



# Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING  
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RACHELLE M. RESNICK  
CLERK OF THE COURT

KATHLEEN E. KEMPLEY  
CHIEF DEPUTY CLERK

September 6, 2007

**RE: RULE 68 OF THE ARIZONA RULES OF CIVIL PROCEDURE**  
Arizona Supreme Court No. R-06-0010

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 27, 2007, in regard to the above-referenced cause:

**ORDERED: Petition to Amend Rule 68 of the Arizona Rules of Civil Procedure = ADOPTED as modified, effective January 1, 2008.**

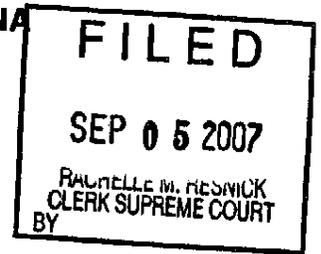
Rachelle M Resnick, Clerk

TO:

Robert B Van Wyck, Chief Counsel, State Bar of Arizona  
Final Rule Distribution List  
cf

IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-06-0010



ORDER AMENDING RULE 68, Ariz. R. Civ. P.

IT IS ORDERED that Rule 68, Ariz. R. Civ. P., be amended in accordance with the attachment hereto,\* effective as of January 1, 2008.

DATED In the City of Phoenix, Arizona, at the Arizona Courts Building, this 5<sup>th</sup> day of September, 2007.

For the Court:

  
RUTH V. MCGREGOR  
Chief Justice

\* Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

## ARIZONA RULES OF CIVIL PROCEDURE

### Rule 68. Offer of Judgment

(a) ~~Offer; Time for Making; Procedure.~~ At any time more than 30 days before the trial begins, any party may serve upon any other ~~the adverse party~~ an offer to allow judgment to be entered in the action ~~in accordance with the terms and conditions specified in the offer, plus costs then accrued.~~

~~(b) Contents of Offer Procedure Generally; Contents of Offer; Acceptance; Entry of Judgment on Offer.~~ In cases in which attorneys' fees have not been sought, ~~if~~ any portion of an offer made under pursuant to this Rule is for the entry of a monetary judgment, the monetary award to be made shall be set forth in the offer as a specifically stated sum, which shall be inclusive of all damages, taxable court costs, interest, and attorneys' fees, if any, sought in the case. The offeror may choose to exclude an amount for attorneys' fees, but must specifically so state in the offer. If the offeror excludes an amount for attorneys' fees in the offer, and the offeree accepts the offer, then either party may apply to the court for an award of attorneys' fees, if otherwise allowed by statute, contract or otherwise. The offer need not be apportioned by claim.

~~(c) Acceptance of Offer; Entry of Judgment.~~ If, while such an offer remains effective within the meaning of this rule, the offeree ~~adverse party~~ serves written notice that the offer is accepted, then either party may ~~then~~ file the offer together with proof of acceptance, thereof and a judgment complying with the requirements of Rule 58(a) shall be entered.

~~(e) Procedure in Actions Involving Claims for Attorneys' Fees.~~

~~(1) Contents of Offer.~~ If an award of attorneys' fees has been sought in the action, any offer made pursuant to this Rule shall set forth separately, as a specific stated sum, (i) the amount of any monetary award to be made on the causes of action asserted, and (ii) the amount of attorneys' fees to be awarded if the offer is accepted.

~~(2) Full Acceptance of Offer; Procedure.~~ If, while such an offer remains effective within the meaning of this Rule, the adverse party serves written notice that the offer is accepted in its entirety, either party may file the offer together with proof of acceptance thereof and a judgment complying with the requirements of Rule 58(a) shall be entered.

~~(3) Partial Acceptance of Offer; Procedure.~~ If, while such an offer remains effective within the meaning of this Rule, the adverse party serves written notice that the portion of the offer stating the monetary award to be made on the causes of action asserted is accepted, either party may file the offer together with proof of acceptance thereof and may apply to the court for a determination whether attorneys' fees should be awarded and, if so, the amount thereof. Following such determination, a judgment shall be entered complying with the requirements of Rule 58(a).

**(d) Rejection of Offer; Waiver of Objections. Not Accepted; Sanctions.** An offer ~~that which~~ is not accepted while it remains effective within the meaning of this Rule shall be deemed rejected, withdrawn and Evidence thereof of the rejected offer shall not be admissible except in a proceeding to determine sanctions under this Rule. If the offeree has any objection(s) to the validity of the offer, the offeree must serve upon the offeror, within ten days after service of the offer, written notice of any such objection(s). Unless the offeree notifies the offeror of any objection as provided under this subsection, the offeree waives the right to do so in any proceeding to determine sanctions under this rule. If the judgment finally obtained is equal to, or more favorable to the offeror than, the offer, the offeree must pay, as a sanction, those reasonable expert witness fees and double the taxable costs of the offeror, as defined in A.R.S. § 12-332, incurred after the making of the offer, and prejudgment interest on unliquidated claims to accrue from the date of the offer. If the offer made included amounts for costs or attorneys' fees, an award of sanctions under this Rule shall only be made if the judgment finally obtained, exclusive of any attorneys' fees or costs awarded and included therein, is equal to, or more favorable to the offeror than, that portion of the offer stating the award to be made on the causes of action asserted.

**(e) Multiple Offerors.** Multiple parties may make a joint unapportioned offer of judgment to a single offeree.

**(f) Multiple Offerees.** Unapportioned offers may not be made to multiple offerees. However, one or more parties may make to two or more other parties an apportioned offer of judgment that is conditioned upon acceptance by all of the offerees. Each offeree may serve a separate written notice of acceptance of the offer. If fewer than all offerees accept, then the offeror may nevertheless enforce any number of the acceptances if (i) the offer discloses that the offeror may exercise this option, and (ii) the offeror serves written notice of final acceptance no later than 10 days after the expiration of the effective period of the offer. The sanctions provided in this Rule apply to each offeree who did not accept the apportioned offer.

**(g) Sanctions.** If the offeree rejects an offer and does not later obtain a more favorable judgment other than pursuant to this Rule, the offeree must pay, as a sanction, reasonable expert witness fees and double the taxable costs, as defined in A.R.S. § 12-332, incurred by the offeror after making the offer and prejudgment interest on unliquidated claims to accrue from the date of the offer. If the judgment includes an award of taxable costs or attorneys' fees, only those taxable costs and attorneys' fees determined by the court as having been reasonably incurred as of the date the offer was made shall be considered in determining if the judgment is more favorable than the offer.

**(e)-(h) Effective Period of Offers; Subsequent Offers; Offers on Damages.** ~~The fact that an offer has been made but not accepted does not preclude a subsequent offer.~~ An offer of judgment made pursuant to this Rule shall remain effective for 30 days after it is served, except that (i) an offer ~~which~~ is made within 60 days after service of the summons and complaint shall remain effective for 60 days after service thereof, and (ii) an offer made within 45 days of trial shall remain effective for 15

days after service. If the effective period is enlarged by the court, the offeror may withdraw the offer at any time after expiration of the initial effective period and prior to acceptance of the offer. The fact that an offer has been rejected does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, ~~the any party adjudged liable~~ may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not fewer less than 10 days before ~~prior to~~ the commencement of hearings to determine the amount or extent of liability.

#### 2007 Amendments

The former subsection (c) regarding attorneys' fees has been deleted. Under the amended rule, unless specifically stated otherwise, all offers include an amount for attorneys' fees if an award of fees has been sought in the action. In determining whether sanctions are appropriate, the court may require a hearing to determine the amount of attorneys' fees reasonably incurred as of the date the offer was made. Cf. Ariz.R.Civ.Proc. 54(g)(3). In subsections (e) and (f), provisions for joint and apportioned offers have been added. The "taxable costs" awarded as sanctions under subsection (g) would not preclude an award of costs otherwise awardable under A.R.S. §12-341 to the "successful party." *Drozda v. McComas*, 181 Ariz. 82, 85, 887 P.2d 612, 615 (App. 1995).