpose behind Rule 33’s verification requirement is better served. It should be noted, however, that the proposed amendment would not require the representative to have first-hand knowledge of the information. It would be sufficient (indeed, expected) that the representative’s answers often would be based on what others within the entity have told him or her.

4. Objections to Interrogatories

The Task Force proposes amending Rule 33 to clarify that objections to interrogatories must be stated with specificity. This is already the stated requirement with respect to objections to RFPs in Rule 34 and likewise is found in the federal rule. *See* Ariz. R. Civ. P. 34(b) (requiring that responding party “identify the reasons for any objection” and to specify the part objected to if objection is only made to part of an item or category); Fed. R. Civ. P. 33(b)(4) (“The grounds for objecting to an interrogatory

must be stated with specificity.”). In addition, the Task Force proposes amending the rule also to provide that if an objection is stated, a party must still answer the interrogatory to the extent it is not objectionable. This change would prevent parties from avoiding answering any of an interrogatory merely by objecting to only part of it.

Rule 34 (Producing Documents, Electronically Stored Information, and Tangible Things, or Entering Onto Land, for Inspection and Other Purposes):

The Task Force proposes various stylistic and organizational amendments to Rules 34. In addition, the Task Force proposes four substantive changes to the rule.

1. Reduced Time for Responding to RFPs

As with its proposal regarding interrogatories, the Task Force proposes reducing the time for responding to RFPs from 40 days to 30 days. Again, this is consistent with federal practice, *see* Fed. R. Civ. P. 34(b)(2)(A) (30 days to respond to RFPs), and for the reasons discussed above in relation to Rule 33, the Task Force sees no reasoned basis for giving parties greater time to respond to written discovery under the state rule than the federal rule.

2. Simplification of Provisions for Exceeding Presumptive Limit of 40 Interrogatories

Again, as with its proposal regarding interrogatories, the Task Force proposes simplifying the provisions found in Rule 34 for exceeding the presumptive limit of 10 RFPs. The reasons supporting this change are discussed above with respect to Rules 29 and 33.

3. Objections

Effective December 1, 2015, the federal rule was amended to require an objecting party to state whether any responsive materials are being withheld on the basis of a stated objection. The reasoning behind this federal amendment is that when a party objects to an RFP but still provides some documents in response to the RFP, it can be difficult for the other party to determine whether anything is being withheld on the basis of the

objection. The Task Force agrees with this reasoning and thus proposes incorporating this federal rule change into Arizona's Rule 34. Similarly, language would be added to clarify that a party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials. Again, this is consistent with the federal rule, and is also consistent with the Task Force's proposed change to Rule 33 whereby a party must answer an interrogatory to the extent it is not objectionable.

4. Production of ESI

As discussed above, the Task Force has proposed substantial amendments to Rule 26.1 regarding the disclosure and production of electronically stored information ("ESI"). Among those proposed amendments are procedures for determining the form of production of ESI under Rule 26.1. Consistent with those proposed changes to Rule 26.1, the Task Force proposes amending Rule 34 to incorporate the same procedures for determining the form of production of ESI in response to an RFP.

Rule 35 (Physical and Mental Examinations):

The proposed amendments are stylistic and organizational and effect no substantive changes to Rule 35.

Rule 36 (Requests for Admission):

The amendments to Rule 36 are primarily stylistic and organizational in nature. However, as with interrogatories and requests for production, the Task Force proposes reducing the deadline for responding to requests for admission to 30 days from the service of the requests, which, again, is consistent with federal practice. In addition, as with interrogatories and requests for production, the provision currently in Rule 36 regarding the procedures for exceeding the presumptive limit of 25 requests for admission would be deleted. In its place, the rule would simply provide that "[u]nless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission." As discussed above with respect to interrogatories and

requests for production, detailed provisions for modifying discovery limits are unnecessary in Rule 36 because the proposed amendments to Rule 29 would already govern that subject.

Rule 37 (Failure to Make Disclosures or to Cooperate in Discovery; Sanctions):

With two exceptions, the proposed amendments to Rule 37 are stylistic and organizational in nature. The two exceptions are: (1) the proposed replacement of the word “shall” with the word “may” with respect to a court sanctioning a party under Rule 37; and (2) a proposed amendment of Rule 37(g) to set forth detailed standards for preserving electronically stored information (“ESI”) and the sanctions and remedies for failing to do so.

1. Clarifying Court’s Discretion Regarding Sanctions

The current version of Rule 37 includes provisions stating that the court “shall” award fees as sanctions under various circumstances, namely:

- a. upon granting or denying a motion to compel (Rule 37(a)(4));
- b. upon a party’s failure to obey a discovery order (Rule 37(b)(2));
- c. upon a party’s failure to disclose (Rule 37(c)(1));
- d. upon a party’s failure to attend his or her own deposition or to answer interrogatories or requests for production (Rule 37(f)).

Under Arizona case law, it is well-established that a trial court’s award of sanctions under these provisions is discretionary and not mandatory. *See, e.g., Security Title v. Pope*, 219 Ariz. 480, 505-06 (App. 2008) (applying abuse of discretion standard to court’s fee award for disclosure violation); *J-R Constr. Co. v. Paddock Pool Constr. Co.*, 128 Ariz. 343, 344 (App. 1981) (“The trial court has broad discretion in imposing sanctions pursuant to rule 37(b).”). The Task Force therefore believes that, rather than amending the word “shall” to the mandatory “must” on these occasions, the word should be amended to the permissive “may.”

2. Inclusion in Rule 37(g) of Standards for Preserving ESI and the Remedies and Sanctions for Failing to Do So.

Rule 37(g) would be amended to include provisions regarding the preservation of ESI. Consistent with the changes to the federal rule that became effective in December 2015, the proposed rule includes provisions regarding remedies and sanctions for the failure to preserve ESI. Like the newly amended federal rule, the proposed amended Rule 37(g) would not permit a court to enter a dismissal or default, or give an adverse inference instruction, if a party’s loss of ESI resulted from negligence rather than intentional conduct. Some differences, however, exist between the federal rule and the proposed state rule. Most importantly, a provision has been added requiring a finding of prejudice to the other party before a case can be dismissed or default entered based on a failure to preserve ESI. The Task Force believes that this addition is consistent with existing Arizona case law. In addition, the proposed amended rule includes provisions

regarding a party's obligation to preserve ESI. These provisions are intended to restate existing law, and come from case law, comments to the federal rule, and the Sedona Conference guidelines on the discovery and protection of ESI. The amended federal rules include these preservation standards in comments to Rule 37. The Task Force believes the standards should be included within the rule itself.

Rule 38.1 (Setting of Civil Actions for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar):

The proposed amendments are stylistic and organizational and effect no substantive change.

July 29, 2015

TO: Work Group #3 Members

FROM: Jodi Knobel Feuerhelm

RE: **Draft Petition Inserts for Work Group #3's Rules**

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

The proposed amendments to Rule 11 include both stylistic and substantive changes to the current rule. It should also be noted that the provisions of current Rule 11(b) (“Verification of pleading generally”) would be moved to Rule 80(g), with only stylistic changes.

Among other substantive changes, the Task Force proposes to delete current Rule 11(c) (“Verification of pleading when equitable relief demanded”). This is consistent with its recommendation to eliminate similar provisions of Rule 9 that currently require verification of certain types of pleadings.

The proposed amendments also incorporate, with only minor stylistic changes, the substance of the State Bar of Arizona’s Petition R-15-0004, which proposes to amend Rule 11 in various respects. Further explanation of these proposed changes can be found in the State Bar’s petition. Highlights include:

(1) Subdivision (b) (“Representations to the Court”) is revised to adopt the expanded federal rule provisions, which set forth four types of “certifications” that arise from a party or attorney’s signature on a pleading, motion or other document. Federal Rule 11(b) was amended in 1993 to expand and clarify the responsibilities of a signing lawyer or party. The proposed amendments adopt the federal language verbatim.

(2) New subdivision (c) (“Sanctions”) proposes procedural limitations designed to curb Rule 11 abuses as reported by practitioners and judges. The amendments propose to address abusive Rule 11 practices by providing that: (A) requests for Rule 11 sanctions must be made separately from any other motion; (B) before filing a Rule 11 motion, the moving party must attempt to resolve the matter by good faith consultation as provided in (new) Rule 7.1(h); and (C) if the matter is not resolved by consultation, the moving party must serve the opposing party with a 10-day advance written notice of the specific conduct allegedly violating Rule 11, before filing any motion. The proposed amendments also provide that the trial court “must” impose sanctions for Rule 11 violations. This would be a departure from the current federal rule, which makes such sanctions discretionary even if the court finds that a Rule 11 violation has occurred.

B. Rule 38 (Right to a Jury Trial; Demand; Waiver).

The proposed amendments to Rule 38 are stylistic only, with one exception relating to jury demands in medical malpractice actions. Rule 38 was amended in 2013 in connection with extensive amendments to Rule 16, to provide that a demand for a jury trial must be made “not later than the date on which the court sets a trial date or ten days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed, whichever first occurs.” As a practical matter, because Rules 16(b) and 16.3 do not apply in medical malpractice actions, that amendment allowed jury demands in medical malpractice actions to be made as late as the date of the trial setting. To address this inadvertent gap, the Task Force proposes to add new subdivision (b)(2), which would provide that a jury demand is presumed in medical malpractice cases, and that no written demand needs to be filed or served. The proposed amendment also would permit parties in medical malpractice cases to waive a jury trial by filing a written stipulation.

C. Rule 39 (Trial by Jury or By the Court)

Current Arizona Rule 39 combines rules on jury trial demands with more generalized trial procedures that are unique to Arizona and have no counterpart in Federal Rule 39. The Task Force proposal would amend Rule 39 so that it conforms to Federal Rule 39. Unrelated provisions of current Rule 39—which generally relate to trial procedures or jury instructions—would be moved to other rules containing related subject matter. This would improve the clarity and structure of the rules and assist practitioners in locating provisions relating to particular subjects.

Highlights of the proposed Rule 39 changes include:

(1) Subdivisions (a), (j) and (m) of current Rule 39 would become subdivisions (a), (b) and (c), respectively, of Rule 39. This new structure would parallel that of Federal Rule 39. The text of these subdivisions also would be revised to correspond to the federal rule’s language, with minor exceptions.

(2) Current Rule 39(m) (interrogatories in cases of equitable relief) would be omitted from Rule 39 and moved to revised Rule 49 where it would appear with related provisions on juror interrogatories.

(3) Portions of Rule 39(d) on jury instructions would be moved to Rule 51(b) and (e), governing jury instructions and the record on instructions.

(4) The remaining subdivisions of current Rule 39 would be moved to Rule 40, with stylistic and substantive revisions as discussed in Section [D] below.

D. Rule 40 (Trial Procedures)¹

The Task Force proposes to delete current Rule 40 (Assignment of cases for trial) because it is unnecessary in light of the recent amendments to Rule 16 and 38 governing trial setting procedure. A new Rule 40 is proposed, governing “Trial Procedures,” that incorporates portions of current Rule 39 governing trial procedures. Although extensive stylistic and clarifying changes are proposed to the language of the current Rule 39 subdivisions, no substantive changes are intended.

Current Rule 39.1 (Trial of cases assigned to the complex litigation program) would be deleted. This rule currently provides that in complex actions, the court should adopt trial procedures as necessary to facilitate the just, speedy and efficient resolution of cases. The substance of this rule—which the Task Force concluded should apply to any trial proceeding—is incorporated in proposed Rule 40(b) on “Objectives.”

A. Rule 41 (Dismissal of Actions)

The Task Force proposal restyles Rule 41, with no substantive changes. The restyling generally conforms to Federal Rule 41, with modifications required to retain Arizona’s unique requirement that a stipulated dismissal requires an order.

B. Rule 42 (Consolidation; Separate Trials).

The Task Force proposes to divide current Rule 42 into three separate rules—Rule 42 (Consolidation; Separate Trials), Rule 42.1 (Change of Judge as of Right), and Rule 42.2 (Change of Judge for Cause). The proposal also deletes references to former subdivisions that were previously abrogated, deleted or renumbered.

Subdivisions (a) and (b) of current Rule 42 would be retained in proposed Rule 42, with minor stylistic revisions that conform (almost verbatim) to Federal Rule 42.

C. Rules 42.1 (Change of Judge as of Right) and 42.2 (Change of Judge for Cause)

Current Rule 42(f), governing changes of judge as a matter of right and for cause, would be restructured and moved to new Rules 42.1 and 42.2, respectively. In addition to stylistic revisions, the Task Force proposes several substantive and clarifying changes to current Rule 42(f) governing a change of judge as of right. The Task Force believes that such changes are long overdue, as the ambiguities and inconsistencies in the current rule have spawned confusion and disputes since they were adopted.

¹ This assumes our main headings will follow the new rules. Thus, for Rules 39, 39.1 and 40, there is no separate section for Rule 39.1, which is omitted; but its fate is addressed in the discussion of new Rule 40.

(1) The proposed rule allows each side one change of judge, defining the term “judge” to include commissioners and judges pro tem. [Proposed Rule 42.1(a) (When Available)] In contrast, the current rule allows each side one change of judge and one change of court commissioner.

(2) The proposed rule clarifies that an “informal” (oral) notice of change of judge is subject to the same content requirements, time limits and waiver provisions as a written notice under the rule. [Proposed Rule 42.1(b)(2) (Oral Notice)]

(3) New proposed subdivision (c)(Time Limitations) modifies the deadline for noticing a change of judge as of right. Under the current rule, notice is timely if filed at least 60 days before the date set for trial. As amended, the rule requires notice within 90 days after the party giving notice first appears in the case, with an additional 10 days allowed if an assignment identifies the judge for the first time within 10 days before this deadline expires or after it has expired. [Proposed Rule 42.1(c)(1)-(2)] This proposed amendment is intended to force parties to exercise their “strike” earlier rather than later, when a reassignment of a judge is likely to be the most disruptive to a case and the judiciary’s case management system. Imposing a deadline early in a case also lessens the need to determine whether a party has already waived its rights under the rule—a subject that has generated a complex body of case law that both courts and practitioners have found confusing.

(4) The waiver provisions in proposed subdivision (d) provide that a party waives the right to change of a judge “assigned to preside over any proceeding in the action,” if one of the specified events or acts occurs. The current rule’s waiver provisions apply to a judge that is “assigned to preside at trial or is otherwise permanently assigned to the action.” This proposed change would eliminate the uncertainty that sometimes exists about whether a judge has been assigned “to preside at trial” or has been “permanently” assigned to an action. [Proposed Rule 42.1(d)]

(5) The proposed rule would clarify, consistent with case law, that: (A) a right to change of judge is renewed if an appellate decision reverses summary judgment; and (B) the right is not renewed if the party—or the side on which the party belongs—previously exercised its right to change of judge in the action. [Proposed Rule 42(e)]

The Task Force also proposes stylistic changes to the procedures governing a change of judge for cause, with no substantive change intended. Among other things, the proposed rule adds a procedure for opposing an affidavit seeking a change of judge for cause, a subject on which the current rule is silent. [Proposed Rule 42.2(e)(“Hearing and Assignment”)] Although not currently in the rule, this addition is consistent with existing practice.

D. Rule 43 (Taking Testimony).

The Task Force proposes stylistic changes to conform Arizona’s rule to Federal Rule 43, with some exceptions. Subdivision (e) proposes a substantive addition, based on Federal Rule 43(a), that would allow the contemporaneous transmission of witness trial testimony from a

different location. The corresponding federal rule requires “compelling” circumstances for this to occur, but the Task Force modified this standard to allow such transmission for “good cause and with appropriate safeguards.”

E. Rule 44 (Proving an Official Record)

The Task Force proposal would amend Rule 44 to conform to Federal Rule 44, with minor exceptions. Certain provisions of Arizona’s current rule that have no federal counterpart, but are covered by the Arizona Rules of Evidence, would be eliminated. Highlights of the proposed changes include:

(1) Subdivisions (a) through (c) would be revised to conform to Federal Rule 44(a) through (c), with minor revisions to improve clarity.

(2) Subdivision (d) [(k) in the current rule], governing proof of the appointment of a guardian, executor or administrator, has no federal counterpart. It would be retained with only minor revisions. The language would be updated to include personal representatives and conservators, consistent with current Probate Code terminology.

(3) Subdivisions (c) and (d) of the current rule, addressing proof of notarized documents and handwriting authentication, would be deleted because they are unnecessary. These topics are already covered by the Arizona Rules of Evidence.

F. Rule 44.1 (Determining Foreign Law)

The Task Force proposes stylistic changes to conform Arizona’s rule to Federal Rule 44.1, with one exception. As revised in 2007, Federal Rule 44.1 omitted the express requirement that a party intending to raise an issue of foreign law must give “reasonable” written notice. The Task Force proposal retains this requirement, requiring a party to give “reasonable written notice, filed with the court.”

G. Rule 45 (Subpoenas).

The Task Force proposes stylistic changes to conform the language and structure of Arizona’s rule to Federal Rule 45 where applicable. Unique aspects of Arizona’s rule relating to requirements for objecting to, and moving to quash, a subpoena would be retained with only stylistic revisions.

The Task Force proposes substantive additions relating to the production of electronically stored information (“ESI”) in response to a subpoena. Arizona’s current Rule 45 is silent regarding the production of ESI. Consistent with similar changes proposed in Rules 26.1(b) and 34(b), the Task Force proposal incorporates provisions of Federal Rule 45 governing the production of ESI in response to a subpoena. [Proposed Rule 45(c)(2)(A) through (C)] Corresponding changes are proposed to Rule 84, Form 9 (Subpoenas).

H. Rule 45.1 (Interstate Depositions and Discovery)

Rule 45.1 is based on the Uniform Interstate Depositions and Discovery Act. When adopted in 2013 in Arizona, the rule departed in some respects from the Uniform Act. The Task Force proposes stylistic, clarifying and substantive changes to Rule 45.1. Key changes would include:

(1) Subdivision (b) would be amended to eliminate the current rule's mandatory requirement—which is unique to Arizona and not part of the Uniform Act—that a foreign subpoena include below the case number the specific phrase: “For the Issuance of an Arizona Subpoena Under Ariz. Rule Civ. P. 45.1.” Instead, the rule would provide only that the phrase “should” be included, which is intended to address concerns that some foreign jurisdictions may not permit form subpoenas to be altered. Where possible, the phrase should be included on the out-of-state subpoena presented to the clerk to alert the clerk to the basis for the request, but a subpoena issued without the phrase is still valid and enforceable.

(2) Substantive changes are proposed to subdivision (d) (Deposition, Production and Inspection). Arizona's current Rule 45.1, consistent with the Uniform Act, provides that discovery taken under Rule 45.1 is subject to all of Arizona's discovery rules. The Task Force felt that some of Arizona's unique limits on discovery should not be applied to discovery under Rule 45.1, but rather, should be governed by the rules of the foreign jurisdiction where the action is pending. The proposal modifies the current rule to provide that the following Arizona rules would not apply: (A) Ariz. R. Civ. P. 30(a)(1), which presumptively disallows depositions of third parties other than custodians of records; and (B) Ariz. R. Civ. P. 30(a)(2), which precludes parties from taking depositions less than 30 days after serving the complaint. The Task Force concluded that the rules of the foreign jurisdiction should govern when depositions may be taken, and who may be deposed, in the foreign action. The Task Force proposal provides that Ariz. R. Civ. P. 30(c)(2), which governs objections, would apply to depositions in out-of-state cases, except that an objector would be permitted to make more objections than would be otherwise be permitted in an Arizona lawsuit “to preserve objections in the jurisdiction where the action is pending.”

(3) The Task Force proposal would retain Arizona's 4-hour limit for depositions taken under Rule 45.1. The Task Force concluded that this limitation was important to protect witnesses residing in Arizona from being subjected to deposition discovery in a foreign action that is more burdensome than what would be permitted in an Arizona action.

(4) Subdivision (e) (Objections, Motion to Quash or Modify; Seeking Protective Order) is would be clarified to state that objections to a subpoena commanding attendance at a deposition must be made by timely motion under Rule 45(e)(2), and that a person properly served with a deposition subpoena must otherwise attend at the specified date, time and place. This would align Rules 45 and 45.1 and clarifies that the same requirements for objecting to a deposition subpoena apply whether the subpoena is issued under Rule 45 or Rule 45.1.

I. Rule 46 (Objecting to a Ruling or Order).

The Task Force proposes stylistic changes to conform Rule 46 to its federal counterpart, with minor alterations to the federal language to improve clarity.

J. Rule 47 (Jury Selection; Juror Information; Voir Dire; Challenges)

Rule 47 is unique to Arizona, with no federal counterpart. The rule's current language is outdated in many respects. For example, it provides that the clerk shall deposit the names of jurors in a "box" and shall "draw from the box as many names as the court directs." The Task Force proposes extensive stylistic revisions, including modernizing the rule's language to reflect current practice, reorganizing the rule's topics and adding subdivisions to promote clarity. No substantive change is intended. Former subdivision (g) on juror notebooks would be deleted from Rule 47 and be moved to Rule 40(f)(2). The language in new Rule 47(f) on alternate jurors would clarify the current rules to take into account that the identity of the alternates is not determined until the end of trial.

K. Rule 48 (Stipulations on Jury Size and Verdict)

The Task Force proposes stylistic and organizational changes to Rule 48, dividing the rule into new subdivisions (a) and (b). The rule's heading would be changed to be more descriptive of its content. No substantive change is intended.

L. Rule 49 (Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict)

The Task Force proposes stylistic and organizational changes to Rule 49, with no intended substantive change. Current subdivisions (g) and (h) would be reordered as subdivisions (a) and (b), to correspond with Federal Rule 49(a) and (b). The language of the federal rule would be adopted with only minor alterations.

The balance of Arizona's rule is unique to Arizona, with no federal counterpart. Key changes would include:

(1) Subdivision (c) (Written Questions in Actions Seeking Equitable Relief) would be moved from current Rule 39(n), with stylistic changes.

(2) Current subdivisions (a) and (b) would be moved to subdivisions (d) and (e), and restructured to add subheadings and subdivisions for clarity. The polling provisions that currently appear in Rule 49(f) would appear in Rule 48 (e)(2). Subdivision (e)(1), governing procedures once a verdict is returned, would be clarified to provide that the court must poll the jury if a juror states that it disagrees with the verdict as read by the clerk. Depending on the outcome of the polling, the court would have the authority to send the jury back for further deliberations or to order a new trial.

(3) New subdivision (f) would combine current subdivisions (c), (d), and (e), all pertaining generally to the form of verdict. The current provisions would be combined under a single subdivision with headings and subheadings, with stylistic revisions for clarity.

M. Rule 50 (Judgment as a matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Rulings).

The Task Force proposal adopts the language of Federal Rule 50, with minor departures as noted below. No substantive change is intended.

A major difference between Federal and Arizona Rule 50 is the time period in which a motion for judgment as a matter of law must be renewed. Under Arizona's rule, the time period is 15 days after entry of judgment. The 2009 federal amendments extended the time period under the federal rule from 10 to 28 days. The Task Force proposes to retain Arizona's 15-day period, which should be adequate in most state court cases. Arizona's Rule 6(b) also is more permissive than Federal Rule 6(b), allowing the court to extend the period in limited circumstances. The Task Force also proposes modifying certain language in Federal Rule 50(b) that is currently unclear, relating to when a movant may file a renewed motion for judgment as a matter of law.

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

Stylistic and organizational changes are proposed to conform Arizona's rule to Federal Rule 51, while still preserving some unique aspects of Arizona's rule. Arizona's current rule has two subparts, Rule 51(a) and (b). The Task Force proposal would restructure the rule to conform more closely to Federal Rule 51, which has subparts (a) through (d).

The Task Force also proposes one substantive change in the current state rule—it would incorporate the substance of Federal Rule 51(b)(2) and (c)(2)(A), which together require objections to jury instructions to be made “before the instructions and arguments are delivered” to the jury. Arizona's current Rule 51 seemingly allows objections to be made even after the court instructs the jury and after closing argument ends, providing that: “No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds for the objection.” The Task Force concluded that there was some benefit to a uniform federal and state rule governing the timing of objections to jury instructions, and that the federal approach is preferable because it gives the court the opportunity to correct a potentially erroneous instruction before it is given to the jury and incorporated into the parties' closing arguments.

Finally, the Task Force proposes to incorporate Arizona's doctrine of “fundamental error” into a new Rule 51(d)(2). Federal Rule 51(d)(2) provides that: “A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.” Because Arizona's case law on “fundamental error” may differ in some respects from the federal doctrine of “plain error,” the Task Force modified the federal rule's language to provide that “[a] court may consider a fundamental error as allowed by law, even if the error was not preserved.”

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

The Task Force proposal incorporates the language of Federal Rule 52, with the following exceptions:

(1) Currently, Arizona Rule 52(a) requires the court to find facts specially and state separately conclusions of law only “if requested before trial.” This “request” requirement also appears in Rule 52(c), which governs a judgment on partial findings. The Task Force proposal would maintain this unique provision of Arizona law because it serves an important purpose—to reduce the burden on the judiciary of having to make such findings in matters where the parties themselves do not feel that findings are necessary. State court judges handle a much higher volume of small cases than do the federal courts, making a requirement of findings in all cases unnecessarily burdensome.

(2) Subdivision (d) of Arizona’s current Rule 52 (Submission on Agreed Statement of Facts) does not have a federal counterpart. The Task Force proposes simplifying the rule’s language to make it easier to understand. The last sentence of the current rule would be deleted because it seems to suggest, erroneously, that the agreed statement and the judgment constitute the entire record on appeal. The Task Force also proposes deleting the current rule’s requirement that the court “certify” the statement as “correct,” because it serves no purpose.

(3) The Task Force proposal would retain Arizona’s requirement that a motion for amended or additional findings must be made no later than 15 days after the entry of judgment. In contrast, Federal Rule 52(b) allows 28 days for such a motion.

P. Rule 53 (Masters)

The Task Force does not propose any substantive changes to Rule 53. Stylistic and organizational changes are proposed to clarify the rule and, where it is possible to do so without altering substance, to conform it to the structure and language of the federal rule. Unique aspects of Arizona’s Rule 53—which are largely the product of rule petitions filed in 2005, 2011 and 2015 to address issues of concern in Arizona—are preserved.

Q. Rule 54 (Judgment).

[To follow—A CPPC costs subcommittee is working on a proposed revision that will be addressed at the November CPPC meeting and will impact the Petition description of this rule.]

R. Rule 55 (Default Judgment).

The Task Force proposes stylistic, organizational and clarifying changes to Rule 55. Rule 55(f) (“Judgment when service by publication; statement of evidence”) would be deleted because it is unnecessary.

One substantive change is proposed, establishing the minimum content of a default application in new subdivision (a)(2). The current rule is silent on those requirements, leaving it to local rule or practice. The proposed rule would require that the application must, at minimum, identify the party against whom default is sought; state that the party has failed to timely plead or defend; provide a current mailing address if known; identify any attorney known to represent the party in the matter or a related matter; and attach a copy of the Rule 4(g) certificate of service. The proposed rule would establish the minimum content for a default application but would not preclude local courts from adopting supplemental requirements. The Task Force recognizes that local court clerks may need to impose additional requirements—for example, Maricopa County has a default judgment “checklist” that requires additional information.

The proposal also would clarify the term “whereabouts” as used in current Rule 55(a)(1)(i) and (iii). It provides that if the party requesting the entry of default knows the “location or other means of contacting” of the party claimed to be in default, a copy of the application must be mailed or delivered to the defaulting party. It also would specify (in new subdivision (a)(3)) that notice of the application for default must be “promptly” provided. The current rule requires notice, but does not specify when notice must be given. The Task Force considered establishing a date certain by which notice must be served, but concluded that imposing a fixed deadline was impractical in the default context where the physical location or mailing address of the defaulting party may not be known.

S. Rule 56 (Summary Judgment).²

Rule 56 was amended in significant respects in 2013. Those amendments adopted some of the 2007 federal stylistic revisions, while retaining other unique aspects of Arizona’s rule. For example, subdivision (c)(3) of Arizona’s rule addresses the requirements for supporting and opposing statements of fact, which have no counterpart in Federal Rule 56. The Task Force proposal retains the substance of the 2013 amendments, but proposes stylistic changes to simplify the rule. Some of the subdivisions of the current rule would be reordered to conform to the structure of Federal Rule 56.

In addition to stylistic improvements, subdivision (c)(2) would be modified to incorporate the requirements of Rule 7.1(g), governing and limiting stipulations to extend briefing schedules on motions. This would bring the two rules into alignment with respect to the requirements for extending briefing schedules. The structure of Rule 56(c)(3) would be modified to add subdivisions and headings, consistent with the federal rule stylistic conventions. Portions of current subdivision (e), governing the form of affidavits, would be moved to subdivision (c)(5) and (6), to conform more closely to the federal rule’s structure.

Subdivision (f) of the current rule would be moved to subdivision (d), to conform to the federal rule’s structure. The Task Force proposal also would incorporate into the rule’s text the factors identified in Arizona’s case law for obtaining Rule 56(f) relief. *See Simon v. Safeway*,

² This draft does not identify all the subdivision movement....the proposed comment covers this.

Inc., 217 Ariz. 330, 173 P.3d 1031 (App. 2007); Proposed Rule 56(d)(1)(A). Currently, those factors are referenced in the Comment to Section (f) of the 2013 Amendments. The Task Force concluded that placing the factors in the rule would assist practitioners, ensuring that Rule 56(d) affidavits meet minimum requirements. In addition, subdivision (d)(1)(B) would specify that a request for Rule 56(d) relief be accompanied by “a certification of the party’s efforts to resolve the matter as required by [new] Rule 7.2(h).” This proposed change is not substantive (as the current rule requires good faith personal consultation) and is intended to align Rule 56’s requirements with new Rule 7.2’s standardized provisions governing good faith consultation required under various rules.

T. Rule 57 (Declaratory Judgments).

The Task Force proposes stylistic changes to Rule 57, adopting the language of Federal Rule 57 with minor exceptions. The Task Force proposal would delete language in the current rule specifying that Rules 38 and 39 govern jury trial demands in declaratory judgment actions. The Task Force concluded that these cross-references were not necessary, as the rule itself generally provides that the rules of civil procedure apply in declaratory judgment actions. The proposal also omits an inapplicable reference to a federal statute contained in Federal Rule 57.

U. Rule 58 (Entering Judgment).

[To follow—A CPPC costs subcommittee is working on a proposed revision that will be addressed at the November CPPC meeting and will impact the Petition description of this rule.]

V. Rule 59 (New Trial; Altering or Amending a Judgment)

The proposed changes to Rule 59 are primarily stylistic and organizational, with one substantive change. The proposal generally would conform Arizona’s rule to Federal Rule 59, but it retains some unique aspects of Arizona’s current rule.

A substantive change is proposed in subdivision (f)(2), relating to the trial court’s conditional grant of a new trial where damages are either excessive or insufficient. The current rule provides (in Rule 59(i)(2)) that the party adversely impacted by the trial court’s order may file a statement consenting to the modified damage amount. In that case, if the opposing party appeals, the consenting party may cross-appeal, but “the perfecting of a cross appeal” is “deemed to revoke the consent.” The Task Force felt that the current rule unfairly penalizes the cross-appealing party. One of the primary reasons for consenting to a remittitur or additur is the hope of thereby ending the litigation and avoiding an appeal by the moving party. If, despite the opposing party’s consent, the moving party nevertheless perfects an appeal, the consenting party should have the right to cross-appeal while preserving its consent if the trial court’s order is affirmed on appeal. Thus, the proposed amendments would eliminate the current rule’s provision that a cross-appeal is “deemed to revoke” the consent, providing instead that “[i]f the court’s ruling on damages is affirmed, the party’s prior acceptance will remain in effect, unless the

appeal’s final disposition requires otherwise.” This approach is consistent with *Plesko v. City of Milwaukee*, 120 N.W. 2d 130 (Wis. 1963).

In addition to this substantive change, proposed clarifying amendments include:

(1) A new subdivision (a), specifying that the rule governs motions for a new trial or to alter or amend a judgment following “a trial, the grant of summary judgment, or other proceeding that results in a final judgment.” This language conforms to established Arizona case law holding that a motion for new trial is appropriate following the grant of summary judgment and in other circumstances resulting in a final judgment. *See Watts v. Medicis Pharmaceutical Corp.*, 236 Ariz. 511, 342 P.3d 847 (App. 2015) (Rule 59 motion following dismissal under Rule 12(b)(6); citing cases); *Maganas v. Northrup*, 112 Ariz. 46, 537 P.2d 595 (1975) (Rule 59 motion following grant of summary judgment); *J-R Constr. Co. v. Paddock Pool Constr. Co.*, 128 Ariz. 343, 625 P.2d 932 (App. 1981) (Rule 59 motion following dismissal for failure to comply with discovery order). Subdivision (a)(1) would retain the current rule’s list of specific grounds supporting a new trial, with only stylistic revisions. This list is not contained in the federal rule.

(2) Subdivision (b) would clarify that Rule 7.2 governs responses and replies to a motion for new trial. The current rule is silent on this subject.

(3) A new sentence would be added to subdivisions (b) and (d), specifying that the deadline for moving for a new trial, or to alter or amend a judgment, may not be extended by stipulation or court order. This limitation is contained currently in Rule 6(b)(2), but recent appeals court memorandum decisions illustrate that the omission of this important limitation in Rule 59 itself is a “trap” for practitioners. *See, e.g., Black v. BNSF Railway Co.*, No. 1 CA-CV 14-0419, 2015 WL 5935367 at *3 ¶ 11 (Ariz. App. Oct. 13, 2015) (mem. dec.) (failure to timely file a new trial motion was not “excusable” under Rule 60(c) because counsel should have known that Rule 6(b) barred a trial court from extending the time in which to file the motion).

W. Rule 65 (Injunctions and Restraining Orders)

The Task Force proposes stylistic, organizational and clarifying changes to Rule 65. The language and structure of Federal Rule 65 would be adopted in part, but unique aspects of Arizona’s rule would be retained. No substantive change is intended.³

³ Needs to be expanded—ran out of time.

Disposition table: ARCP

This table shows current civil rules that have been moved to a new location, or deleted, by the 2017 amendments. This table also show, if appropriate, a reference (in parentheses) to a subpart of a new rule.

Former	Rule title	Now	Rule title
5(e)	Abrogated, effective July 1, 1991	--	Deleted
5(f)	Sensitive data	5(e)	Sensitive Data
5(g)	Filing; attachments	5(f)	Filing; Attachments
5(h)	Filing with the court defined	5(g)	Filing With the Court Defined
5(i)	Compulsory arbitration	5(h)	Compulsory Arbitration
5(j)	Proposed orders and proposed judgments	5(i)	Proposed Orders; Proposed Judgments
5.2	Limited scope representation in vulnerable adult exploitation actions brought under A.R.S. § 46-451 et. seq.	5.1(c)	Limited Appearance
6(c)	Abrogated, effective December 1, 2000	--	Deleted
6(d)	Orders to show cause	7.4	Orders to Show Cause
7.1(a)	Formal requirements	7.2(a)	Requirements
7.1(b)	Effect of non-compliance	7.2(b)	Effect of Non-compliance or Waiver
7.1(c)	Law and motion day	7.2(c)(2)	Rulings on Motions (Law and Motion Day)
7.1(d)	Oral argument	7.2(d)	Oral Argument
7.1(e)	Motion for reconsideration	7.2(e)	Motions for Reconsideration
7.1(f)	Limitations on motions to strike	7.2(f)	Limitations on Motions to Strike
7.1(g)	Agreed extensions of time for filing memoranda	7.2(g)	Agreed Extensions of Time for Filing Memoranda
7.2	Motions in limine	7.3	Motions <i>in Limine</i>
8(d)	Effect of failure to deny	8(b)	Defenses; Admissions and Denials
8(e)	Pleading to be concise and direct; consistency	8(d)	Pleading to Be Concise and Direct; Alternative Statements; Inconsistency
8(f)	Construction of pleadings	8(e)	Construing Pleadings
8(g)	Claims for damages	8(f)	Claims for Damages
8(h)	Civil cover sheets; classification of civil actions	8(g)	Civil Cover Sheets
8(i)	Complex civil litigation program; designation	8(h)	Complex Civil Litigation Program Designation
10(a)	Caption; names of parties	5.2(a)	Caption
10(d)	Method of preparation and filing	5.2(b)	Document Format
10(e)	Deleted effective October 1, 1987	--	Deleted
10(f)	Designation of defendant	10(d)	Using a Fictitious Name to Identify a Defendant

11(a)	Signing of pleadings, motions, and other papers; sanctions	11(a) 11(b) 11(c) 11(d)	Signature Representations to the Court Sanctions Assisting Filing by Self-Represented Person
11(b)	Verification of pleading generally	80(g)	Verified pleadings
11(c)	Verification of pleading when equitable relief demanded	--	Deleted
12(b)	How presented; motion to dismiss	12(b) 12(d)	How to Present Defenses Result of Presenting Matters Outside the Pleadings
12(d)	Preliminary hearings	12(i)	Preliminary Hearings
13(f)	Abrogated effective January 1, 2012	--	Deleted
13(g)	Cross-claim against co-party	13(f)	Crossclaim Against a Coparty
13(h)	Joinder of additional parties	13(g)	Joining Additional Parties
13(i)	Separate trials; separate judgments	13(h)	Separate Trials; Separate Judgments
16.2	Good faith settlement hearings	--	Deleted
16.3	Initial case management conference in cases assigned to the complex civil litigation program	16.2	Initial Case Management Conference in Actions Assigned to the Complex Civil Litigation Program
17(c)	Actions by or against personal representatives	--	Deleted
17(d)	Actions by or against county, city or town	17(c)	Actions by or Against A County, City, or Town
17(e)	Deleted, effective June 1, 1985	--	Deleted
17(f)	Actions against surety, assignor or endorser	17(e)	Actions Against a Surety, Assignor, or Endorser
17(g)	Infants or incompetent persons	17(f)	Minor or Incompetent Person
17(h)	Bond of guardian ad litem or next friend	17(f)(2)	Minor or Incompetent Person (Without a Representative)
17(i)	Consent of guardian ad litem or next friend; liability; compensation	17(f)(2)	Minor or Incompetent Person (Without a Representative)
17(j)	Partnerships	17(g)	Partnerships
22(a)	Interpleader	22(a) 22(c)	Interpleader Relation to Other Rules
24(d)	Time to answer	24(c)(3)	Procedure (Response to Pleading in Intervention)
25(b)	Death of defendant after tort action commenced	--	Deleted (See A.R.S. § 14-3110)
25(c)	Incompetency	25(b)	Incompetency
25(d)	Transfer of interest	25(c)	Transfer of Interest
25(e)	Public officers; death or separation from office	25(e) 17(d)	Public Officers; Death or Separation from Office Public Officer's Title and Name
26(h)	Deleted, effective November 1, 1970	--	Deleted
26.1(b)	Time for disclosure; a continuing duty	26(d)	Time for Disclosure; Continuing Duty
26.1(c)	Deleted, effective December 1, 1996	--	Deleted

26.1(d)	Signed disclosure	26.1(e)	Signature under Oath
26.1(e)	Deleted, effective December 1, 1996	--	Deleted
28(c)	Disqualification for interest	28(d)	Disqualification
31(a)	When a deposition may be taken	31(a) 31(b)	When a Deposition May Be Taken Notice; Service of Questions and Objections; Questions Directed to an Entity
31(c)	Deleted, effective January 1, 2013	--	Deleted
31(d)	Deleted, effective November 1, 1979	--	Deleted
32(d)	Effect of errors and irregularities in depositions	30(c)(2) 32(d)	Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions (Objections) Waiver of Objections
33(a)	Availability; procedures for use	33(a) 33(b)	Generally Answers and Objections
33(b)	Scope; use at trial	33(a) 33(b) 33(c)	Generally Answers and Objections Use
33(c)	Option to produce business records	33(d)	Option to Produce Business Records
33.1	Uniform and non-uniform interrogatories; limitations; procedure	33	Interrogatories to Parties
35(a)	Order for examination	35(a) 35(c)	Examination on Order Attendance of Representative; Recording
35(b)	Report of examiner	35(d)	Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege
35(c)	Alternate procedure; notice of examination; objections	35(b)	Examination on Notice; Motion Objecting to Examiner; Failure to Appear
36(b)	Procedure	36(a)	Scope and Procedure
38.1(c)	Application for postponement; grounds; effect of admission of truth of affidavit by adverse party	38.1(b)	Postponements
38.1(d)	Deposition of witness or party; consent	--	Deleted (NOTE: check this)
38.1(e)	Scheduling conflicts between courts	38.1(c)	Scheduling Conflicts Between Courts
38.1(f)	Dismissal calendar	38.1(d)	Dismissal Calendar
38.1(g)	Notification	38.1(d)(3)	Dismissal Calendar (Notification)
39(b)	Order of trial by jury; questions by jurors to witnesses or the court	40(c) 40(i)(2)	Order of Trial Juror Communications (Witnesses)
39(c)	Omission of testimony during trial	40(d)	Supplementing Testimony

39(d)	Verdict, deliberations and conduct of jury; sealed verdict; access to juror notes and notebooks NOTE: Check on directing the jury to return a sealed verdict	40(e) 40(f)(3) 40(h) 40(k) 51(b) 51€	Jury Deliberations Juror Notes and Notebooks (Access) Juror Admonitions Dismissal and Discharge of Jury; New Trial Instructions Record
39(e)	Duty of officer in charge of jury	40(g)	Officer Duties
39(f)	Admonition to jurors; juror discussions	40(h)(1)	Juror Admonitions (Discussions)
39(g)	Communication to court by jury	40(i)(1)	Juror Communications (The Court)
39(h)	Assisting jurors at impasse	40(j)	Assisting Jurors at Impasse
39(i)	Discharge of jury; new trial	40(k)	Dismissal and Discharge of Jury; New Trial
39(j)	Trial by the court	39(b)	If No Demand Is Made
39(k)	Procedures applicable in trial by the court	40(a)	Scope
39(l)	Abrogated, effective December 1, 2000	--	Deleted
39(m)	Advisory jury and trial by consent	39(c)	Advisory Jury; Jury Trial by Consent
39(n)	Interrogatories when equitable relief sought; answers advisory	49(c)	Written Questions in Actions Seeking Equitable Relief
39(o)	Arguments	40(c)(5)	Order of Trial (Closing Argument)
39(p)	Note taking by jurors	40(f)(1)	Juror Notes And Notebooks (Juror Notes)
39(q)	Memoranda	40(l)	Memoranda
39.1	Trial of cases assigned to the complex civil litigation program	--	Deleted
40	Assignment of cases for trial	38.1(a)	Trial Setting
42(c)	Abrogated October 10, 2000	--	Deleted
42(d)	Renumbered as Rule 38.1(i)	--	Deleted
42(e)	Renumbered as Rule 38.1(j)	--	Deleted
42(f)	Change of judge (1) Change as a Matter of Right (2) Proceedings Based on Cause (3) Duty of Judge After Filing of Notice or Affidavit	42.1 42.2 42.1(f) 42.2(e)	Change of Judge as of Right Change of Judge for Cause Procedures on Notice Hearing and Assignment
43(e)	Deleted, effective September 1, 1977	--	Deleted
43(f)	Form and admissibility of evidence	43(e)	In Open Court
43(g)	Abrogated, effective December 1, 2000	--	Deleted
43(h)	Deleted, effective September 1, 1977	--	Deleted
43(i)	Evidence on motions	43(f)	Evidence on a Motion
43(j)	Renumbered as Rule 39(c)	--	Deleted
43(k)	Preservation of verbatim recording of court proceedings	43(g)	Preserving Recording of Court Proceedings
44(b)	Deleted, effective September 1, 1977	--	Deleted

44(c)	Proof of records of notaries public	--	Deleted
44(d) through 44(i)	Deleted, effective September 1, 1977	--	Deleted
44(j)	Deleted, effective November 1, 1967	--	Deleted
44(k)	Proof of appointment of executor, administrator, or guardian; letters or certificate	44(b)	Means of Proving Appointment of Guardian, Personal Representative, Administrator or Conservator
44(l)	Deleted, effective September 1, 1977	--	Deleted
44(m)	Comparison of handwriting	--	Deleted
44(n) through 44(s)	Deleted, effective September 1, 1977	--	Deleted
45(g)	Failure to produce evidence	--	Deleted
47(a)	Trial jury procedure; list; striking; oath	47(a) 47(b) 47(e)	Jury Selection Juror Information Peremptory Challenges
47(b)	Voir dire oath; examination of jurors; brief opening statements	47(c)	Voir Dire Oath and Procedure
47(c)	Grounds of challenge for cause	47(d)	Challenges for Cause
47(d)	Extent of examination; trial of challenge	47(c)(3) 47(d)(2)	Voir Dire Oath and Procedure (Extent of Voir Dire) Challenges for Cause (Procedure)
47(g)	Juror notebooks	40(f)(2)	Juror Notes and Notebooks (Juror Notebooks)
49(a)	Return of a verdict by six or more jurors; presentation in court	49(d) 49(e)	Return of Verdict Proceedings on Return of Verdict
49(b)	Proceedings on return of verdict	49(e)	Proceedings on Return of Verdict
49(c)	Defective or nonresponsive verdict	49(f)(1)	Form of Verdict (Defective, Informal, or Nonresponsive Verdict)
49(d)	Fixing amount of recovery	49(f)(3)	Form of Verdict (Fixing Net Recovery Amount)
49(e)	Special form of verdict not required	49(f)(2)	Form of Verdict (No Special Form of Verdict Required)
49(f)	Polling jury; procedure	49(e)(2)	Proceedings on Return of Verdict (Polling the Jury)
49(g)	Special verdict and interrogatories	49(a)	Special Verdict
49(h)	General verdict accompanied by answer to interrogatories	49(b)	General Verdict With Answers to Written Questions
50(c)	Same: conditional rulings on grant of motion for judgment as a matter of law	50(c) 50(d)	Granting the Renewed Motion; Conditional Ruling on a Motion for New Trial Time for a Losing Party's New-Trial Motion
50(d)	Same: denial of motion for judgment as a matter of law	50(e)	Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal

51(a)	Instructions to jury; objection	51(a) 51(b) 51(c) 51(d) 51(e)(1)	Requests Instructions Objections Assigning Error; Fundamental Error Record (Jury Communications)
51(b)	Instructions to jury; notations; filing transcript	51(b) 51(e)(2)	Instructions Record (Preliminary and Final Instructions)
51(c)	Renumbered as 39(n)	--	Deleted
51(d)	Deleted, effective July 1, 1989	--	Deleted
52(b)	Amendment	52(a)(5) 52(b)	Findings and Conclusions (Questioning the Evidentiary Support) Amended or Additional Findings
53(a)	Appointment	53(a) 53(b)	Appointment Order Appointing a Master
53(b)	Order appointing master	53(a)(2) 53(b)	Appointment (Disqualification; Affidavit) Order Appointing a Master
53(d)	Meetings and evidentiary hearings	53(c)(1) 53(c)(3)	Master's Authority (Generally) Master's Authority (Meetings)
53(e)	Master's orders	53(d)	Master's Orders
53(f)	Draft reports	--	Deleted
53(g)	Master's reports	53(e)	Master's Reports
53(h)	Action on master's order, report, or recommendation	53(f)	Action on the Master's Order, Report, or Recommendations
53(i)	Compensation	53(g)	Compensation
53(j) and 53(k)	Repealed, effective January 1, 2006	--	Deleted
55(d)	Plaintiffs, counterclaimants, cross-claimants	55(e)	Plaintiffs, Counterclaimants and Cross-Claimants
55(e)	Judgment against the state	55(d)	Judgment Against the State
55(f)	Judgment when service by publication; statement of evidence	--	Deleted
56(d)	Declining to grant all the requested relief	56(g)	Failing to Grant All the Requested Relief
56(e)	Form of affidavits and depositions; further testimony; defense required	56(c)(5) 56(c)(6) 56(e)	Procedures (Affidavits) Procedures (Other Materials) Failing to Properly Oppose a Motion
56(f)	When facts are unavailable to the nonmovant; request for Rule 56(f) relief and expedited hearing	56(d)	When Facts Are Unavailable to the Opposing Party; Request for Rule 56(d) Relief; Expedited Hearing
56(g)	Affidavits made in bad faith	56(h)	Affidavit Submitted in Bad Faith
56(h)	Judgment independent of the motion or based on materials not cited in the motion	56(f)	Judgment Independent of the Motion

58(a)	Service of form of judgment; entry	58(a) 58(b)	Form of Judgment; Objections to Form Entering Judgment
58(b)	Remittitur; procedure; effect on right of appeal	58(d)	Remittitur
58(c)	Enforcement of judgment; special writ	69(b)	Special Writ
58(d)	Objections to form	58(a)(2)	Forms of Judgment; Objections to Form (Objections to Form)
58(e)	Minute entries; notice of entry of judgments	58(c) 80(h)(1)	Notice of Entry of Judgment Clerk's Distribution of Minute Entries and Other Court Records (Minute Entries)
58(f)	Entry of judgment in habeas corpus proceedings	58(b)(2)	Entering Judgment (Time and Manner of Entry)
58(g)	Entry of judgment	58(b)(3)	Entering Judgment (Cost or Fee Awards)
59(a)	Procedure; grounds	59(a)(1)	Generally (Grounds for New Trial)
59(b)	Scope	59(a) 59(a)(2)	Generally Generally (Further Action After a Nonjury Trial)
59(c)	Contents of motion; amendment; rulings reviewable	59(b)	Time to File a Motion; Response and Reply
59(d)	Time for motion	59(b)	Time to File a Motion; Response and Reply
59(e)	Deleted, effective November 1, 1967	--	Deleted
59(f)	Time for serving affidavits	59(b)	Time to File a Motion; Response and Reply
59(g)	On initiative of court	59(c)	New Trial on the Court's Initiative or for Reasons Not in the Motion
59(h)	Questions to be considered in new trial	59(e)	Scope of New Trial
59(i)	Motion on ground of excessive or inadequate damages	59(f)	Motion on Ground of Excessive or Inadequate Damages
59(j)	After service by publication	59(g)	Motion for New Trial After Service by Publication
59(k)	Number of new trials	59(h)	Number of New Trials
59(l)	Motion to alter or amend a judgment	59(d)	Motion to Alter or Amend a Judgment
59(m)	Specification of grounds of new trial in order	59(i)	Order Specifying Grounds
60(b)	Correction of error in record of judgment	60(e)	Correction of Error in Record of Judgment

60(c)	Mistake; inadvertence; surprise; excusable neglect; newly discovered evidence; fraud, etc.	60(b) 60(c) 60(d)	Grounds for Relief from a Final Judgment, Order, or Proceeding Timing and Effect of Motion Other Powers to Grant Relief
60(d)	Reversed judgment of foreign state	60(f)	Reversed Judgment of Foreign State
62(a)	NOTE: The current rule is directed to an “interlocutory or final judgment in an action for an injunction or in a receivership action.” However, Rule 62(a) in the vetting draft applies more broadly; it applies to “an interlocutory or final judgment – including in an action for an injunction or a receivership...” There is not another section of Rule 62 – or any other ARCP rule – that applies this stay provision to a non-receivership or non-injunction judgment. The vetting draft is probably a correct statement of the law, but need to confirm that this is what was intended.		
62(d) and 62(e)	Deleted, effective January 1, 1978	--	Deleted
62(f)	Stay of judgment directing execution of instrument; sale of perishable property and disposition of proceeds	62(d)	Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property
62(g)	Stay in favor of the state or agency or political subdivision thereof	62(e)	Stay of a Judgment Against the State or Its Agencies or Political Subdivisions
62(h)	Deleted, effective January 1, 1978	--	Deleted
62(i)	Stay of judgment under Rule 54(b)	62(f)	Stay of Judgment Entered Under Rule 54(b)
62(j)	Stay of judgments in rem	62(g)	Stay of a Judgment in Rem
64.1(a)	Definition	64.1(b)	Defined
64.1(b)	When issued NOTE: The new rule omits “ordered by the judge and issued by the clerk”	64.1(c)	When Issued
64.1(c)	Content of warrant NOTE: The new rule omits “issued by the court”	64.1(d)	Content of Warrant
64.1(d)	Time and manner of execution	64.1(e)	Time and Manner of Execution
64.1(e)	Duty of court after execution of warrant	64.1(f)	Duty of Court After Execution of Warrant
64.1(f)	Forfeiture of bond	64.1(g)	Forfeiture of Bond
65(b)	Deleted, September 15, 1987	--	Deleted

65(c)	Motion to dissolve or modify	65(a)(3)	Preliminary Injunction or Temporary Restraining Order (Motion to Dissolve or Modify)
65(d)	Temporary restraining order; notice; hearing; duration	65(b)	Temporary Restraining Order Without Notice
65(e)	Security	65(c)(1)	Security (Generally; On Issuance)
65(f)	Deleted, effective November 1, 1967	--	Deleted
65(g)	Security on injunction restraining collection of money; injunction made permanent	65(c)(2)	Security (Injunction Retraining Collection of Money)
65(h)	Form and scope of injunction or restraining order	65(d)	Contents and Scope of Injunction or Restraining Order
65(i)	Writ of injunction; where returnable; several parties	65(e)	Venue of a Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment
65(j)	Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment	65(f)	Procedure for Obtaining Sanctions; Order to Show Cause
67(d)	Security for costs; when required; bond and conditions	--	Deleted (R-13-0044, effective January 1, 2015)
67(e)	Inability to give security; proof; objection and examination	--	Deleted (R-13-0044, effective January 1, 2015)
67(f)	Exemptions; exceptions	--	Deleted (R-13-0044, effective January 1, 2015)
73(a)	Lawyer or non-lawyer arbitrators	73(a) 73(b)	Mutually Agreed on Arbitrator Appointment of Arbitrator
73(b)	List of arbitrators	73(b) 73(c)	Appointment of Arbitrator List of Eligible Arbitrators
73(c)	Appointment of arbitrators; timing of Assignment; notice of appointment; right to peremptory strike	73(d) 73(e) 73(f)	Timing of Appointment Notice of Appointment Change of Arbitrator as of Right
73(d)	Disqualifications and excuses	73(g)	Disqualifying or Excusing an Arbitrator
76(a)	Notice of decision and filing of award or other final disposition	76(a) 76(b)	Decision of Arbitrator Arbitrator's Award
76(b)	Failure of arbitrator to file an award	76(c)	Failure of Arbitrator to File an Award
76(c)	Judgment	76(d)	Judgment
76(d)	Dismissal upon failure to apply for entry of judgment	??	NOTE: Was This Provision Intentionally Deleted?
77(a)	Notice of appeal	77(a) 77(b)	Filing a Notice of Appeal Time for Filing a Notice of Appeal
77(b)	Deposit on appeal	77(c)	Deposit
77(c)	Appeals de novo	77(d)	Appeal <i>De Novo</i>
77(d)	Deleted	--	Deleted
77(f)	Costs and fees on appeal	77(g) 77(h)	Refund of Deposit on Appeal Forfeiture of Deposit on Appeal; Sanctions on Appeal

77(g)	Discovery and listing of witnesses and exhibits	77(f)	Discovery and Listing of Witnesses and Exhibits on Appeal
80(c)	Deleted, effective June 27, 1991	--	Deleted
80(d)	Agreement or consent of counsel or parties	80(c)	Agreement or Consent of Counsel or Parties
80(e)	Deleted, May 1, 1989	--	Deleted
80(f)	Deleted, September 16, 2008	--	Deleted
80(g)	Officer of court or attorney as surety	80(d)	Attorney or Officer of Court as Surety
80(h)	Lost records; method of supplying; substitution of copies; hearing if correctness denied	80(f)	Lost or Destroyed Records
80(i)	Unsworn declarations under penalty of perjury	80(e)	Unsworn Declarations Under Penalty of Perjury
85	Title	--	Deleted
86	Effective date	81(a)	Effective Date

From: Civil Rules [<mailto:CivilRules@courts.az.gov>]
Sent: Tuesday, October 20, 2015 12:45 PM
Subject: TF.ARCP: comment #5 (workgroup #4)

For the attention of workgroup #4.

From: Karen Mullins - SUPCRTX [<mailto:mullinsk@superiorcourt.maricopa.gov>]
Sent: Monday, October 19, 2015 4:13 PM
To: Civil Rules <CivilRules@courts.az.gov>
Subject: Rule 76

I am on my second civil assignment and continuously have trouble with arbitrators failing to follow the rules in regard to decisions and awards. In regard to Rule 76(a), the full paragraph following subparts (1)-(5), I believe a proposed form of order should also be lodged with the clerk so there is a record of it. Also, the last sentence of that same paragraph requires the arbitrator to “mail or otherwise deliver” a copy of the signed original award to all parties or their counsel. Why not use the word “serve” rather than “mail or otherwise deliver”?

Thank you. Good luck!

Hon. Karen A. Mullins
Maricopa County Superior Court

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Tue 10/27/2015 10:35 AM
Aaron Nash - COSCX <nasha@COSC.maricopa.gov>

FW: TF.ARCP: comment #5 (workgroup #4)

Mark –

A response to Judge Mullins’ suggestions for the Task Force to consider:
One of the problems the Clerks have experienced with lodging forms of order is the confusion it can cause when people review the court record and it appears an order has been filed. In arbitration cases, the arbitrator has to file a Notice of Decision, but the parties are not required to submit a proposed form of award. When the problem comes from arbitrators not following the rules, adding a new filing to the rules and case files is not likely to solve the problem. The State Bar and Maricopa County Bar Association have offered CLEs in the past that explain the arbitration process, including templates for Notices and Awards. Better education or standardized packets for arbitrators may be a better approach.

Regarding “service,” a quick search of the rules shows that “mailed or delivered” appears in local rules, the restoration of rights process, family court, probate, appeals, and notice of commission meetings.

Thank you,
Aaron Nash



**OFFICE OF THE ATTORNEY GENERAL
MEMORANDUM**

TO: Dawn Northup
Civil Division Chief Counsel

FROM: James B. Bowen
Assistant Attorney General

DATE: October 15, 2015

RE: State Government Division
Rules of Civil Procedure Committee

I have attached a grid with the recommendations and comments of members of the SGD Civil Rules Committee to the Supreme Court Task Force's proposed amendments to the Arizona Rules of Civil Procedure.

RULE	PROPOSED	SGD PROPOSED	DISCUSSION
ALL			<p>In most places: “This Rule 4(i) does not apply to service....” In other places: “A party subject to service under this rule, Rule 4.1 or Rule 4.2 may waive issuance....” See Rule 4(f)(1). I think it would be better to consistently use one form throughout, e.g., “this rule does not apply to service.”</p>
Rule 1			<p>The Rule now uses terms “action” and “proceeding.” “Proceeding” is not defined and the Rules later use the term “action” in isolation (<i>see, e.g., Rule 27</i>). This may likely lead to litigation to define the term “proceeding.”</p>
Rule 4			<p>We are changing the title of Rule 4 from “Process” to “Summons,” yet the text of the rules still often uses the terms interchangeably. I would recommend going through the service rules one more time and changing “process” to “summons” wherever appropriate. For example, if Rule 4 is titled “summons,” then shouldn’t the entire rule relate to the summons?</p> <p>So, Rule 4(d) should discuss service of a summons; Rule 4(f) should discuss acceptance or waiver of service of a summons; Rule 4(h) should discuss amendment of a summons. Another example: Rule 4(f)(1) discusses waiver of “issuance or service of process,” yet Rule 4(f)(4) states that waiver, acceptance, and</p>

			<p>appearance have the same force and effect “as if a summons had been issued and served.”</p> <p>Otherwise, maybe we should leave the title as “process.”</p>
Rule 4(a)(3)	<p>(3) Service. A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 4.1, or Rule 4.2, as applicable.</p>	<p>(3) Service. A summons must be served with a copy of the pleading. Service This service of process must be completed as required by this rule, Rule 4.1, or Rule 4.2, as applicable.</p>	<p>Particularly if the language regarding “summons” and “process” stays as currently proposed, I strongly recommend changing Rule 4(a)(3) as noted.</p>
Rule 4(d)(1)	<p>Service of process must be made by a sheriff, a sheriff’s deputy, a constable, a constable’s deputy, a private process server certified under to the Arizona Code of Judicial Administration . . .</p>	<p>Service of process must be made by a sheriff, a sheriff’s deputy, a constable, a constable’s deputy, a private process server certified under to the Arizona Code of Judicial Administration . . .</p>	<p>Just a typo fix</p>
Rule 4(e)	<p>A certified private process server will be entitled to serve in that capacity for any state court anywhere within Arizona.</p>	<p>A certified private process server will be entitled to serve in that capacity for any state court anywhere within Arizona.</p>	<p>If it’s any state court within Arizona, the second anywhere is superfluous.</p>
Rule 4(f)(1) & (f)(2)			<p>Who must file the waiver or acceptance under Rule 4(f)(1) (waiver of service) and Rule 4(f)(2) (acceptance of service)?</p> <p>As for the waiver, Rule 4.1(c)(4) states “when the plaintiff files an executed waiver,” so the question of who files it eventually gets answered. There is no similar provision regarding an “executed acceptance.”</p>

<p>Rule 4 (g)(6)</p>	<p><i>(6) Affidavit, Official Mark of Sheriff as Prima Facie Evidence.</i> The affidavit of service or sheriff's official mark is prima facie evidence of service of the summons and the pleading being served</p>		<p>The requirement is unnecessary, since 4(g)(2) is sufficient. The Sheriff's Office, at least in Maricopa County, has a high error rate respect to service on individual State employees which will lead to additional unnecessary litigation.</p>
<p>Rule 4.1(e)(1)</p>	<p>(1) to the minor's father, mother or guardian, if any of them reside or may be found within Arizona; or</p>	<p>(1) to the minor's father, mother parent or guardian, if any of them reside or may be found within Arizona; or</p>	<p>It would be simpler to say "to the minor's parent or guardian"—did you use "to the minor's father, mother or guardian" to specifically exclude people like stepparents?</p>
<p>Rule 7.1(H)</p>			<p>The recent ARCAP changes removed the requirement for parallel citations; when citing Arizona case law, we are required only to cite to the Arizona reporter and are not required to cite to the Pacific reporter. See ARCAP 13(f). Do we want to match our superior court rules to the ARCAP rules?</p>
<p>Rule 7.2(g) and see Rule 56(c)(2)</p>			<p>Approve of the change to allow the stipulated notice of extension to be effective even for Motions for Summary Judgment under Rule 56.</p>
<p>Rule 7.2(h)</p>			<p>Is there any concern regarding the need to demonstrate that the parties have conferred by person or telephone to resolve any issues where a "good faith consultation certificate" would be required? It seems as if for some of these, detailed email or letter communication should be sufficient and</p>

			<p>proving that a phone conversation occurred is virtually impossible and impracticable.</p>
Rule 16(a)(3)			<p>This appears to be a reflection of the federal standard used to determine the “reasonableness” of discovery, so I’m not sure if we would prefer to include language that goes towards looking at the proportionality of the issues instead.</p>
Rule 23(h)			<p>Is this a new avenue for plaintiffs to collect attorneys’ fees or was this previously available in another statute/rule. Generally I am leery of adding additional avenues for people to sue the state and seek to recover attorneys’ fees.</p>
Rule 24(b)(2)			<p>Support this additional right for government officer or agency to intervene when the issues are directly related to statutes that the agency administers.</p>
Rule 25(d)	<p>Counsel for the public officer must file a notice of the substitution and later proceedings should be in the substituted party’s name . . .</p>	<p>Proceedings following Counsel for the public officer must file a notice of the substitution and later proceedings should be in the substituted party’s name . . .</p>	<p>While individually not concerning, if the substitution is already automatic, this seems to add unnecessary burden to our practice to have to file notices in all pending matters whenever public officials change, particularly if representing an unelected jural entity that has regular turnover.</p>
Rule 26.1(a)(3) & (a)(4)	<p>(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</p>	<p>(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</p>	<p>Why does (a)(3) require only “a description of the substance...of the testimony” but (a)(4) requires “a fair description of the nature of the knowledge or information each such person is believed to possess”? The proposed amendment strikes the word “fair” from (a)(3) yet adds “fair description” to</p>

	information each such person is believed to possess;	person is believed to possess;	(a)(4). I don't think the word "fair" is needed in (a)(4)—we are already saying that the description is of knowledge/info that each person <i>is believed</i> to possess.
Rule 27			This Rule, as proposed, is changed dramatically. It now governs not just depositions, but discovery generally, before an action is filed. Such change has potential to greatly (and adversely impact) state clients. The purpose of this change should be investigated. On the other hand, however, there is a formal process to seek such pre-filing discovery, including motion practice and hearing. Nonetheless, this could simply add more cost and risk considerations for state clients. Without additional information, unsure how to support this change.
Rule 30			Subsection (d) now contemplates that a deposition must be completed "in a single day." Likely a good change and will reduce burden(s) for state clients.
Rule 33(b)(1)	(1) Time to Respond. Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after	(1) Time to Respond. Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections	Do we intentionally leave out reference to "acceptance" of service and voluntary appearance? We give extra response time to defendants who are served a summons and complaint, and it seems like we should also give extra response time to defendants who accept service (and possibly to those who have voluntarily appeared).

	<p>service or execution of a waiver of service of the summons and complaint on that defendant.</p>	<p>within 60 days after service or execution of a waiver of service of the summons and complaint on that defendant, service of summons and complaint, execution of waiver of service, execution of acceptance of service, or voluntary appearance.</p>	<p>We explicitly give extra response time to defendants who receive formal service (summons/complaint via process server) and to defendants who waive formal service. We do not explicitly give extra response time to defendants who accept service or who have voluntarily appeared. Yet waiver, acceptance, and appearance all have the same force and effect as if a summons had been issued and served. See ARCP 4(f)(4).</p> <p>Are we talking about the situation where the plaintiff has served the interrogatories at the same time plaintiff serves the complaint? If so, I think the SGD Proposed change would clarify.</p>
<p>Rule 30(b)(3)(D)</p>	<p><i>Notice of Recording by Audiovisual Means.</i> Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s)</p>		<p>30(b)(3)(B) requires that if the method of recording testimony includes audiovisual means, the notice must so state. The additional detail of the placement of the camera(s) is impractical in that the reporter/videographer usually determines the placement. The proposed rule is hyper-technical, and ripe for abuse by counsel trying to prevent an audiovisual recording of the witness for purely tactical reasons. Moreover, the placement of camera(s) appears to be fairly standard and rarely results in disputes.</p>

<p>Rule 33(b)(1)</p>	<p>1) Time to Respond. Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after service – or execution of a waiver of service of the summons and complaint on that defendant</p>	<p>(1) Time to Respond. Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant receiving interrogatories simultaneously with the complaint may serve its answers and any objections within 60 days after service—of execution of a waiver of service—of the summons and complaint on that defendant: service of summons and complaint, execution of waiver of service, execution of acceptance of service, or voluntary appearance.</p>	<p>Do we intentionally leave out reference to “acceptance” of service and voluntary appearance? We give extra response time to defendants who are served a summons and complaint, and it seems like we should also give extra response time to defendants who accept service (and possibly to those who have voluntarily appeared). We explicitly give extra response time to defendants who receive formal service (summons/complaint via process server) and to defendants who waive formal service. We do not explicitly give extra response time to defendants who accept service or who have voluntarily appeared. Yet waiver, acceptance, and appearance all have the same force and effect as if a summons had been issued and served. See ARCP 4(f)(4). If we talking about the situation where the plaintiff has served the interrogatories at the same time plaintiff serves the complaint, then I think the SGD Proposed change would clarify.</p>
			<p>Additionally, the rule of 40 days is often insufficient to respond to interrogatories. This rule will required additional time and expense negotiating with the requesting party or petition the court for an extension of time to respond.</p>

<p>Rule 34(b)(3)(A)</p>	<p>(A) Time to Respond. Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after being served. But a defendant may serve its responses and any objections within 60 days after service or execution of a waiver of the summons and complaint on that defendant.</p>	<p>(A) Time to Respond. Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 40 days after being served. But a defendant receiving requests for production or inspection simultaneously with the complaint may serve its responses and any objections within 60 days after service of execution of a waiver of service of the summons and complaint on that defendant: service of summons and complaint, execution of waiver of service, execution of acceptance of service, or voluntary appearance.</p>	<p>Same discussion as Rule 33(b)(1).</p>
<p>Rule 35</p>			<p>Subsection (a) broadens the universe of individuals who may conduct an examination from “physician or psychologist” to “suitably licensed or certified examiner.” Generally, I do not prefer words like “suitably” without direction or definition. Unsure of the reason for this change, which may well impact whether state clients would benefit or not from the proposed amended Rule.</p>
<p>Rule 36(a)(4)</p>	<p>(4) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection</p>	<p>(4) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 40 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by</p>	<p>Same discussion as Rule 33(b)(1)</p>

	<p>addressed to the matter and signed by the party or its attorney. But a defendant may serve its answers and any objections within 60 days after service or execution of a waiver of service of the summons and complaint on that defendant. A shorter or longer time for responding may be stipulated to or be ordered by the court.</p>	<p>the party or its attorney. But a defendant receiving requests for admission simultaneously with the complaint may serve its answers and any objections within 60 days after service or execution of a waiver of service of the summons and complaint on that defendant. service of summons and complaint, execution of waiver of service, execution of acceptance of service, or voluntary appearance. A shorter or longer time for responding may be stipulated to or be ordered by the court.</p>	
<p>Rule 36(b)</p>			<p>Formerly Subsection (c), the standard is amended so that withdrawal/amendment may be permitted where “it would promote” the presentation of the merits...” Initially it seems that mere promotion is a lower standard. Has potential to benefit and hinder state clients depending on the case, however, the objective is still to rule on the merits of a case.</p>
<p>Rule 37(a)(4)</p>			<p>Allows Court more discretion to evasive/incomplete disclosures, etc. as a failure to disclose, answer, or respond. Likely a positive change for state clients.</p>
<p>Rule 37(g)</p>			<p>I don't have specific comments regarding individual provisions of the addition here, but I think this is something that should be carefully examined by our e-Discovery group because I think there could be</p>

<p>Rule 41(a)(1)</p>	<p>(A) On Notice or Order on Stipulation. Subject to Rule 41(a)(1)(A)(iii), the plaintiff may dismiss an action:</p> <p>(i) by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or</p> <p>(ii) by order based on a stipulation of dismissal signed by all parties who have appeared. The order may be signed by a judge, an authorized court commissioner, the court clerk or a deputy clerk.</p> <p>Dismissals under this Rule 41(a)(1)(A) are subject to Rules 23(e), 23.1(c), 23.2, and 66(d) and any applicable statute</p>	<p>(A) On Notice or Order on Stipulation. Subject to Rule 41(a)(1)(A)(iii), the plaintiff may dismiss an action:</p> <p>(i) by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or</p> <p>(ii) by order based on a stipulation of dismissal signed by all parties who have appeared. The order may be signed by a judge, an authorized court commissioner, the court clerk or a deputy clerk.</p> <p>(iii) Dismissals under this Rule 41(a)(1)(A) are subject to Rules 23(e), 23.1(c), 23.2, and 66(d) and any applicable statute</p>	<p>problems at many of our state agencies that are not tech-savvy.</p> <p>Subsection (g)(C) provides a non-exhaustive list of factors that a court can use to decide whether a party took reasonable steps to preserve electronically stored evidence. It is questionable, however, how/why the “probative value” of the information at issue is relevant to deciding whether steps to preserve such information were reasonable.</p>
<p>Rule 41(a)(2)</p>	<p>(2) By Other Court Order; Effect. Except as provided in</p>	<p>(2) By Other Court Order; Effect. Except as provided in Rule</p>	<p>Probably typo: Rule 41(a)(1)(A) references “subject to Rule 41(a)(1)(A)(iii),” but there is no subsection (iii). Is the last stand-alone sentence within the proposed Rule 41(a)(1)(A) supposed to be numbered (iii)?</p> <p>The first sentence references an action being dismissed “at the plaintiff’s request,” but the</p>

	<p>Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.</p>	<p>41(a)(1), an action may be dismissed at the plaintiff's request motion only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.</p>	<p>second sentence references "the plaintiff's motion to dismiss." For consistency, I would change the first reference to motion.</p>
<p>Rule 47(b)</p>	<p>"Any party or counsel receiving a copy of the questionnaire and answers must keep the information strictly confidential and must not disclose the information to any other person."</p>	<p>"Any party or counsel receiving a copy of the questionnaire and answers must keep the information strictly confidential and must not disclose the information to any other person."</p>	
<p>Rule 56(c)(2) and see Rule 7.2(g)</p>			<p>Approve of the change to allow the stipulated notice of extension to be effective even for Motions for Summary Judgment under Rule 56.</p>
<p>Rule 72(b)(1)</p>			<p>Please consider also explicitly excluding appeals from agency decisions. <i>See, e.g.,</i> Rule 16(b)(1)(xi) (stating that Rule 16(b) applies to all civil actions except "review of a decision of an agency or a court of limited jurisdiction").</p>

The types of appeals from agency decisions that I deal with always involve requests for affirmative relief other than a money judgment, so technically, I think my agency appeals would not be subject to compulsory arbitration given Rule 72(b)(1)(A). But an explicit exclusion would be so much clearer and better. I am not sure, however, if this is feasible for *all* agency appeals.