

Committee on Civil Rules of Procedure for Limited Jurisdiction Courts
MEETING AGENDA

Thursday, June 9, 2011

10:00 AM to 3:00 PM

State Courts Building * 1501 W. Washington * Conference Room 345(B) * Phoenix, AZ

Conference call-in number: (602) 452-3192 Access code: 1114

Item no. 1	Call to Order. Introductory comments. Approval of the April 20, 2011 meeting minutes.	<i>Mr. Julien, Chair</i>
Item no. 2	Continuation from the April 20, 2011 meeting of a presentation by workgroup #2 on Rules 7.1, 7.2, 16, 16.1, 16.2, 16.3, and 26 through 53.	<i>Judge Davis Judge Williams Ms. Johnston Mr. McKay</i>
	Lunch.	
Item no. 3	Workgroup #3: Rules 54 through 86.	<i>Judge Felix Judge Hegyi Ms. Fabian Mr. Hammerman Mr. Jones Mr. Rosenbaum</i>
Item no. 4	Discussion of next steps.	<i>Mr. Julien All</i>
Item no. 5	Call to the Public. Adjourn.	<i>Mr. Julien</i>

Items on this Agenda, including the Call to the Public, may be taken out of the indicated order.

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

Persons with a disability may request reasonable accommodations by contacting Julie Graber at (602) 452-3250. Requests should be made as early as possible to allow time to arrange accommodations.

Please note the date of the next Committee meeting:

Wednesday, July 20, 2011: 10:00 a.m. to 3:00 p.m.

Room 230, State Courts Building, 1501 West Washington, Phoenix

ARIZONA SUPREME COURT
Committee on Civil Rules of Procedure in Limited Jurisdiction Courts
Draft Minutes
 April 20, 2011

Members present:

Hon. Paul Julien, Chair
 Hon. Timothy Dickerson
 Hon. Hugh Hegyi
 Mary Blanco
 David Hameroff
 Emily Johnston
 William Klain
 David Rosenbaum

Hon. Jill Davis
 Hon. Maria Felix
 Hon. Gerald Williams
 Veronika Fabian
 Stanley Hammerman
 Nathan Jones
 George McKay
 Anthony Young

Members not present:

Roger Wood

Guests:

Jerri Medina
 Theresa Barrett

Staff: Mark Meltzer, Tama Reily, Julie Graber

1. Call to Order; introductions; approval of meeting minutes. The Chair called the meeting to order at 10:05 a.m. The Chair introduced Judge Hugh Hegyi and Ms. Veronika Fabian, new members of the Committee, and Ms. Julie Graber, new Committee staff.

The March 31, 2011 meeting minutes were then reviewed.

Motion: A motion was made to approve the March 31, 2011 meeting minutes. The motion was seconded. The motion carried unanimously. **RCiP.LJC 11-005**

After approval of the minutes, the members revisited their charge. The Chair identified a correlation table contained within the Arizona Rules of Family Law Procedure at page 949 of the 2011 volume of the Arizona Rules of Court. This table assists in tying the new family rules to former rules in the Arizona Rules of Civil Procedure. The Chair suggested that a similar table might be useful for any revised rules that may be recommended by this Committee. The Chair added that some communities served by justice court precincts don't have legal aid offices that can provide advice to self-represented litigants, and the court rules may be a primary source of information for these individuals. Members then offered the following comments:

- Rewriting the civil rules for LJ courts in "plain English" would be beneficial, but other changes that would make the administration of justice in LJ courts more effective should also be considered.

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- Rewriting the rules in simpler language does not necessarily require reducing the substance of the rules. Requiring notices to an opposing party at crucial steps of a lawsuit would be effective in informing self-represented individuals of their responsibilities during the litigation process.
- Rules may not be read by self-represented litigants even if the rules are simplified by this Committee. What self-represented litigants need most is basic information on a single page or in very few pages. A good handbook or checklists might be also useful for these litigants. A few courts have developed helpful web pages.
- A small amount of money might mean a lot for litigants in LJ courts. Procedural due process, including notice and an opportunity to be heard, should be an objective of the rules. The rules should provide reasonable limits on the time and expense of litigation.
- The rules of civil procedure are inherently fair, but they may not be used fairly. Unfairness concerns both sides of a case. Self-represented litigants, for example, don't always provide a copy of their answer to the plaintiff, causing a plaintiff uncertainty about the status of a case or causing a plaintiff to incur additional costs for obtaining a copy of the answer from the court clerk.
- Any solutions recommended by this Committee should promote the parties' understanding of the rules as well as uniform application of the rules by justice courts throughout the state. Certain statutes must also be taken into consideration in drafting new rules. For example, although A.R.S. § 22-215 allows oral pleadings, the rules of procedure and Rule 10 in particular appear to require that pleadings be written.
- The process adopted by RCiP.LJC workgroups of going through each rule and each subsection of every rule will help to address questions under A.R.S. § 22-211 about which superior court rules do or don't apply in LJ courts. However, the process of reviewing each rule and subsection of every rule is time consuming, and it may be necessary in the future to ask the Court for additional time that would allow the Committee to complete its work.

2. Presentation from workgroup #2. The Chair invited Judge Davis and the members of workgroup #2 to discuss their suggestions. Judge Davis referred the Committee members to written materials that had been prepared by the workgroup and staff. These materials contained the language of each existing rule and every subsection of each rule assigned to them; a recommendation in a table format about whether the rule or subsection should apply as written, or whether it should apply as rewritten, should be incorporated by reference, or did not apply; and if the recommendation was to rewrite a rule, the materials provided by the workgroup included draft language for the proposed rule. The Committee then discussed the following rules presented by the workgroup:

Section III: Pleadings and motions; pretrial procedures

Rule 7.1: motions. The workgroup recommended that consideration of this rule be deferred pending a discussion of other rules on motions (such as Rules 56, 59, and 60). The Committee concurred with this recommendation.

Rule 7.2: motions *in limine*. The workgroup recommended that this rule be rewritten, and that it be included with Section VI of the rules concerning trial. The suggested title of this proposed new rule 47 was changed to “pretrial motions regarding evidence”. Following discussion by the Committee, the word “jury” was deleted from subsection (b) of this proposed rule so that it could apply to bench trials as well as to jury trials.

Rule 16: pretrial conferences; scheduling; management. The workgroup recommended that this rule be rewritten under a shortened title of “pretrial conferences”.

- Proposed subsection (g) of this rule, which is new, is entitled “special rule for collection cases.” It was intended to address the large volume of collection cases that are filed, and to provide defendants in those cases at or prior to pretrial conferences with information that would permit them to understand the nature and origin of the alleged debt.

Members expressed concern that the collection industry was being singled out by this proposed provision. Concerns were also expressed that because some courts set pretrial conferences shortly after an answer was filed, plaintiffs’ counsel may not yet have received the appropriate documentation of the debt from their clients. Other members believed that the merits of a case couldn’t be assessed at a pretrial conference without these documents; and that providing these items at or before the pretrial would be beneficial for both sides and would allow the court to conduct a meaningful pretrial, especially because many courts set only one pretrial conference during a case. Some courts refer cases to mediation prior to conducting a pretrial conference.

It was noted that this proposed provision concerns a disclosure obligation, and that it would be more appropriate to include this concept within Rule 26.1. The members agreed on this point. They also agreed that a time frame for providing these documents to a defendant should be included in a Rule 26.1 provision.

- A provision in the revised Rule 16 providing that the court may sanction a party for failing to comply with a discovery requirement, or for failing to appear at a pretrial conference, was modified by the members by deleting the portion about failing to comply with discovery.
- Proposed paragraphs dealing with “settlement” and “settlement conference” were consolidated by the Committee. The Committee declined to include a provision that the parties should only be allowed to discuss settlement in the presence of a third party

neutral; the draft rule therefore provides that judges may discuss settlement with the parties, or the parties may be given an opportunity to discuss settlement themselves.

Rule 16.1: settlement conferences. The Committee agreed with the workgroup's recommendation that this existing rule is unduly detailed for LJ cases, and that the settlement provisions in proposed Rule 16 are sufficient.

Rule 16.2: good faith settlement conferences. Although this rule may not have frequent application in justice court cases, the members concurred with the workgroup's suggestion that the rule be applied by reference, as indicated in proposed Rule 16.2.

Rule 16.3: initial case management conferences in cases assigned to the complex civil litigation program. The Committee members agreed that this rule is exclusively for cases in the superior court and it does not apply in LJ courts.

Section IV: Depositions and discovery

Rules 26(a) and 26(b): discovery methods, and discovery scope and limits. Staff noted that the proposed draft reversed the order of these two subsections, so that discovery scope would precede discovery methods. A provision in the proposed rule regarding non-parties at fault was inadvertently omitted and will be added in the next draft. The Committee agreed that the word "party" should be substituted for "counsel" in a provision regarding discovery motions.

A suggestion was made during the Committee's discussion that these paragraphs should include an explanation of what the term "discovery" means. A member believed that discovery should be allowed only by court order following a motion to permit discovery, although the threshold requirement to allow discovery should be a low one. The majority of members felt that discovery should be allowed without the need for a court order; that requiring a court order might raise due process issues; and that requiring a motion might precipitate an increased workflow and a lack of uniform practices in justice courts.

Rule 36: requests for admissions. The members then focused on requests for admissions ("RFA's") under Rule 36. The core issue was the rule's self-executing sanction that requests are deemed admitted if not timely denied. On the one hand, it was felt that requests to admit and the attendant consequence of deeming matters admitted if not denied are used in practice to deprive parties of their day in court. On the other hand, RFA's were considered to be effective tools for narrowing the issues. One member commented that it was the responsibility of a party who was served with RFA's to participate in the litigation process rather than ignoring the litigation. It was also noted that the "deemed admitted" provision was not truly a sanction, because there was no consequence if a party did what it was otherwise obligated to do under the discovery rules: respond with a timely denial.

The Committee discussed options to mitigate rather than eliminate the self-executing feature of Rule 36. Among the options were:

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- 1) Providing a bold and clear warning upon service of an RFA about the consequences of a failure to timely deny or to respond to the RFA's;
- 2) Allowing a "grace" or "cure" period to respond, similar to the notice requirement for a default under Rule 55;
- 3) Requiring the propounding party to file a motion with the court requesting that the matters be deemed admitted

The prevailing view during the discussions was that the intent of A.O. 2011-13 was not to abolish the consequences of discovery violations, but rather to make those consequences clear and comprehensible. The members unanimously felt that providing a bold and clear explanation of the consequences of failing to timely respond was appropriate. Most members further felt that a grace period should also be added to the rule, but that court action to deem the requests admitted should not be required.

Rule 26.1: prompt disclosure of information. In the course of discussing this proposed rule, Committee members advised that in some counties, the parties are advised by the court of the need to exchange disclosure statements, but that this is not done statewide. A provision should be included in the draft rules to heighten awareness of the disclosure requirements. A proposed provision regarding disclosure of "legal authority" was modified by the Committee to instead require disclosure of a "legal theory". A provision requiring a party to disclose and to provide copies of relevant documents that were known to exist was also modified by the members to require the party to instead disclose a list of those documents "whether favorable or not, and their location if known."

Rule 26.2: exchange of records and discovery limitations in medical malpractice cases. This case type was with very rare exceptions felt to be non-existent in justice court cases, and the rule was therefore not included in the draft of proposed rules.

Rule 27: depositions before action or pending appeal. This rule was believed by the members to be applicable only in the superior court, and it too was not included in the proposed draft.

Rule 28: persons before whom depositions may be taken. The members favored keeping this rule in the proposed draft with modifications suggested by the workgroup that simplify the rule.

Rule 29: stipulations regarding discovery practice. Notwithstanding a recommendation of the workgroup that this rule was unnecessary, after discussion by the members the rule was thought to have value and it should be included in the draft. Staff will rewrite a proposed Rule 29.

3. Next steps. Workgroup #2 will continue its presentation at the next meeting, and if time permits, workgroup #1's recommendations will be revisited. Workgroup #3 will present at the August 11 meeting.

4. Call to the Public; Adjourn. There was no response to a call to the public. The meeting was adjourned at 3:07 p.m.

The next meeting date is **Thursday, June 9, 2011.**

DRAFT

*Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules*

III. PLEADINGS AND MOTIONS; PRETRIAL PROCEDURES

Rule 7.1: Civil Motion Practice

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
7.1	Civil motion practice					Workgroup #2 defers drafting a rule re: motions pending consideration of other motion rules (e.g. rules 56, 59, and 60). Cross-ref existing Rule 43(i).

Rule 7.1: Civil Motion Practice

(a) Formal Requirements. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

All motions made before or after trial shall be accompanied by a memorandum indicating, as a minimum, the precise legal points, statutes and authorities relied on, citing the specific portions or pages thereof, and shall be served on the opposing parties. Unless otherwise ordered by the court, affidavits supporting the motion shall be filed and served together with the motion. Each opposing party shall within ten days thereafter serve and file any answering memorandum. Within five days thereafter the moving party may serve and file a memorandum in reply, which shall be directed only to matters raised in the answering memorandum. Affidavits submitted in support of any answering memorandum or memorandum in reply shall be filed and served together with that memorandum, unless the court permits them to be filed and served at some other time. The trial court may in its discretion waive these requirements as to motions made in open court.

The time and manner of service shall be noted on all such filings, and shall be governed by Rule 6 of these Rules. If the precise manner in which service has actually been made is not noted on any such filing, it will be conclusively presumed that the filing was served by mail, and the provisions of Rule 6(e) of these Rules shall apply. This conclusive presumption shall only apply if service in some form has actually been made. The time periods specified in this paragraph shall not apply where specific times for motions, affidavits or memoranda are otherwise provided by statute, the Rules of Civil Procedure, or order of court.

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The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by this Rule, and all such motions and other papers shall be signed in accordance with Rule 11.

(b) Effect of Non-compliance. If a motion does not conform in all substantial respects with the requirements of this rule, or if the opposing party does not serve and file the required answering memorandum, or if counsel for any moving or opposing party fails to appear at the time and place assigned for oral argument, such non-compliance may be deemed a consent to the denial or granting of the motion, and the court may dispose of the motion summarily.

(c) Law and Motion Day.

(1) Unless local conditions make it impracticable, each superior court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of. The judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

(2) To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(d) Oral Argument. Oral argument shall be limited, in accordance with local rules, to a prescribed number of minutes, which shall not be exceeded without special permission in advance.

(e) Motions for Reconsideration. A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. All motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply, unless the court otherwise directs. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response, a motion authorized by this Rule may not be employed as a substitute for a motion pursuant to Rule 50(b), 52(b), 59 or 60 of these Rules, and shall not operate to extend the time within which a notice of appeal must be filed.

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Rule 7.2: Motions *In limine*

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
7.2	Motions in limine		X			Workgroup #2 suggested that this rule be included with the rules concerning trial. See proposed Rule 46.

Rule 7.2: Motions *In limine*

(a) Within sufficient time to comply with subsection (b) of this rule, the parties shall confer to identify disputed evidentiary issues that are anticipated to be the subject of motions *in limine*.

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

(c) The moving party shall not file a reply in support of its motion *in limine*.

(d) All motions *in limine* submitted in accordance with subsection (b) of this rule shall be ruled upon before trial unless the court determines the particular issue of admissibility is better considered at trial.

(e) Motion *in limine* not filed in accordance with subsection (b) of this rule shall be deemed untimely and shall not be ruled upon prior to trial except for good cause shown.

(f) The failure to file a motion *in limine* in compliance with this rule shall not operate as a waiver of the right to object to evidence at trial.

→ **PROPOSED RULE 46: Pretrial motions regarding evidence**

(a) Duty to confer. *The parties shall confer prior to trial to concerning any disputes on the admissibility of evidence.*

(b) Time for filing. *If there is evidence where the parties cannot agree as to its admissibility at a jury trial, and no later than 30 days before the date of the trial, a party shall file a pretrial motion regarding evidence. A party may respond to a pretrial motion regarding evidence, but the moving party may not file a reply.*

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(c) Ruling. All pretrial motions concerning evidence that are submitted in accordance with this rule shall be ruled upon before the start of the trial unless the court determines the issue of admissibility is better considered at trial.

(d) Right to object. The failure to file a motion in compliance with this rule shall not operate as a waiver of the right to object to evidence at trial.

Rule 16: Pre-trial conferences; scheduling; management

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(a)	Pretrial conferences; objectives		X			See proposed Rule 16

Rule 16(a): Pretrial conferences; objectives

In any action, the court may in its discretion direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate, either in person or, with leave of court, by telephone, in a conference or conferences before trial for such purposes as:

1. expediting the disposition of the action;
2. establishing early and continuing control so that the case will not be protracted because of lack of management;
3. discouraging wasteful pretrial activities; and
4. improving the quality of the trial through more thorough preparation.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(b)	Scheduling and subjects to be discussed at comprehensive pretrial conference in non-medical malpractice cases		X			See proposed Rule 16

Rule 16(b): Scheduling and Subjects to Be Discussed at Comprehensive Pretrial Conference in Non-Medical Malpractice Cases

Except in medical malpractice cases, upon written request of any party the court shall, or upon its own motion the court may, schedule a comprehensive pretrial conference. At any

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comprehensive pretrial conference under this rule, except for conferences conducted in medical malpractice cases, the court may:

(1) Determine the additional disclosures, discovery and related activities to be undertaken and a schedule therefor.

(A) The schedule shall include depositions to be taken and the time for taking same; production of documents or electronically stored information; non-uniform interrogatories; admissions; inspections or physical or mental examinations; and any other discovery pursuant to these rules.

(B) Among other orders the court may enter under this rule, the court may enter orders addressing one or more of the following:

(i) setting forth any requirements or limitations for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;

(ii) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information; and

(iii) adopting any agreements the parties reach for asserting claims of privilege or of protection as to trial preparation materials after production.

(2) Determine a schedule for the disclosure of expert witnesses. Such disclosure shall be within 90 days after the conference except upon good cause shown.

(3) Determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4).

(4) Determine a date for the disclosure of non-expert witnesses and the order of their disclosure; provided, however, that the date for disclosure of all witnesses, expert and non-expert, shall be at least 45 days before the completion of discovery. Any witnesses not so disclosed shall not be allowed to testify at trial unless there is a showing of good cause.

(5) Resolve any discovery disputes which have been presented to the court by way of motion not less than 10 days before the conference. The moving party shall set forth the requested discovery to which objection is made and the basis for the objection. The responding party may file a response not less than 3 days before the conference. No replies shall be filed unless ordered by the court. The court shall assess an appropriate sanction, including those permitted under Rule 16(f), against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist discovery.

(6) Eliminate non-meritorious claims or defenses.

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- (7) Permit the amendment of the pleadings.
- (8) Assist in identifying those issues of fact which are still at issue.
- (9) Obtain stipulations as to the foundation or admissibility of evidence.
- (10) Determine the desirability of special procedures for management of the case.
- (11) Consider alternative dispute resolution.
- (12) Determine whether any time limits or procedures set forth in the discovery rules or set forth in these Rules or Local Rules of Practice should be modified or suspended.
- (13) Determine whether Rule 26.1 has been appropriately complied with by the parties.
- (14) Determine a date for a settlement conference if such a conference is requested by a party or deemed advisable by the court.
- (15) Determine a date for filing the joint pretrial statement required by subpart (d) of these Rules.
- (16) Determine a trial date.
- (17) Discuss the imposition of time limits on trial proceedings or portions thereof, 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.
- (18) Make such other orders as the court deems appropriate.
- (19) Determine how verbatim record of future proceedings in the case will be made.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(c)	Scheduling and subjects to be discussed at comprehensive pretrial conference in medical malpractice cases				X	

Rule 16(c): Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Cases

In medical malpractice cases, within five days of receiving answers or motions from all defendants who have been served, plaintiff shall notify the court to whom the case has been

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assigned so that a comprehensive pretrial conference can be set. Within 60 days of receiving the notice, the court shall conduct a comprehensive pretrial conference. At that conference, the court and the parties shall:

- (1) Determine the discovery to be undertaken and a schedule therefor. The schedule shall include the depositions to be taken, any medical examination which defendant desires to be made of plaintiff and what additional documents, electronically stored information, and other materials are to be exchanged. Only those depositions specifically authorized in the comprehensive pretrial conference shall be allowed except upon stipulation of the parties or upon motion and a showing of good cause. The court, upon request of any defendant, shall require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(A)(2) of these Rules or records ordered to be produced by the court. If records are obtained pursuant to such authorization, the party obtaining the records shall furnish complete copies to all other parties at the sole expense of the party obtaining the records.
- (2) Determine a schedule for the disclosure of standard of care and causation expert witnesses. Except upon good cause shown, such disclosure shall be simultaneous and within 30 to 90 days after the conference, depending upon the number and complexity of the issues. No motion for summary judgment based upon the lack of expert testimony will be filed prior to the expiration of the date set for the simultaneous disclosure of expert witnesses except upon a showing of good cause.
- (3) Determine the order of and dates for the disclosure of all other expert and non-expert witnesses, provided that the date for disclosure of all witnesses, expert and non-expert, shall be at least 45 days before the close of discovery. Any witnesses not appropriately disclosed shall be precluded from testifying at trial unless there is a showing of extraordinary circumstances.
- (4) Limit the number of experts as provided in Rule 26(b)(4)(D) of these Rules.
- (5) Determine whether additional non-uniform interrogatories and/or requests for admission or production are necessary and, if so, limit the number.
- (6) Resolve any discovery disputes which have been presented to the court by way of motion within 10 days before the conference. The moving party shall set forth the question or answer to which objection is made and the basis for the objection. The responding party may file a response within 3 days of the conference. No replies shall be filed unless ordered by the court. The court shall assess an appropriate sanction, including any order under Rule 37(b)(2) of these Rules, against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist discovery.
- (7) Discuss alternative dispute resolution, including mediation, and binding and non-binding arbitration.

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- (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 subpart (d) of this Rule.
- (11) Set a trial date.
- (12) Make such other orders as the court deems appropriate.
- (13) Determine how verbatim record of future proceedings in the case will be made.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(d)	Joint pretrial statement; preparation; final pretrial conference				X	

Rule 16(d): Joint Pretrial Statement: Preparation; Final Pretrial Conference

(1) Counsel or the parties who will try the case and who are authorized to make binding stipulations shall confer and prepare a written joint pretrial statement, signed by each counsel or party, that shall be filed five days before the date of the final pretrial conference, or if no conference is scheduled, five days before trial. Plaintiffs shall submit their portion of the joint pretrial statement to all parties no later than twenty days before the statement is due. All other parties shall submit their portion of the joint pretrial statement to all parties no later than fifteen days before the statement is due.

(2) The joint pretrial statement shall contain the following:

(A) Stipulations of material fact and law;

(B) Such contested issues of fact and law as counsel can agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law believed by that party to be material;

(D) A list of witnesses intended to be used by each party during trial. Each party shall list any objections to a witness and the basis for that objection. No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;

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(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence, such stipulations being subject to court approval;

(F) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony and the basis for any objections. Except for good cause shown, no deposition testimony shall be used at trial other than that designated or counter--designated or 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 shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

(H) Technical equipment needed or interpreters requested;

(I) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(J) Whether any party will be invoking Rule 615 of the Arizona Rules of Evidence regarding exclusion of witnesses from the courtroom; and

(K) A brief description of settlement efforts.

(3) At the time of the filing of the joint pretrial statement, the parties shall 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 (C) a statement by each party on how a verbatim record of the trial will be made.

(4) Each party intending to submit a jury notebook to the jurors shall submit a copy of the notebook to opposing counsel five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

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(5) Each party who will be submitting a trial memorandum shall file such memorandum five days before the final pretrial conference, or if no conference is scheduled, five days before the trial.

(6) Any final pretrial conference scheduled by the court shall be held as close to the time of trial as reasonable under the circumstances. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(7) The provisions of this rule may be modified by order of the court.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(e)	Pretrial orders		X			See proposed Rule 16

Rule 16(e): Pretrial Orders

After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(f)	Sanctions		X			See proposed Rule 16

Rule 16(f): Sanctions

If a party or attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a scheduling or pretrial conference or in the preparation of the joint pretrial statement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, any of the orders provided in Rule 37(b)(2)(B), (C), or (D). In lieu of or in addition to any other sanction, the judge shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorneys' fees, or payment of an assessment to the clerk of the court, or both, unless the judge finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(g)	Alternative dispute resolution		X			See proposed Rule 16

Rule 16(g): Alternative Dispute Resolution

(1) Upon motion of any party, or upon its own initiative after consultation with the parties, the court may direct the parties in any action to submit the dispute which is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

(2) The Parties' Duty to Consider ADR, and to Confer and Report.

(A) No later than 90 days following the first appearance of a defendant, the parties shall confer, either in person or by telephone, about:

(1) the possibilities for a prompt settlement or resolution of the case; and

(2) whether they might benefit from participating in some alternative dispute resolution (“ADR”) process, the type of process that would be most appropriate in their case, the selection of an ADR service provider and the scheduling of the proceedings.

(B) The attorneys of record and all unrepresented parties who have appeared in the case are jointly responsible for attempting in good faith to settle the case or agree on an ADR process and for reporting the outcome of their conference to the court. Within 30 days after their conference, the parties shall inform the court by means of a text prescribed in an official form promulgated pursuant to Rule 84 of the following:

(1) if the parties have agreed to use a specific ADR process, the type of ADR process to be used, the name and address of the ADR service provider they will use and the date by which the ADR proceedings will be completed;

(2) if the parties have not agreed to use a specific ADR process the position of each party as to the type of ADR process that is appropriate for their circumstances or, in the alternative, why ADR is not appropriate; and

(3) whether any party requests that the court conduct a conference to consider ADR.

(C) Unless the parties have agreed to use a specific ADR process, the court may direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to discuss with a court-appointed ADR specialist, either in person or by

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telephone, whether ADR is appropriate and the types of ADR processes that might benefit their case.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16(h)	Time limitations		X			See proposed Rule 16

Rule 16(h): Time Limitations

The court may impose reasonable time limits on the trial proceedings or portions thereof.

→ **PROPOSED RULE 16: Pre-trial conferences**

(a) **Purpose.** *The purpose of a pre-trial conference is for the parties to discuss the status of a lawsuit with the court, and to determine what will happen next.*

(b) **Trial Date Coordination.** *At the pre-trial conference, the parties should be prepared to advise the court which exhibits and what witnesses they will use at trial, and how much time they expect they will need for presenting their case. The parties should also be prepared to discuss a trial date.*

~~(c) **Settlement.** *The judge may discuss settlement with the parties or the parties may be given an opportunity to discuss the case themselves.*~~

~~(d) (c) **Settlement conference.** *The court may set the case for a settlement conference either before or after the pre-trial conference. The judge may discuss settlement with the parties or the parties may be given an opportunity to discuss the case themselves. A settlement conference is not binding and if the case is not settled at a settlement conference, it will likely be set for a trial.*~~

~~(e) **Discovery.** *The parties must exchange disclosure statements before the pre-trial conference. The court will decide whether either side needs additional information from the other and if so, the court may set deadlines for exchanging information.*~~

~~(f)(d) **Pending Motions.** *If a party has filed a motion, the time to respond to that motion remains in effect even if the court has set a pre-trial conference date. The court may rule on a pending motion before the pre-trial conference, and if a ruling on the motion results in either a judgment or a dismissal, the court will then vacate the previously scheduled pre-trial conference.*~~

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~~(g) **Special Rule for Collection Cases.** If the plaintiff is attempting to collect a written consumer debt, then on or before the date of the pre-trial conference, the plaintiff must supply the defendant with reasonably available documents that provide a basis for the underlying debt.~~

~~(h)(e) **Sanctions.** If a party fails to appear for the pre-trial conference, then the court may sanction a party. These sanctions include, but are not limited to, preventing proposed evidence from being admitted, granting a default judgment, or dismissing the case.~~

Rule 16.1: Settlement Conferences: Objectives

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16.1	Settlement conference; objectives		X			See proposed Rule 16(d)

Rule 16.1: Settlement Conferences: Objectives

(a) Mandatory Settlement Conferences. Except as to lower court appeals, medical malpractice cases, and cases subject to compulsory arbitration under A.R.S. § 12-133, in any action in which a motion to set and certificate of readiness is filed, the court, at the request of any party, shall, except for good cause shown, direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate either in person or, with leave of court, by telephone, in a conference or conferences before trial for the purpose of facilitating settlement. Unless otherwise ordered by the court, all requests for settlement conferences shall be made not later than 60 days prior to trial. The court may also schedule a settlement conference upon its own motion.

In medical malpractice cases, the court shall conduct a mandatory settlement conference no earlier than four (4) months after the conduct of the comprehensive pretrial conference and no later than thirty (30) days before trial.

(b) Scheduling and Planning. The court shall enter an order that sets the date for the settlement conference, a deadline for furnishing settlement conference memoranda, and other matters appropriate in the circumstances of the case. An order setting a settlement conference shall not be modified except by leave of court upon a showing of good cause.

(c) Settlement Conference Memoranda. At least five (5) days prior to the settlement conference, each party shall furnish the court with a separate memorandum. In non-medical malpractice cases, the memorandum shall not be filed with the clerk of the court, and the parties shall furnish the memoranda sealed to the division assigned to the case. In medical malpractice cases, the settlement conference memoranda shall be filed and exchanged. Each memorandum shall address the following:

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- (1) a general description of the issues in the lawsuit, and the positions of each party with respect to each issue;
- (2) a general description of the evidence that will be presented by each side with respect to each issue;
- (3) a summary of the settlement negotiations that have previously occurred;
- (4) an assessment by each party of the anticipated result if the matter did proceed to trial; and
- (5) any other information each party believes will be helpful to the settlement process.

No part of any settlement conference memorandum shall be admissible at trial.

(d) Attendance. Settlement conferences shall be attended by all of the parties to the litigation and their counsel unless specifically excused for good cause by the court. In addition, the defendants shall have a representative present with actual authority to enter into a binding settlement agreement. All participants shall appear in person except pursuant to stipulation of the parties or order of the court.

(e) Confidentiality. The court shall order that discussions in settlement conferences shall be confidential among the parties, their counsel and the court.

(f) Discretion to Transfer. The court, upon its own motion, or upon the motion of a party, may transfer the settlement conference to another division of the court, willing to conduct the settlement conference.

(g) Ex Parte Communications. At any settlement conference conducted pursuant to this Rule, the court, with the consent of all those participating in the conference, may engage in *ex parte* communications if the court determines that will facilitate the settlement of the case.

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

Rule 16.2: Good faith settlement hearings

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16.2(a)	Good faith settlement hearing: petition			X		See proposed Rule 16.2

Rule 16.2(a). Petition

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In any action where it is alleged that two or more parties are joint tortfeasors, and a settlement is entered into by any of the parties to the action, the court, upon petition of any party, shall make a formal determination whether the settlement is made in good faith. Any petition shall be accompanied by affidavits. If the petition is filed by the parties to the settlement, such affidavits shall set forth the terms of the settlement and the circumstances establishing the good faith of the settlement.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16.2(b)	Good faith settlement hearing: objection to petition			X		See proposed Rule 16.2

Rule 16.2(b). Objection to Petition

Within ten days after a petition has been filed, any other party may file an objection to the petition, supported by accompanying affidavits. Replies to the objection shall be filed within ten days of service of the objection. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16.2(c)	Good faith settlement hearing: hearing			X		See proposed Rule 16.2

Rule 16.2(c). Hearing

Upon timely request of any party, the court shall set a time for hearing of the objection. If no request is made, the court may, in its discretion, set a time for such hearing, or rule without a hearing. If a hearing is set, the court shall consider the circumstances and evidence set forth in the parties' affidavits, and shall receive other evidence as presented.

→ **PROPOSED RULE 16.2: Good faith settlement hearings**

In any action where it is alleged that two or more parties are joint tortfeasors, and a settlement is entered into by any of the parties to the action, the court, upon petition of any party, shall make a formal determination whether the settlement is made in good faith. The procedures for a petition for a good faith settlement hearing, objecting to a petition, and the hearing are governed by Rule 16.2 of the Arizona Rules of Civil Procedure.

Rule 16.3: Initial Case Management Conference in Cases Assigned to the Complex Civil Litigation Program

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
16.3	Initial case management conference in cases assigned to the complex civil litigation program				X	

Rule 16.3: Initial Case Management Conference in Cases Assigned to the Complex Civil Litigation Program

(a) Subjects for Consideration. Once a case is determined to be a complex civil case, an initial case management conference with all parties represented shall be conducted at the earliest practical date, and a Case Management Order issued by the court promptly thereafter. Among the subjects that should be considered at such a conference are:

- (1) Status of parties and pleadings
- (2) Determining whether severance, consolidation, or coordination with other actions is desirable
- (3) Scheduling motions to dismiss or other preliminary motions
- (4) Scheduling class certification motions, if applicable
- (5) Scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master
- (6) Issuing protective orders
- (7) Any requirements or limitations for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
- (8) Any measures the parties must take to preserve discoverable documents or electronically stored information;
- (9) Any agreements reached by the parties for asserting claims of privilege or of protection as to trial-preparation materials after production;
- (10) Appointing liaison counsel and admission of non-resident counsel
- (11) Scheduling settlement conferences

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- (12) Notwithstanding Rule 26.1, the establishment and timing of disclosure requirements
- (13) Scheduling expert disclosures and whether sequencing of expert disclosures is warranted
- (14) Scheduling dispositive motions
- (15) Adopting a uniform numbering system for documents and establishing a document depository
- (16) Determining whether electronic service of discovery materials and pleadings is warranted
- (17) Organizing a master list of contact information for counsel
- (18) Determining whether expedited trial proceedings are desired or appropriate
- (19) Scheduling further conferences as necessary
- (20) Use of technology, videoconferencing and/or teleconferencing
- (21) Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof
- (22) Such other matters as the court or the parties deem appropriate to manage or expedite the case

(b) Meeting of Parties Before Conference. Before the date set by the court for the initial case management conference, all parties who have appeared in the action, or their attorneys, shall meet and confer concerning the matters to be raised at the conference, shall attempt in good faith to reach agreement on as many case management issues as possible, and shall submit a joint report to the court no later than seven (7) days before the initial case management conference. A party who fails to participate in good faith shall be subject to sanctions.

(c) Purpose of Conference. The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(d) Establishing Time Limits. Time limits should be regularly used to expedite major phases of complex civil cases. Time limits should be established early, tailored to the circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference shall be set by the court as early as possible with a trial date to follow within 60 days of the final pre-trial conference.

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(e) Commencement of Discovery. Absent an order of the court, or by stipulation of the parties filed with the court, no party may initiate discovery or disclosure in a complex civil case until the court has issued a Case Management Order following the initial case management conference.

V. DEPOSITIONS AND DISCOVERY

Rule 26: General provisions governing discovery

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(a)	Discovery methods		X			See proposed Rule 26(b)

Rule 26(a). Discovery methods

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(b)	Discovery scope and limits		X			See proposed Rules 26(a) and (f)

Rule 26(b). Discovery Scope and Limits

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

(A) Parties may obtain discovery regarding any matter, not privileged, which is 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, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

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(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause considering the limitations in the final paragraph of subsection (b)(1) of this Rule. The court may specify conditions for the disclosure or discovery.

(C) The frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) *Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) *Trial preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court

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order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may through interrogatories or by deposition 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, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) In all cases including medical malpractice cases. each side shall presumptively be entitled to only one independent expert on an issue, except upon a showing of good cause. Where there are multiple parties on a side and the parties cannot agree as to which independent expert will be called on an issue, the court shall designate the independent expert to be called or, upon the showing of good cause, may allow more than one independent expert to be called.

In medical malpractice cases, each party shall presumptively be entitled to only one standard-of-care expert. A defendant may testify on the issue of that defendant's standard-of-care in addition to that defendant's independent expert witness and the court shall not be required to allow the plaintiff an additional expert witness on the issue of the standard-of-care.

(5) *Non-party at Fault.* Any party who alleges pursuant to A.R.S. § 12-2506(B) (as amended), that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action shall provide the identity, location, and the facts supporting the claimed liability of such nonparty at the time of compliance with the requirements of Rule 38.1(b)(2) of these Rules, or within one hundred fifty (150) days after the filing of that party's answer,

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whichever is earlier. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any nonparty whose identity is not disclosed in accordance with the requirements of this subpart 5 except upon written agreement of the parties or upon motion establishing good cause, reasonable diligence, and lack of unfair prejudice to other parties.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(c)	Protective orders		X	X		See proposed Rule 26(e).

Rule 26(c). Protective Orders

(1) Subject to paragraph (2) of this rule, upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(2) Before entering an order in any way restricting a party or person from disclosing information or materials produced in discovery to a person who is not a party to the litigation in which the information or materials are being discovered or denying an intervener's request for access to such discovery materials, a court shall direct: (a) the party seeking confidentiality to show why a confidentiality order should be entered or continued; and (b) the party or intervener opposing confidentiality to show why a confidentiality order should be denied in whole or part, modified or vacated. The burden of showing good cause for an order shall remain with the the party seeking confidentiality. The court shall then make findings of fact concerning any relevant factors, including but not limited to: (i) any party's need to maintain the confidentiality of such information or materials; (ii) any nonparty's or intervener's need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety or financial

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welfare to which such information or materials may relate or reveal. Any order restricting release of such information or materials to nonparties or interveners shall use the least restrictive means to maintain any needed confidentiality. No such findings of fact are needed where the parties have stipulated to such an order or where a motion to intervene and to obtain access to materials subject to a confidentiality order are not opposed.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(d)	Sequence and timing of discovery		X			See proposed Rule 26(c)

Rule 26(d). Sequence and timing of discovery

Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(e)	Supplementation of responses		X			See proposed Rule 26(d)

Rule 26(e). Supplementation of Responses

Except as provided in Rule 26.1 a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly 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, the subject matter on which the person is expected to testify and the substance of the person's testimony, (C) the identity of any other person expected to be called as a witness at trial and (D) the identity, location and the facts supporting the liability of any nonparty who is claimed to be wholly or partially at fault in causing any personal injury, property damage or wrongful death, pursuant to A.R.S. § 12-2506(B) (as amended). A party shall supplement responses with respect to any question directly addressed to (B), (C) or (D) prior to sixty (60) days before the date of trial. Any witness not identified in accordance with this Rule shall not be permitted to testify except for good cause shown or upon written agreement of the parties. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any nonparty whose

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identity is not disclosed in accordance with subpart (D) of this rule except for good cause shown or upon written agreement of the parties.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(f)	Discovery requests, responses, objections, and sanctions		X			See proposed Rule 26(f)

Rule 26(f). Discovery Requests, Responses, Objections and Sanctions

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

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(g)	Discovery motions		X			See proposed Rule 26(f)

Rule 26(g). Discovery Motions

No discovery motion will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26(h)	Deleted					Not applicable

Rule 26(h). Deleted. Effective Nov. 1, 1970

→ **PROPOSED RULE 26: General provisions regarding discovery**

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a. Scope of discovery. Parties may obtain discovery regarding any matter that is not privileged, and which is relevant to the facts or issues involved in the lawsuit, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. Check grammar v existing. A party may obtain discovery concerning the existence, description, nature, custody, condition and location of any books, documents, or other things, and the identity and location of persons having knowledge of any discoverable matter. A party may not object to a request for discovery on the grounds that the information sought will be inadmissible at the trial if the information requested appears reasonably calculated to lead to the discovery of admissible evidence. The court may limit discovery or it may limit specific discovery methods as provided by this rule and as provided by Rule 26(c).

b. Discovery methods. A party may obtain discovery from another party by one or more of the following methods: depositions upon oral examination or by written questions; written interrogatories; production of documents or things, or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admissions.

c. Timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence. The fact that a party is conducting discovery will not operate to delay any other party's discovery.

d. Supplementation of discovery responses. A party has a duty to amend a prior discovery response if the party knows that the response was incorrect when it was provided; or if the party knows that the response, although correct when it was provided, is no longer true and a failure to amend the response is in substance a knowing concealment.

e. Protective order. If a motion of a party or of a person from whom discovery is sought shows good reasons, the court may in the interests of justice enter an order to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense in connection with the discovery request. Specific grounds for a motion for a protective order and the procedure to apply for a protective order are contained in Rule 26(c) of the Arizona Rules of Civil Procedure.

f. Discovery motions; sanctions. A discovery motion will be not be considered by the court unless a statement of moving ~~counsel~~ **party** is attached to the motion that certifies that, after personal consultation and good faith efforts to do so, the parties have been unable to satisfactorily resolve the matter. In deciding a discovery motion, the court may assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

g. Specific discovery issues:

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(1) Electronically stored information. Electronically stored information is discoverable. However, a party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense.

(2) Insurance agreements. A party may obtain discovery of any insurance agreement which may be liable for satisfying all or part of a judgment that may be entered in a lawsuit. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Materials prepared for litigation. A party may obtain a statement they made to another party or the other party's representative without showing a substantial need or substantial hardship. Otherwise, a party may not obtain discovery of materials prepared for litigation by another party or by the other party's representative, unless that party seeking discovery shows the court that they have a substantial need for the materials to prepare the lawsuit, and that there is no other way to obtain the materials or their equivalent without substantial hardship.

(4) Experts. A party may use interrogatories, a deposition, or both to discover facts and opinions known by someone who has been identified by another party as an expert witness. The party taking the deposition of an expert witness shall pay the expert a reasonable fee for the expert's time actually spent at deposition.

(5) Non-party at fault. A party who alleges pursuant to A.R.S. § 12-2506(B) that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury or property damage for which damages are sought in the lawsuit shall provide the identity, location, and facts supporting the claimed liability of the non-party within 150 days from the filing of that party's answer. No allocation of liability to any non-party whose identity has not been disclosed as required by this paragraph shall be permitted, except as the parties may agree or as the court may allow for a good reason.

Rule 26.1: Prompt Disclosure of Information

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26.1	Prompt disclosure of information		X			See proposed Rule 26.1

Rule 26.1. Prompt Disclosure of Information

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(a) Duty to Disclose, Scope. Within the times set forth in subdivision (b), each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a fair description of the substance of each witness' expected testimony.

(4) The names and addresses of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies 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 qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.

(7) A computation and the measure of damage alleged by the disclosing party and the documents or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

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

(9) A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection, copying, testing or sampling. Unless good cause is stated for not doing so, a copy of the documents and

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electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

b) Time for Disclosure; a Continuing Duty.

(1) The parties shall make the initial disclosure required by subdivision (a) as fully as then possible within forty (40) days after the filing of a responsive pleading to the Complaint, Counterclaim, Crossclaim or Third Party Complaint unless the parties otherwise agree, or the Court shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the disclosures shall be served as provided by Rule 5. In domestic relations cases involving children whose custody is at issue, the parties shall make disclosure regarding custody issues no later than 30 days after mediation of the custody dispute by the conciliation court or a third party results in written notice acknowledging that mediation has failed to settle the issues, or at some other time set by court order.

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

(3) All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(c) Deleted effective Dec. 1, 1996.

(d) Signed Disclosure. Each disclosure shall be made in writing under oath, signed by the party making the disclosure.

(e) Deleted effective Dec. 1, 1996.

(f) Claims of Privilege or Protection of Trial Preparation Materials.

(1) *Information Withheld.* When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

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(2) *Information Produced.* If a party contends that information subject to a claim of privilege or of protection as trial-preparation material has been inadvertently disclosed or produced in discovery, the party 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 made and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(g) Deleted effective Dec. 1, 1996.

→ **PROPOSED RULE 26.1: Prompt disclosure of information**

a. Duty to disclose. *Each party has a duty to provide the other parties in the case with a written disclosure statement containing information about their claims or defenses. The disclosure statement shall sufficiently inform the other parties about the basis of every claim or defense so that if the case goes to trial, the other parties will have fairly been made aware of all relevant information.*

b. Scope and time of disclosure. *Within forty calendar days after the defendant has filed an answer, each party in the case shall provide to every other party the following information in a disclosure statement:*

1. The facts **and legal theory** supporting the claim or defense, and if there is more than one claim or defense, the facts and legal theory supporting each claim or defense.

~~2. Legal authority such as statutes or case law that may support the claim or defense.~~

3. The name, address, and telephone number of anyone who may be called by that party as a witness at trial, including parties, and a summary of the expected testimony of each witness.

4. If the disclosing party is aware of a person who will not be called as a witness, but who has relevant knowledge of the event or transaction that is the subject of the case, whether favorable or unfavorable, that person's name, address, and telephone number must also be provided in the disclosure statement.

4. If there are experts, the name, address, and telephone number of each person that the disclosing party expects to call as an expert witness at trial, the qualifications of the expert, the subject matter on which the expert is expected to testify, the opinions and conclusions of the expert, and a summary of the facts upon which the expert relies to support those opinions and conclusions.

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5. If the disclosing party is making a claim for money damages, the disclosure statement must include a computation of the amount of the damages.

c. Disclosure of documents. In addition to the information in paragraph (b), each party shall provide with their disclosure statement copies of:

1. Every document that the party intends to use at trial, including electronically stored documents.
2. Any written or recorded statement of a witness.
3. Any report prepared by an expert witness.
4. A list of all relevant documents that are known to exist, whether favorable or not, and their location if known.

If a party possesses or may readily obtain a document that is or may be favorable to an opposing party, the document shall also be disclosed.

d. Disclosure of documents or objects for inspection. If the party intends to use at trial any document, object, or exhibit that cannot be easily duplicated, the party shall notify the other parties of this item in the disclosure statement, and shall make the item reasonably available for inspection by the other parties. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

e. Signed disclosure. Each party's disclosure statement shall be signed by the party under oath. If the party has an attorney, the attorney shall sign the disclosure statement as required by these rules. The disclosure statement shall be served on every other party in the case in the manner provided by Rule __ of these rules.

f. Continuing duty to disclose. The duty to make disclosures required under this rule is a continuing duty. If a party discovers new or different information or documents after their initial disclosure, the party has a responsibility to prepare an amended or supplemental disclosure statement containing this additional information or document and to provide that to the other parties.

g. Claim of privilege. A party is not required to disclose information that is legally privileged or that has been prepared in preparation for litigation, except as provided in Rule 26(f)(3).

h. Penalties for failure to disclose or to timely disclose, or for disclosure of inaccurate information. The court may penalize any party who fails to disclose, or who fails to timely disclose significant information, or who discloses inaccurate information. The penalties can include an order by the court that certain witnesses or exhibits may not be used at trial; that a particular fact is deemed established; that a pleading, or a claim or defense in a pleading, be stricken; or that the party be assessed the reasonable attorneys fees, costs, and expenses of a

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party who was harmed by the inaccurate disclosure or the failure to disclose or to timely disclose. The court may also impose any other penalty that is reasonable and appropriate for the disclosure violation, as set forth in Rules 37(c) and 37(d) of the Arizona Rules of Civil Procedure.

Rule 26.2: Exchange of Records and Discovery Limitations in Medical Malpractice Cases

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
26.2	Exchange of records and discovery limitations in medical malpractice cases				X	

Rule 26.2. Exchange of Records and Discovery Limitations in Medical Malpractice Cases

(a) Exchange of Records.

(1) Within five days of the date that plaintiff notifies the court pursuant to Rule 16(c) of these Rules that all served defendants have either answered or filed motions, plaintiff shall serve upon defendant copies of all of plaintiff's available medical records relevant to the condition which is the subject matter of the action.

(2) Within ten days of the date of service by plaintiff of such records, each defendant shall serve upon plaintiff copies of all of plaintiff's medical records relevant to the condition which is the subject matter of the action.

(3) In lieu of serving copies of the above-described records counsel may, before the date set for exchange of records, inquire of opposing counsel concerning the documents or electronically stored information which opposing counsel wishes produced and may then produce copies of only those records which are specifically requested.

(b) Discovery Limitations. Before the comprehensive pretrial conference contemplated by Rule 16(c) of these Rules, the parties may exchange the uniform interrogatories set forth in the Appendix and 10 additional non-uniform interrogatories. Any subparagraph of a non-uniform interrogatory will be treated as one non-uniform interrogatory. The parties may also submit a request for production of documents pursuant to Rule 34 of these Rules, requesting the following items:

1. A party's wage information where relevant.
2. Written or recorded statements by any party or witness including reports or statements of experts.
3. Any exhibits intended to be used at trial.

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4. Incident reports.

In addition, the depositions of the parties and any known liability experts may be taken. No other discovery is permitted before the comprehensive pretrial conference except pursuant to stipulation of the parties, or, upon motion and a showing of good cause. Stipulations for additional discovery shall not be unreasonably withheld.

Rule 27: Depositions before action or pending appeal

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
Rule 27(a)	Before action; petition; notice and service; order and examination; use of deposition				X	

Rule 27(a). Before Action; Petition; Notice and Service; Order and Examination; Use of Deposition

1. A person who desires to perpetuate that person's own testimony or that of another person regarding any matter that may be cognizable in any court may file a verified petition in the superior court in the county of the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show:

(i) That the petitioner expects to be a party to an action cognizable in a court but is presently unable to bring it or cause it to be brought.

(ii) The subject matter of the expected action and the petitioner's interest therein.

(iii) The facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it.

(iv) The names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known.

(v) The names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each. The petition shall also ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

2. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or

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without the state in the manner provided in Rule 4.1 or Rule 4.2 of these rules for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise, and shall appoint, for persons not served in the manner provided in Rule 4.1 or Rule 4.2 an attorney who shall represent them, and, in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17(g) shall apply.

3. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules, and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

4. If a deposition to perpetuate testimony is taken under these Rules, it may be used in any action involving the same subject matter subsequently brought, in accordance with the provisions of Rule 32(a).

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
27(b)	Pending appeal				X	

Rule 27(b). Pending appeal

If an appeal has been taken from a judgment of a superior court or before taking an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show the names and addresses of the persons to be examined, the substance of the testimony which the party expects to elicit from each and the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in actions pending in the superior court.

Rule 28: Persons Before Whom Depositions May Be Taken

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
28(a)	Within the United States; commission or letters rogatory		X			See proposed Rule 28(a)

Rule 28(a). Within the United States; commission or letters rogatory

Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States, the State of Arizona, or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony. Depositions may be taken in this state or anywhere upon notice provided by these Rules without a commission, letters rogatory or other writ. The term officer as used in Rules 30, 31 and 32 includes a person appointed by the court or designated by the parties under Rule 29.

Upon proof that the notice to take a deposition outside this state has been given as provided by these Rules, the party seeking such deposition may, but is not required, after one full day's notice to the other parties, have issued by the clerk, in the form given in such notice, a commission or letters rogatory or other like writ either in lieu of the notice to take the deposition or supplementary thereto. Failure to file written objections to such form before or at the time of its issuance shall be a waiver of any objection thereto. Any objection shall be heard and determined forthwith by the court or judge thereof.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
Rule 28(b)	In foreign countries			X		See proposed Rule 28(a)

Rule 28(b). In foreign countries

In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of the commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by the name or descriptive title. A letter

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rogatory may be addressed “To the Appropriate Authority in (here name the country).” Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
28(c)	Disqualification for interest		X			See proposed Rule 28(b). The short title of this paragraph has been changed.

Rule 28(c). Disqualification for interest

No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

→ **PROPOSED RULE 28: Persons before whom depositions may be taken.**

a. Before whom a deposition may be taken. A deposition shall be taken in Arizona or in another state before an officer authorized to administer oaths. A certified court reporter in Arizona is deemed an officer authorized to administer oaths. Depositions in a foreign country shall be taken before a person as provided in Rule 28(b) of the Arizona Rules of Civil Procedure.

b. Before whom a deposition may not be taken. The officer presiding at a deposition shall not be a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Rule 29: Stipulations regarding discovery procedure

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
29	Stipulations regarding discovery procedure		X		X	Not necessary.

Rule 29. Stipulations regarding discovery procedure

Unless the court orders otherwise, the parties may by stipulation (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, including extending the time provided in Rules 33, 34, and 36 for responses to discovery.

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PROPOSED RULE 29: Agreements concerning discovery procedures

Unless the court orders otherwise, the parties may agree that a deposition may be taken before any person, or at any place and time, upon any notice, or in any manner; and a deposition that is taken based on such an agreement may be used like any other deposition. The parties may also agree to modify any other procedure provided by these rules for discovery, including rules that provide the deadlines for responding to discovery requests.

Rule 30: Depositions Upon Oral Examination

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(a)	When depositions may be taken		X			See proposed Rule 30(a)

Rule 30(a). When Depositions May Be Taken

After commencement of the action, the testimony of parties or any expert witnesses expected to be called may be taken by deposition upon oral examination. Depositions of document custodians may be taken to secure production of documents and to establish evidentiary foundation. No other depositions shall be taken except upon: (1) agreement of all parties; (2) an order of the court following a motion demonstrating good cause, or (3) an order of the court following a Comprehensive Pretrial Conference pursuant to Rule 16(c).

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

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(b)	Notice of examination; general requirements; special notice; method of recording; production of documents and things; deposition of organization; deposition by telephone		X			See proposed Rule 30(a), (b), (c), (d), (e), (f), and (m)

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Rule 30(b). Notice of Examination; General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone

(1) Absent a stipulation of all parties to the action or an order of the court authorizing a briefer notice, a party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least ten days prior to the date of the deposition. The notice shall state the date, time and place for taking the deposition, the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and the name and address of the person before whom the deposition shall be taken. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Arizona, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11(a) are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Unless the parties stipulate or the court orders otherwise, the deposition shall be recorded by a certified court reporter and may also be recorded by audio or audio-video means.

When a deposition is recorded only by a certified court reporter, the party taking the deposition shall bear the cost of the recording. If requested by one of the parties, the testimony shall be transcribed. If the testimony is transcribed, the party noticing the deposition or the party causing the deposition to be taken shall be responsible for the cost of the original transcript. A party may arrange to have a certified copy of the transcript made at the party's own expense. If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording, and a party requesting an

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audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy.

When a deposition is recorded only by audio or audio-video means, the party noticing the deposition shall bear the cost of the recording. A party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a certified transcript made at the party's own expense.

Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition.

Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement or notation on the record by the officer that includes (A) the officer's name, certification number, if any, and business address; (B) the date, time and place of the deposition; (C) the name of the deponent; (D) the administration of the oath or affirmation to the deponent; and (E) an identification of all persons present. The officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state or note on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

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(7) The parties may stipulate or the court may order that a deposition be taken by telephone. For the purpose of this Rule and Rules 28(a), 37(a)(1), 45(c)(3)(A)(ii), and 45(e), a deposition is taken in the county where the deponent is to answer questions propounded to the deponent.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(c)	Examination and cross-examination; record of examination; oath; objections		X			See proposed Rules 30(g), (h), and (i)

Rule 30(c). Examination and Cross-Examination; Record of Examination; Oath; Objections

Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Arizona Rules of Evidence. The examination shall commence at the time and place specified in the notice or within thirty minutes thereafter. And, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays and legal holidays until completed. Any party not present within thirty minutes following the time specified in the notice of taking deposition waives any objection that the deposition was taken without that party's presence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. If the deposition is taken telephonically and the witness is not physically in the presence of the officer before whom the deposition is to be taken, the officer may nonetheless place the witness under oath with the same force and effect as if the witness were physically present before the officer. The testimony shall be taken in accordance with subdivision (b)(4) of this rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. The court shall assess an appropriate sanction, including a sanction provided for under Rule 16(f), against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(d)	Length of deposition; motion to terminate or limit examination		X			See proposed Rules 30(i) and (j)

Rule 30(d). Length of Deposition; Motion to Terminate or Limit Examination

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Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties, or, upon motion and a showing of good cause. The court shall impose sanctions pursuant to Rule 16(f) for unreasonable, groundless, abusive or obstructionist conduct.

At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(e)	Submission to witness; changes, signing		X			See proposed Rule 30(k)

Rule 30(e). Submission to Witness; Changes, Signing

Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be submitted within the time period provided, the officer shall indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
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30(f)	Certification and delivery by officer; exhibits; copies		X	X		See proposed Rule 30(l)
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Rule 30(f). Certification and Delivery by Officer; Exhibits; Copies

(1) The officer must certify that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer must securely seal the deposition in an envelope or package endorsed with the title of the action and marked “Deposition of [here insert name of witness]” and must promptly send it to the attorney who arranged for the transcript or recording, who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration. Documents and things produced for inspection during the examination of the witness must, upon the request of a party, be marked for identification and annexed to the deposition and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may (A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (B) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the certified court reporter shall preserve the record of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of reasonable charges therefor, the certified court reporter shall furnish a copy of the transcript of the deposition to any party or to the deponent.

If the record of the deposition is created solely by audio or audio-video means, and unless otherwise ordered by the court or agreed by the parties, the officer shall retain the original recording of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court in such place and manner as to ensure its availability to the court or any party upon request. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(g)	Failure to attend or to serve subpoena; expenses		X			See proposed Rule 30(n)

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Rule 30(g). Failure to attend or to serve subpoena; expenses

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(h)	Depositions for foreign jurisdiction				X	

Rule 30(h). Depositions for foreign jurisdiction

When an action is pending in a jurisdiction foreign to the State of Arizona and a party or a party's attorney wishes to take a deposition in this state, it may be done and a subpoena or subpoena duces tecum may issue therefor from the Superior Court of this state. The party or the attorney shall file, as a civil action, an application, under oath, captioned as is the foreign action, which contains the following information:

- (a) The caption of the case and the court in which it is pending including the names of all parties and the names of the attorneys for the parties;
- (b) References to the law of the jurisdiction in which the action is pending which authorized the taking of the deposition in this state and such facts as, under that law, must appear to entitle the party to take the deposition and have a subpoena issued for the attendance of the witness;
- (c) A certified copy of the notice of taking deposition, order of the court authorizing the deposition, commission or letters rogatory or such other pleadings as, under the law of the foreign jurisdiction, are necessary in order to take the deposition;
- (d) A description of the notice given to other parties and a description of the service of the application to be made upon other parties to the action.

Upon the filing of the application, the clerk of the Superior Court of the county in which the deposition is to be taken shall forthwith issue the subpoena or subpoena duces tecum as

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requested by the application. An affidavit of service of the application upon all other parties to the civil action shall be filed with the clerk of the court.

No further proceedings in the Superior Court of the State of Arizona are required but any party or the witness may make such motions as are appropriate under the Arizona Rules of Civil Procedure.

→ ***PROPOSED RULE 30: Depositions upon oral examination***

a. Who may be deposed; when depositions may be taken. *The testimony of a party or an expert witness may be taken by deposition. The deposition of a documents custodian may be taken to obtain the production of documents from a non-party. No other depositions may be taken except upon agreement of the parties, or upon order of the court based on a motion establishing a good reason. A deposition may be taken after thirty days following service of the summons and complaint, unless the notice of deposition states that the person to be deposed is about to leave the State of Arizona within thirty days, and will thereafter be unavailable; or unless the court for a good reason permits the taking of a deposition within thirty days of service.*

b. Written notice of deposition. *A written notice of a deposition shall be given to every other party at least ten days before the date of the deposition. The notice shall state the date, time, and place for taking the deposition, and the name and address of the person being deposed. The parties may agree or the court may order that a deposition be taken by telephone.*

c. Deposition with a request for documents. *A deposition notice to a party deponent may include a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedures in Rule 34 shall apply to the request. If a subpoena requesting documents will be served on a non-party who is being deposed, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.*

d. Notice of deposition of custodian of documents. *A notice of deposition for a custodian of documents shall contain the information specified in paragraph (b), and in addition, shall identify the documents or other materials to be produced.*

e. Notice of deposition of an organization. *A deposition notice may name as the deponent a public or private corporation or a partnership or association or governmental agency, and the notice may designate with reasonable particularity the matters on which the deposition is requested. The organization named in the notice shall designate one or more of its officers, directors, managing agents, or other persons who will testify on its behalf and for each person designated, the matters on which that person will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.*

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f. Notice of method of recording. A deposition shall be recorded by a certified court reporter. A notice of deposition shall specify whether the deposition will also be recorded by audio or by video, and if so, the technique for recording the deposition and the protocols to be used, the identity of the person making the audio or video recording, and if the deposition will be recorded by video, the placement of the camera. The parties may stipulate to other provisions to assure that testimony recorded by audio or video methods will be accurate and trustworthy.

g. Start of deposition. A deposition shall start at the place specific in the notice, and at the designated time or within thirty minutes of that time. A party not present within thirty minutes of the designated time waives any objection that the deposition was started without the party's presence. The person being deposed, including a person who is being deposed by telephone, shall be placed under oath at the start of the deposition by the officer before whom the deposition is taken.

h. Examination of the deponent. After being placed under oath, the person being deposed may be examined and cross-examined as permitted at trial. All objections made during the deposition shall be noted by the officer taking the deposition. Evidence objected to shall be taken subject to the objections.

i. Misconduct during a deposition. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or the court may limit the scope and manner of the taking of the deposition. The court shall assess an appropriate sanction against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct during a deposition.

j. Length of a deposition. Every depositions shall be of reasonable length, and no deposition of a party, an expert, or other person shall exceed four hours, unless by agreement of the parties or by order of the court for good reasons.

k. Submission of the deposition record to the deponent. Before a deposition is completed, the officer recording the deposition or counsel who may be present at the deposition shall advise the deponent of the right to review, modify, and sign the transcript or affirm the accuracy of an audio or video recording. If such a request is made by the deponent before the deposition has been concluded, the deponent shall then have thirty days after being notified by the officer that the transcript is complete or that the recording is available to review the record and to note any changes in form or substance, and to sign a statement reciting the changes and the reasons for each change. If the deponent does not provide changes within that time, the officer may so indicate.

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l. Delivery of the record of deposition. *The officer reporting the deposition must prepare and package the record of the deposition, including exhibits to the deposition, as provided by Rule 30(f) of the Arizona Rules of Civil Procedure.*

m. Cost of recording a deposition. *When a deposition is recorded only by a certified court reporter, the party taking the deposition shall pay the cost of the recording. The court reporter shall provide a transcript of the deposition if requested by one of the parties, and the party noticing the deposition shall be responsible for the cost of the original transcript. Any other party may arrange to have a certified copy of the transcript made at the party's own expense. If audio or audio-video is also requested by one of the parties, the requesting party shall be responsible for the cost of the recording, and a party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy.*

n. Failure to attend a deposition. *If a party who has served a notice of deposition fails to attend and another party or the party's attorney attends pursuant to the notice, the court may order the party giving the notice to pay to the other party their reasonable expenses of attending, including reasonable attorney's fees. If a party who has served a notice of deposition of a witness fails to serve a subpoena upon the witness and the witness because of that failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to the other party their reasonable expenses of attending, including reasonable attorney's fees.*

Rule 31: Depositions upon written questions

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
31(a)	Serving questions; notice			X		See proposed Rule 31

Rule 31(a). Serving questions; notice

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon

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written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
31(b)	Officer to take responses and prepare record			X		See proposed Rule 31

Rule 31(b). Officer to take responses and prepare record

A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
31(c)	Notice of filing			X		See proposed Rule 31

Rule 31(c). Notice of filing

When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
31(d)	Deleted				X	

Rule 31(d). Deleted. Effective Nov. 1, 1970

→ **PROPOSED RULE 31: Depositions upon written questions**

Deposition upon written questions. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The

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procedure for taking a deposition upon written questions is governed by Rule 31 of the Arizona Rules of Civil Procedure.

Rule 32: Use of depositions in court proceedings

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
32(a)	Use of depositions		X			See proposed Rule 32(a)

Rule 32(a). Use of Depositions

At the trial or at any hearing, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, and had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. The party who seeks admission of the testimony by deposition may do so without proof of the deponent's unavailability to testify at trial. Nothing contained in this Rule shall be construed to limit, in any way, the right of any party to call the deposed witness to testify in person at trial.

If only part of a deposition is offered in evidence by a party, the court may require the offeror to introduce contemporaneously any other part which ought in fairness to be considered together with the part introduced.

Except as provided in Rule 56(e), the use of the deposition transcript may be supplemented with contemporaneously recorded audio and video files that may be synchronized to the deposition transcript, if any.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Arizona Rules of Evidence.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
32(b)	Objections to admissibility		X			See proposed Rule 32(b)

Rule 32(b). Objections to Admissibility

Subject to the provisions of Rules 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any

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reason which would require the exclusion of the evidence if the witness were then present and testifying.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
32(c)	Form of presentation		X			See proposed Rule 32(c)

Rule 32(c). Form of Presentation

A party offering deposition testimony may offer it in the form permitted by Rules 30(b)(4) and 30(c). If deposition testimony is offered in any form for any purpose, the offering party shall provide the court with a transcript of the portions offered. In cases tried before a jury, if deposition testimony is to be offered for purposes other than impeachment and is available in non-stenographic form, it shall be presented to the jury in that form unless the court for good cause orders otherwise.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
32(d)	Effect of errors and irregularities in depositions		X			See proposed Rule 32(d)

Rule 32(d). Effect of Errors and Irregularities in Depositions

(1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) *As to Taking of Deposition.*

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if

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promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(D) Objections to the form of the question or responsiveness of the answer shall be concise, and shall not suggest answers to the witness. No specification of the defect in the form of the question or the answer shall be stated unless requested by the party propounding the question. Argumentative interruptions shall not be permitted.

(E) Continuous and unwarranted off the record 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. This conduct is subject to the proscriptions of Rule 32(d)(3)(D) and the sanctions prescribed in Rule 37.

(4) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

→ ***PROPOSED RULE 32: Use of depositions in court proceedings***

a. General rule. All or any part of a deposition may be used in court as if the deposed witness was present and testifying in court, without proof that the witness is unavailable to appear in court, if the party against whom the testimony is offered was present or had the opportunity to be present at the deposition, or if another party was present at the deposition with a similar interest. If only part of a deposition is offered into evidence by a party, the court may allow another party to introduce other parts of the deposition that in fairness should also be considered.

b. Admissibility. Any part of a deposition used at a court proceeding must be admissible under the rules of evidence. The court may consider objections to the use of any part of deposition testimony at a trial for any reason that would make the testimony inadmissible if the witness was present and testifying in court.

c. Form of presentation. Deposition testimony may be offered in any form by which it has been recorded. A party who introduces deposition testimony may be required to provide the court with a transcript of the portions that are offered.

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d. Objections at a deposition. *Objections to the form of a question or to the responsiveness of an answer shall be concise, and shall not suggest answers to the witness. A party making an objection to a defect in the form of a question or to an answer shall not specify the purported defect unless requested by the party who has asked the question. Argumentative interruptions shall not be permitted. Continuous and unwarranted off the record conferences between the deponent and counsel following a question and prior to the answer, or at any time during the deposition, are prohibited and are subject to the sanctions described in Rule 37.*

Rule 33: Interrogatories to Parties

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
33(a)	Availability; procedures for use		X			See proposed Rule 33(a)

Rule 33(a). Availability; Procedures for Use

Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association of governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 40 days after the service of the interrogatories, except that a defendant may serve answers or objections within 60 days after service of the summons and complaint upon that defendant, or execution of a waiver of service, by that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
33(b)	Scope; use at trial		X			See proposed Rule 33(b)

Rule 33(b). Scope; use at trial

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

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An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
33(c)	Option to produce business records		X			See proposed Rule 33(c)

Rule 33(c). Option to produce business records

Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be derived or ascertained.

→ **PROPOSED RULE 33: Interrogatories to parties**

a. General rule. Any party may serve interrogatories (written questions) on any other party. If the party who is served with the interrogatories is a corporation, partnership, association, a government body or a government agency, that organization shall furnish whatever information that it has available. Interrogatories may be served upon the plaintiff after service of the summons and complaint. Interrogatories may be served on any other party with the summons and complaint or thereafter.

Each interrogatory shall be stated separately. Each and every interrogatory shall be answered fully, in writing, and under oath, unless an interrogatory is objected to, in which case the reasons for the objection to the interrogatory shall be stated in the response rather than an answer. Interrogatory answers shall be signed by the person making them.

The party upon whom the interrogatories have been served shall provide a copy of the answers, and objections if any, within 40 days after the interrogatories have been served, except that a defendant may serve answers or objections within 60 days after service of the summons and

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complaint upon that defendant. The court may allow a shorter or longer time for a party to respond to interrogatories. The party who served the interrogatories may move for an order under Rule 37(a) concerning a failure to answer an interrogatory, or concerning an objection to an interrogatory.

b. Scope of interrogatories; use at trial. An interrogatory is not necessarily objectionable merely because the interrogatory includes a contention that relates to facts or the application of law to the facts, or because an answer to the interrogatory involves an opinion.

Interrogatories may relate to any matters which can be inquired into under Rule 26(a), and the answers may be used to the extent permitted by the rules of evidence.

c. Option to produce business records. Where the answer to an interrogatory may be determined by examining a party’s business records, including electronically stored records, and the burden of determining the answer is substantially the same for the party serving the interrogatory as for the party who is served, it is a sufficient answer to that interrogatory to specify in sufficient detail the records from which the answer may be determined, and to afford the party serving the interrogatory a reasonable opportunity to examine, audit or inspect those records ,and to make copies, compilations, abstracts or summaries of them.

Rule 33.1: Uniform and Non-uniform Interrogatories; Limitations; Procedure

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
33.1	Uniform and non-uniform interrogatories; limitations; procedures		X			See proposed Rule 33.1

Rule 33.1. Uniform and Non-uniform Interrogatories; Limitations; Procedure

(a) Presumptive Limitations. Except as provided in these Rules, a party shall not serve upon any other party more than forty (40) interrogatories, which may be any combination of uniform or non-uniform interrogatories. Any uniform interrogatory and its subparts shall be counted as one interrogatory. Any subpart to a non-uniform interrogatory shall be considered as a separate interrogatory. In the notice of service of uniform interrogatories, a propounding party may specifically limit the scope of the uniform interrogatory to request less information than called for in the uniform interrogatory, such as by requesting information only as to particular persons, events, or issues. Such limiting instructions do not transform the uniform interrogatory into a non-uniform interrogatory.

(b) Stipulations to Serve Additional Interrogatories. If a party believes that good cause exists for the service of more than forty (40) interrogatories upon any other party, that party shall consult with the party upon whom the additional interrogatories would be served and attempt

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to secure a written stipulation as to the number of additional interrogatories that may be served.

(c) Leave of Court to Serve Additional Interrogatories. If a stipulation permitting the service of additional interrogatories is not secured, a party desiring to serve additional interrogatories may do so only by leave of court. Upon written motion or application showing good cause therefor, the court in its discretion may grant to a party leave to serve a reasonable number of additional interrogatories upon any other party. The party seeking leave to serve additional interrogatories shall have the burden of establishing that the issues presented in the action warrant the service of additional interrogatories, or that such additional interrogatories are a more practical or less burdensome method of obtaining the information sought, or other good cause therefor. No such motion or application may be heard or considered by the court unless accompanied by the proposed additional interrogatories to be served, and by the certification of counsel required by Rule 37(a)(2)C) of these Rules. The proposed additional interrogatories shall only be attached to the judge's copy of the motion and the copy served on opposing parties.

(d) Spacing. Whenever interrogatories are used, a space sufficient for the answer shall be left immediately below the question. The answering party shall insert the answer in the space below each interrogatory, or if it requires more space, on a separate sheet which restates the question before giving the answer.

(e) Nonuniform Interrogatories. The method of propounding and answering Nonuniform Interrogatories shall be as follows:

- (1) A party propounding interrogatories, other than Uniform Interrogatories, shall serve upon the answering party and not the clerk of the court, the original and one copy of the interrogatories and shall serve a copy upon every other party.
- (2) The answering party shall, within the time permitted by law, serve upon the propounding party and all other parties one copy of the interrogatories and typewritten answers.

(f) Uniform Interrogatories. The interrogatories set forth in the Appendix of Forms following these Rules are denominated as Uniform Interrogatories, and are approved for use as a standard or guide in preparation by counsel of interrogatories under Rule 33 of these Rules. The use of Uniform Interrogatories shall be governed by Rule 33 of these Rules, and this Rule. The use of Uniform Interrogatories is not mandatory. The interrogatories should serve as a guide only, and may or may not be approved as to either form or substance in a particular case. They are not to be used as a standard set of interrogatories for submission in all cases. Any uniform interrogatory may be used where it fits the legal or factual issues of the particular case, regardless of how the action or claims are designated. The method of propounding and answering Uniform Interrogatories shall be as follows:

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(1) A party propounding Uniform Interrogatories shall serve a copy of a Notice of Service of Uniform Interrogatories upon each other party to the action.

(2) The Notice of Service of Uniform Interrogatories shall contain the names of the party and attorney to whom the request is made and the number only of each uniform interrogatory for which the propounding party requests an answer.

(3) The answering party shall:

(i) reproduce the text of each interrogatory requested and insert the answer below it;

(ii) serve the original upon the propounding party and a copy upon all other parties.

→ **PROPOSED RULE 33.1: Uniform and non-uniform interrogatories**

a. Uniform Interrogatories. *Interrogatories contained in the Appendix of Forms following the Arizona Rules of Civil Procedure are designated as uniform interrogatories. The use of uniform interrogatories is not required. Uniform interrogatories may or may not be appropriate in a particular case, and they are not to be used as a standard set of interrogatories for every case. Any uniform interrogatory may be used where it fits the legal or factual issues of the particular case. The method of submitting and answering uniform interrogatories shall be as follows:*

(1) A party submitting uniform interrogatories shall provide a copy of a notice of service of uniform interrogatories to every other party.

(2) The notice of service of uniform interrogatories shall contain the name of the party to whom the request is made and the number of each uniform interrogatory for which the party requests an answer. In the notice of service of uniform interrogatories, a submitting party may specifically limit the scope of the uniform interrogatory by requesting less information than called for in the uniform interrogatory, such as by requesting information only as to particular persons, events, or issues. Such limiting instructions do not transform the uniform interrogatory into a non-uniform interrogatory.

(3) The answering party shall:

(i) reproduce the text of each interrogatory that has been requested, and insert the answer below it;

(ii) provide the original answers to the submitting party and provide a copy to all other parties.

b. Non-uniform interrogatories. *Interrogatories that are not uniform interrogatories are non-uniform interrogatories. A party submitting non-uniform interrogatories shall provide the*

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answering party, and not the clerk of the court, the original and one copy of the interrogatories, and shall provide a copy to every other party. A space for the answer shall be left immediately below each question. The answering party shall insert their answer in the space below each interrogatory, or if the answer requires more space, on a separate sheet which restates the question before giving the answer. The answering party shall, within the time permitted by law, serve upon the submitting party and all other parties a copy of the interrogatories with the answering party's typewritten answers.

c. Number of interrogatories that may be submitted. A party shall not serve upon another party more than forty (40) interrogatories, which may be any combination of uniform or non-uniform interrogatories. Each uniform interrogatory and its subparts shall be counted as one interrogatory. Any subpart to a non-uniform interrogatory shall be considered as a separate interrogatory.

d. Asking the court for permission to serve additional interrogatories. A party who wishes to serve more than forty interrogatories on another party must ask the other party's permission to do so, and if permission is not given, the party must ask the court for permission to serve additional interrogatories. A party's motion to serve additional interrogatories must provide reasons why additional interrogatories are necessary.

Rule 34: Production of Documents, Electronically Stored Information, and Things and Entry Upon Land for Inspection and Other Purposes

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
34(a)	Scope		X			See proposed Rule 34(a)

Rule 34(a). Scope

Any party may serve on any other party requests (1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect, copy, test or sample 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 - translated into reasonably usable form when translation is practicably necessary, or to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
34(b)	Procedure and limitations		X			See proposed Rule 34(b)

Rule 34(b). Procedure and Limitations

The requests may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The requests shall set forth the items to be inspected either by individual item or by specific category, and describe each item and specific category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The requests(s) shall not, without leave of court, cumulatively include more than ten (10) distinct items or specific categories of items. Each request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. If a party believes that good cause exists for more than ten (10) distinct items or categories of items, that party shall consult with the party upon whom a request would be served and attempt to secure a written stipulation to that effect. The party upon whom a request is served shall serve a written response within 40 days after the service of the request, except that a defendant may serve a response within 60 days after service of the summons and complaint upon that defendant, or execution of a waiver of service by that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested or identify the reasons for any objection, including any objection to the requested form or forms for producing electronically stored information,. If objection is made to part of an item or category, the part shall be specified. If objection is made to the requested form or forms for producing electronically stored information--or if no form was specified in the request--the responding party must state the form or forms it intends to use. The party submitting a request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. Unless the parties otherwise agree, or the court otherwise orders:

- (1) a party who produced documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request;
- (2) if a request does not specify the form or forms for producing electronically stored information, a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable; and
- (3) a party need not produce the same electronically stored information in more than one form.

	Description	Applies as	Applies w/ new	Applies by	Does not	Comment
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Rule		written	language	reference	apply	
Rule 34(c)	Persons not parties		X			See proposed Rule 34(c).

Rule 34(c). Persons not Parties

A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

→ **PROPOSED RULE 34: Requests for production of documents and electronically stored information, or for entry upon property**

a) Scope. Any party may serve on any other party a request to produce and to permit the party making the request, or to permit someone acting on the requesting party’s behalf, to inspect or to copy designated documents or electronically stored information, including written documents, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained when provided in a reasonably usable format; or to inspect, test, or sample designated tangible things; provided that the items requested are within the scope of Rule 26(a) and are in the possession or control of the party upon whom the request is served.

A party may also request that they be allowed to enter upon designated land or other property in the possession or control of the party upon whom the request is served, for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the land or property, provided that the request is within the scope of Rule 26(a).

b. Procedure and limitations. Requests under this rule may be served at the same time or after service of the summons and complaint. The requests shall set forth the items to be inspected either by individual item or by specific category, and shall describe each item and specific category with reasonable particularity.

A request may specify the form or format in which electronically stored information is to be produced. If a request does not specify the form or format for producing electronically stored information, a responding party must produce the information in a form or format in which it is ordinarily maintained or in a form that is reasonably usable. A party need not produce the same electronically stored information in more than one form.

A party’s requests shall not include more than ten (10) distinct items or specific categories of items. If a party believes that good reasons exist for more than ten (10) distinct items or categories of items, that party shall consult with the party upon whom a request would be served and attempt to obtain a written agreement to that effect. If there is no agreement, a party may ask the court to allow additional requests.

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Each request shall specify a reasonable time, place, and manner of making the inspection or performing the entry on property. The party upon whom a request is served shall serve a written response within 40 days after the service of the request, except that a defendant may serve a response within 60 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection or entry will be permitted as requested, and if inspection of documents will be permitted, the party may provide copies of the requested documents with their response. Alternatively, the response must identify the reasons for any objection, including any objection to the requested form or forms for producing electronically stored information. The party submitting a request may move for an order under Rule 37(a) with respect to any objection or any other failure to respond to the request in whole or in part, or any failure to permit inspection or entry as requested.

A party who produces documents for inspection or who provides copies of documents in response to a request shall produce them as they are kept in the usual course of business, or shall organize and label them to correspond with the categories in the request.

c. Requests to non-parties. *A request may not be served under this rule on a person who is not a party to the lawsuit. A person who is not a party to the lawsuit may be required to produce documents as provided in Rule 45.*

Rule 35: Physical and Mental Examination of Persons

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
35(a)	Order for examination			X		See proposed Rule 35

Rule 35(a). Order for Examination

When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a physician or psychologist or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The person to be examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The

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person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
35(b)	Report of examiner			X		See proposed Rule 35

Rule 35(b). Report of Examiner

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor, within twenty days of the examination, a copy of the detailed written report of the examining licensed professional setting out the professional's findings, including the results of all tests made, diagnoses and conditions, together with like reports of all earlier examinations of the same condition and copies of all written or recorded notes filed out by the examiner and the person examined at the time of the examination, providing access to the original written or recorded notes for purposes of comparing same with the copies. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that such party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician or psychologist fails or refuses to make a report the court may exclude the physician's or psychologist's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with the provisions of any other rule.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
35(c)	Alternate procedure; notice of examination; objections			X		See proposed Rule 35

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Rule 35(c). Alternate Procedure; Notice of Examination; Objections

(1) When the parties agree that a mental or physical examination is appropriate but do not agree as to the examining physician or psychologist, the party desiring the examination may seek it by giving reasonable notice in writing to every other party to the action not less than 30 days in advance. The notice shall specify the name of the person to be examined, the time, place and scope of the examination, and the person or persons by whom it is to be made. The person to be physically examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.

(2) Upon motion by a party or by the person to be examined, and for good cause shown, the court in which the action is pending may, in addition to other orders appropriate under subdivision (a) of this rule, make an order that the examination be made by a physician or psychologist other than the one specified in the notice. If a party after being served with a proper notice under this subdivision does not make a motion under this rule, and fails to appear for the examination or to produce for the examination the person in the party's custody or legal control, the court in which the action is pending may on motion make such orders in regard to the failure as are just, such as those specified in Rule 37 (f).

(3) The provisions of Rule 35(b) shall apply to an examination made under this subdivision.

→ **PROPOSED RULE 35: Medical examinations of parties**

When the mental or physical condition of a party, or of a person under the legal control of a party, is at issue in a lawsuit, the court in which the lawsuit is pending may order the party or person to submit to a physical or mental examination by a physician or a psychologist. The procedures for requesting an examination, and for reporting the results of an examination, are governed by Rule 35 of the Arizona Rules of Civil Procedure.

Rule 36: Requests for Admissions

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
36(a)	Request for admission		X			See proposed Rule 36(a)

Rule 36(a). Request for Admission

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A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within (40) days after service of the request, or, in the case of a defendant, within 60 days after service of the summons and complaint upon that defendant, or execution of a waiver of service by that defendant, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
36(b)	Procedure		X			See proposed Rule 36(b)

Rule 36(b). Procedure

Each request shall contain only one factual matter or request for genuineness of all documents or categories of documents. Each party without leave of court shall be entitled to submit no

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more than twenty-five (25) requests in any case except upon: (1) agreement of all parties; (2) an order of the court following a motion demonstrating good cause, or (3) an order of the court following a Comprehensive Pretrial Conference pursuant to Rule 16(c). Any interrogatories accompanying requests shall be deemed interrogatories under Rule 33.1.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
36(c)	Effect of admission		X			See proposed Rule 36(c)

Rule 36(c). Effect of admission

Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pre-trial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

→ **PROPOSED RULE 36: Requests for admissions**

a) General rule. *A party may serve on any other party written requests to admit the truth of factual matters in the lawsuit and that are within the scope of Rule 26(a). Requests for admissions may be served at the same time as service of the summons and complaint, or thereafter.*

A request for admission may relate to facts or opinions of facts, or to the application of the law to the facts. If a request concerns whether a document described in a request is a genuine document, a copy of the document shall be attached to the request unless it has been previously provided to the party upon whom the request is served.

If a request is not denied, or if no objection is made, as provided in paragraph (b) of this rule, the request is deemed admitted for the purposes of the pending lawsuit.

b. Procedure. *Each request shall contain only one fact, or it shall concern the genuineness of only a single document. The request is admitted unless the party to whom the request is directed provides a written response that denies or objects to a request within the time allowed by this rule. The party served with a request must respond within 40 days after service of the request or, in the case of a defendant, within 60 days after service of the summons and complaint if the requests are served together with the summons.*

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A denial of a request shall fairly respond to the substance of the request. If the party who is served with a request has no personal knowledge concerning the substance of the request, the party may properly deny that request only if the party has first made a reasonable inquiry to determine whether the request is or is not true. A party may not object to a request merely because it concerns an issue that may be presented at trial. The party that submits requests may move for an order under Rule 37(a) with respect to the sufficiency or good faith of any objections or denials by the party who is served with the requests.

Each party is entitled to submit no more than twenty-five requests in a lawsuit. If a party believes that good reasons exist for more than twenty-five requests, that party shall consult with the party upon whom a request would be served and attempt to obtain a written agreement to that effect. If there is no agreement, a party may ask the court to allow additional requests.

Any interrogatories that are sent with requests for admissions will be counted as provided in Rule 33.1(c).

c. Effect of admission; notice. If a party has not responded to request for admissions within the time period provided in subsection (b) of this rule, then the party making the request must provide a notice to the party to whom the request was made in substantially the following form:

“[Case Caption]

“TO: _____:

“ Do not ignore this notice.

“You were served with requests for admission on _____ (insert date.) The rules of procedure required you to respond to these requests no later than _____ (insert date.) You have failed to respond.

“The rules will still allow you to respond to the requests for admission by _____ (insert date that is fifteen days after the date of this notice.) If you don’t respond by that date, you will be deemed to have admitted the requests. Admitting the requests will harm your case. You must respond to the requests immediately to preserve your claims or defenses.

“Date: _____”

Any matter **thereafter** admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits.

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d. Expenses on failure to admit. *If a party fails to admit the genuineness of any document or the truth of any matter as requested under this rule, and if the party requesting the admissions proves at a trial or hearing the genuineness of the document or the truth of the matter, the party who requested the admission may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, subject to the exceptions provided in Rule 37(e) of the Arizona Rules of Civil Procedure.*

Rule 37: Failure to Make Disclosure or Discovery; Sanctions

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(a)	Motion for order compelling disclosure or discovery		X			See proposed Rule 37(a), (b), and (c)

Rule 37(a). Motion for Order Compelling Disclosure or Discovery

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) *Appropriate court.* An application for an order to a party may be made to the court in the county in which the action is pending, or, in matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.

(2) *Motion.*

(A) 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) If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(C) No motion brought under this Rule 37 will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

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(3) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) *Expenses and Sanctions.*

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(b)	Failure to comply with order		X			See proposed Rule 37(d)

Rule 37(b). Failure to comply with order

(1) *Sanctions by court in county where deposition is taken.* If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) *Sanctions by court in which action is pending.* If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35 the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

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(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(c)	Failure to disclose; false or misleading disclosure; untimely disclosure		X			See proposed Rule 26.1(h)

Rule 37(c). Failure to Disclose; False or Misleading Disclosure; Untimely Disclosure

(1) A party who fails to timely disclose information required by Rule 26.1 shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion, the information or witness not disclosed, except by leave of court for good cause shown. A party or attorney who makes a disclosure pursuant to Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete and thereby causes an opposing party to engage in investigation or discovery, shall be ordered by the court to reimburse the opposing party for the cost, including attorney's fees of such investigation or discovery. In addition to or in lieu of these sanctions, the court on motion of a party or on the court's own motion, and

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after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorney's fees, caused by the failure, these sanctions may include any of the actions authorized under subparagraphs (A), (B) and (C) of subdivision (b)(2) of this Rule and may include informing the jury of the failure to make the disclosure.

(2) A party seeking to use information which that party first disclosed later than sixty (60) days before trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) that the information would be allowed under the standards of subsection (c)(1) notwithstanding the short time remaining before trial; and

(ii) that the information was disclosed as soon as practicable after its discovery.

(3) A party seeking to use information which that party first disclosed during trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) that the information could not have been discovered and disclosed earlier even with due diligence; and

(ii) that the information was disclosed immediately upon its discovery.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(d)	Failure to disclose unfavorable information		X			See proposed Rule 26.1(h)

Rule 37(d). Failure to Disclose Unfavorable Information

A party's or attorney's knowing failure to timely disclose damaging or unfavorable information shall be grounds for imposition of serious sanctions in the court's discretion up to and including dismissal of the claim or defense.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(e)	Expenses on failure to admit		X			See proposed Rule 36(d)

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Rule 37(e). Expenses on Failure to Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) the request was held objectionable pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or (4) there was other good reason for the failure to admit.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(f)	Failure of a party to attend own deposition or serve answers to interrogatories or respond to request for inspection		X			See proposed Rules 37(a), (b), (c), and (d)

Rule 37(f). Failure of Party to Attend at Own Deposition or Serve Answer to Interrogatories or Respond to Request for Inspection

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
37(g)	Electronically stored information		X	X		See proposed Rule 37(e)

*Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules*

Rule 37(g). Electronically stored information

Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

→ ***PROPOSED RULE 37: Sanctions for failure to disclose information or to respond to discovery***

a) General rule. *A party may file a motion with the court where the lawsuit was filed requesting the issuance of a court order that requires another party, a person, or an organization to disclose information or to provide discovery responses:*

1. if a party fails: to disclose information that is required under Rule 26.1; to appear at a deposition under Rule 30, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6); to answer an interrogatory under Rule 33; or to respond to a request for production under Rule 34, or to permit entry upon property under Rule 34;

2. if a person or an organization who is not a party fails: to appear at a deposition under Rule 30, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6).

A failure to disclose, to appear, to answer, to designate, or to respond includes evasive or incomplete disclosures, appearances, answers, designations, or responses.

b) Good faith certification. *A motion that is made under this rule will not be considered by the court without a written certification by the party making the motion that the party has been unable to satisfactorily resolve the matter after a good faith effort and after personally consulting or attempting to personally consult with the party, person, or organization that is the subject of the motion.*

c) Orders and sanctions. *If a motion that has been made under this rule is granted, the court may require the party, a person, or an organization to pay the moving party's reasonable expenses incurred in making the motion. If a motion that has been made under this rule is granted, denied, or granted in part and denied in part, the court may make any order permitted under Rule 37(a) of the Arizona Rules of Civil Procedure.*

d) Failure to comply with an order. *If, after entry of an order made under paragraph (c) of this rule, a party, a person, or an organization refuses to comply with the order, the court upon motion of a party may impose an appropriate sanction provided in Rule 37(b) of the Arizona Rules of Civil Procedure.*

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e) Failure to provide electronically stored information. Absent exceptional circumstances, a court may not impose sanctions under this rule on a party, a person, or an organization for failing to provide electronically stored information that has been lost as a result of the routine, good-faith operation of an electronic information system.

VI. TRIALS

Rule 38: Jury Trial of Right

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
38(a)	Right preserved	X				See proposed Rule 39(a)

Rule 38(a). Right preserved

The right of trial by jury shall be preserved inviolate to the parties.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
38(b)	Demand		X			See proposed Rule 39(b)

Rule 38(b). Demand

Any person may demand a trial by jury of any issue triable of right by jury. The demand may be made by any party by serving upon the other party a demand therefor in writing at any time after the commencement of the action, but not later than the date of setting the case for trial or ten days after a motion to set the case for trial is served, whichever first occurs. The demand for trial by jury may be endorsed on or be combined with the motion to set, but shall not be endorsed on or be combined with any other motion or pleading filed with the court.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
38(c)	Demand; specification of issues		X			See proposed Rule 39(b)

Rule 38(c). Demand; specification of issues

In the demand a party may specify the issues which the party wishes so tried, otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within ten days after

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service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all the issues of fact in the action.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
38(d)	Waiver		X			See proposed Rule 39(b)

Rule 38(d). Waiver

The failure of a party to serve a demand as required by this Rule and to file it as required by Rule 5(b) constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

→ **PROPOSED RULE 39: Demand for a jury trial**

a) Right to a jury trial. *The right of a trial by jury shall be preserved inviolate to the parties.*

b) Demand for a jury trial; waiver of jury trial. *A party may demand a jury trial of any issue for which a right to a jury exists under the law. The demand must be in writing and must be filed with the court and served on the other parties not later than ten days after a trial date has been set. The party demanding a jury trial may specify particular issues in the lawsuit that the party wishes to present to a jury, and if that is done, other parties may have ten days thereafter to specify any additional issues to present to a jury. If no party demands specific issues, then all issues in the case shall be presented to a jury. A demand for a jury trial may be withdrawn only with the consent of the other parties. The failure to demand a jury trial pursuant to this rule shall be considered a waiver of the right to a jury trial.*

Rule 38.1: Setting of Civil Cases for Trial; Postponements

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
38.1	Setting of civil cases for trial; postponements		X			See proposed Rule 38. Q: Is this the proper place to include the provisions re active/inactive calendars in existing Rule 38.1(c)+(d)?

Rule 38.1. Setting of Civil Cases for Trial; Postponements

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Existing + proposed rules***

(a) Motion to Set and Certificate of Readiness: Identification of Nonparty at Fault. In every civil case, counsel for plaintiff shall, or counsel for any other party may, file a Motion to Set and Certificate of Readiness. Service shall be in the manner prescribed by Rule 5 of these Rules. The form and contents of the Certificate of Readiness shall be as follows:

The undersigned attorney hereby certifies:

(1) That the issues in the above-captioned case have actually been joined;

(2) The largest award sought by any party, including punitive damages, but excluding interest, attorneys' fees, and costs, is \$_____. This case [is] [is not] subject to the mandatory arbitration provisions of Rules 72 through 76 of these Rules.

(3) That the status of discovery is as follows:

(i) In a court which requires such certification by local rule, the parties have completed, or will have had a reasonable opportunity to complete, the procedures under Rules 26 to 37 of these Rules within 60 days after the filing of the Certificate of Readiness; or

(ii) In a court which requires such certification by local rule, the parties have completed, or have had a reasonable opportunity to complete, the procedures under Rules 26 to 37 of these Rules at the time of filing of the Certificate of Readiness; or

(iii) In all other cases, the parties have completed, or will have had a reasonable opportunity to complete, the procedures under Rules 26 to 37 of these Rules prior to ten days before trial.

(4) That this case will be ready for trial on or after [DATE].

(5) That a trial by jury is [not] demanded (strike out the word "not" if a jury trial is demanded);

(6) That this cause may [not] be heard as a short cause within one hour [strike out the word "not" if the time required for trial will not exceed one hour];

(7) That the names, addresses and telephone numbers of the parties or their individual attorneys who are responsible for the conduct of the litigation are:--[insert the appropriate information]; and

(8) That this cause is entitled to a preference for trial by reason of the following statute or rule:--[insert statutory section or rule number if a preference is applicable].

Signature of Attorney

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If the Motion to Set and Certificate of Readiness is filed by a defending party in a court which does not require the certification set forth in (a)(3)(i) or (ii) of this Rule, then the Certificate of Readiness shall also identify any nonparty who is alleged, pursuant to A.R.S. § 12-2506(B) (as amended), to be wholly or partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action.

(b) Controverting Certificate: Identification of Nonparty at Fault. Within ten days after a Motion to Set and Certificate of Readiness has been served:

(1) Counsel for any other party may file a Controverting Certificate which specifies the particular statements contained in the Certificate of Readiness to which objection is made, and the reasons therefor.

(2) In those courts which do not require the certification set forth in either subpart (a)(3)(i) or (ii) of this Rule, counsel for a defending party must, in a Controverting Certificate or separately, identify any nonparty who is alleged, pursuant to A.R.S. § 12-2506(B) (as amended), to be wholly or partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action.

The court shall thereupon enter an order, without oral argument, placing the case on the Active Calendar either immediately or, where good cause is shown, at a specified later date. No case shall be heard as a short cause if objection is made thereto in the Controverting Certificate.

(c) Active Calendar. Ten days after a Motion to Set and Certificate of Readiness has been served, if a Controverting Certificate has not been served, or otherwise by order of the court, the clerk of the court or court administrator shall place the case on the Active Calendar and shall stamp thereon a chronological list number which shall generally govern the priority of the case for trial, except as to those cases which are entitled to preference by statute or local rule, and except that short causes may be preferred for trial in accordance with local rules.

(d) Inactive Calendar. The clerk of the court or court administration shall place on the Inactive Calendar every case in which a Motion to Set and Certificate of Readiness has not been served within nine months after the commencement thereof, All cases remaining on the Inactive Calendar for two months shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such two month period;

(1) a proper Motion to Set and Certificate of Readiness is served;

(2) the court, on motion for good cause shown, orders the case to be continued on the Inactive Calendar for a specified period of time without dismissal; or

(3) a notice of decision has been filed with the clerk of court in a case assigned to arbitration.

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Existing + proposed rules***

(e) Notification. The clerk of the court or court administrator, whoever is designated by the presiding judge, shall promptly notify counsel in writing of the placing of cases on the Inactive Calendar, and no further notice shall be required prior to dismissal.

(f) Additional Discovery. In those cases in which the certification set forth in subpart (a)(3)(i) is required by local rule, all pretrial procedures under Rules 26 to 37 of these Rules shall be completed within 60 days after service of the Motion to Set and Certificate of Readiness. In those cases in which the certification set forth in subpart (a)(3)(ii) is required by local rule, all pretrial procedures under Rules 26 to 37 of these Rules shall be completed at the time of service of the Motion to Set and Certificate of Readiness. In all other cases, all pretrial procedures under Rules 26 to 37 of these Rules shall be completed prior to ten days before trial. Notwithstanding the foregoing, for good cause shown, the court may permit or the parties may stipulate that additional discovery procedures may be undertaken anytime prior to trial.

(g) Setting for Trial. Cases on the Active Calendar shall be set for trial as soon as possible. Preference shall be given to short causes and cases which by reason of statute, rule or court order are entitled to priority. Counsel shall be given at least thirty days notice of the trial date.

(h) Postponements. Unless otherwise provided by local rule, when an action has been set for trial on a specified date by order of the court, no postponement of the trial shall be granted except for sufficient cause, supported by affidavit, or by consent of the parties, or by operation of law.

(i) Application for Postponement: Grounds; Effect of Admission of Truth of Affidavit by Adverse Party. On an application for a postponement of the trial, if the ground for the application is the want of testimony, the party applying therefor shall make affidavit that such testimony is material showing the materiality thereof, and that the party has used due diligence to procure such testimony, stating such diligence and the cause of failure to procure such testimony, if known, and that such testimony cannot be obtained from any other source. If the ground for the application is the absence of a witness, the party applying shall state the name and residence of the witness, and what the party expects to prove by the witness. The application in either case shall also state that the postponement is not sought for delay only, but that justice may be done. If the adverse party admits that such testimony would be given and that it will be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. Such testimony may be controverted as if the witness were personally present.

(j) Deposition of Witness or Party; Consent. The party obtaining a postponement shall, if required by the adverse party, consent that the testimony of any witness or adverse party in attendance be taken by deposition, without notice. The testimony so taken may be read on the trial by either party as if the witnesses were present.

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Existing + proposed rules***

(k) Scheduling Conflicts Between Courts.

(1) *Notice to the Court.* Upon learning of a scheduling conflict between a case in Superior Court and a case in United States District Court, or between cases in the Superior Courts of different counties, or between cases in different courts within a county, counsel has a duty to promptly notify the judges and other counsel involved in order that the conflict may be resolved.

(2) *Resolution of Conflicts.* Upon being advised of a scheduling conflict, the judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither federal nor state court cases have priority in scheduling, the following factors may be considered in resolving the conflict;

(A) the nature of the cases as civil or criminal, and the presence of any speedy trial problems;

(B) the length, urgency, or relative importance of the matters;

(C) a case which involves out-of-town witnesses, parties or counsel;

(D) the age of the cases;

(E) the matter which was set first;

(F) any priority granted by rule or statute;

(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.

→ ***PROPOSED RULE 38: Setting a case for trial***

a) Request to set a trial date. A case may be set for trial after a trial date has been requested by a party or, if no party requests a trial date, as determined by the court. A party may request a trial date after confirming to the court, either in writing or orally in open court, that the parties have concluded their disclosure and discovery, or that the parties will conclude their disclosure and discovery within thirty after the request to set the case for trial has been made. If any other party needs more time for discovery, that party may advise the court either (1) within ten days after a written request, or (2) in open court at the same time that an oral request is made, that disclosure and discovery may not be concluded within thirty days.

b) Request to postpone a trial date. After a trial has been scheduled for a specified date, a postponement of the trial date will only be allowed by the court if there are good reasons, or if the parties agree to a postponement, or by operation of law.

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Existing + proposed rules

Rule 39: Trial by Jury or by the Court

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(a)	Trial by jury		X			See proposed Rule 40(a). This proposed rule combines existing Rules 39(a) and 39(j)

Rule 39(a). Trial by jury

When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless:

1. The parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury, or
2. The court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(b)	Order of trial by jury; questions by jurors to a witness or to the court	X				See proposed Rule 47(a)

Rule 39(b). Order of Trial by Jury; Questions by Jurors to Witnesses or the Court

The trial by a jury shall proceed in the following order, unless the court for good cause stated in the record, otherwise directs:

(1) Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 39(b)(10), and the elementary legal principles that will govern the proceeding.

(2) The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case.

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Existing + proposed rules***

(3) The defendant or the defendant's counsel may read the answer and may make a statement of the case to the jury, but may defer making such statement until after the close of the evidence on behalf of the plaintiff.

(4) Other parties admitted to the action or their counsel may read their pleadings and may make a statement of their cases to the jury, but they may defer making such statement until after the close of the evidence on behalf of the plaintiff and defendant. The statement of such parties shall be in the order directed by the court.

(5) The plaintiff shall then introduce evidence.

(6) The defendant shall then introduce evidence.

(7) The other parties, if any, shall then introduce evidence in the order directed by the court.

(8) The plaintiff may then introduce rebutting evidence.

(9) The defendant may then introduce rebutting evidence in support of the defendant's counterclaim(s) if any. Rebuttal evidence from other parties or with respect to cross-claims or third party complaints may be introduced with the permission of the court in an order to be established at the court's discretion.

The statements to the jury shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial, and any party may decline to make such statement.

(10) Jurors shall be permitted to submit to the court written questions directed to witnesses or to the court. Opportunity shall be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the court may prohibit or limit the submission of questions to witnesses.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(c)	Omission of testimony during trial	X				See proposed Rule 47(b)

Rule 39(c). Omission of testimony during trial

The court may at any time before commencement of the argument, when it appears necessary to the due administration of justice, allow a party to supply an omission in the testimony upon such terms and limitations as the court prescribes.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(d)	Verdict, deliberations, and conduct of the jury; sealed verdict; access to juror notes and notebooks	X				See proposed Rules 49(a) and (d). The word “sealed” in ¶4 was deleted.

Rule 39(d). Verdict, Deliberations and Conduct of Jury; Sealed Verdict; Access to Juror Notes and Notebooks

1. Before the jury begins deliberating, the court shall instruct the jury on the law, the appropriate procedures to be followed during deliberations, and the appropriate method for reporting the results of its deliberations. Such instructions shall be recorded or reduced to writing and made available to the jurors during deliberations.

2. When the jurors retire to deliberate, they shall be kept together in some convenient place in the charge of a proper officer. The court in its discretion may permit jurors to separate while not deliberating, or, on motion of any party or the court, may require them to be sequestered in the charge of a proper officer whenever they leave the courtroom or place of deliberation. The court shall admonish the jury not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.

3. The court shall not require a jury to deliberate after normal work hours unless the court, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

4. The court may direct the jury to return a sealed verdict at such time as the court directs.

5. Jurors shall have access to their notes and notebooks during recesses, discussions and deliberations.

6. When dismissing a jury at the conclusion of the case, the court shall advise the jurors that they are discharged from service and, if appropriate, release them from their duty of confidentiality and explain their rights regarding inquires from counsel, the media, or any person.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(e)	Duty of officer in charge of jury	X				See proposed Rule 49(e)

Rule 39(e). Duty of officer in charge of jury

The officer having the jurors under that officer's charge shall not allow any communication to be made to them, or make any, except to ask them if they have agreed upon their verdict, unless by order of the court, and shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(f)	Admonition to jurors; juror discussions	X				See proposed Rule 49(c)

Rule 39(f). Admonition to Jurors; Juror Discussions

If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial; except that the jurors shall be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence. Notwithstanding the foregoing, the jurors' discussion of the evidence among themselves during recesses may be limited or prohibited by the court for good cause.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(g)	Communication to court by jury	X				See proposed Rule 49(f)

Rule 39(g). Communication to court by jury

When the jurors desire to communicate with the court during retirement, they shall make their desire known to the officer having them in charge who shall inform the court and they may be brought into court, and through their foreman shall state to the court, either orally or in writing, what they desire to communicate.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
30(h)	Assisting jurors at impasse	X				See proposed Rule 49(l)

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Rule 39(h). Assisting Jurors at Impasse

If the jury advises the court that it has reached an impasse in its deliberations, the court may, in the presence of counsel, inquire of the jurors to determine whether and how 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.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(i)	Discharge of jury; new trial	X				See proposed Rule 49(m)

Rule 39(i). Discharge of jury; new trial

The jurors may, after the action is submitted to them, be discharged by the court when they have been kept together for such time as to render it altogether improbable that they can agree, or when a calamity, sickness or accident may, in the opinion of the court, require it. When a jury has been discharged without having rendered a verdict the action may be tried again.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(j)	Trial by the court		X			See proposed Rule 40(a)

Rule 39(j). Trial by the court

Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court. Notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(k)	Procedure applicable in trial by the court	X				See proposed Rule 40(c)

Rule 39(k). Procedure applicable in trial by the court

The rules prescribed for trial of actions before a jury shall govern in trials by the court so far as applicable.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(l)	Abrogated	--	--	--	--	

Rule 39(l). Abrogated Oct. 10, 2000, effective Dec. 1, 2000

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(m)	Advisory jury and trial by consent				X	

Rule 39(m). Advisory jury and trial by consent

In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(n)	Interrogatories when equitable relief sought; answers advisory				X	

Rule 39(n). Interrogatories when equitable relief sought; answers advisory

In actions where equitable relief is sought, if a jury is demanded, and more than one material issue of fact is joined, the court may submit written interrogatories to the jury covering all or part of the issues of fact, and such interrogatories shall be answered by the jury. The interrogatories shall be approved by the court, and each interrogatory shall be confined to a single question of fact and shall be so framed that it can be answered yes or no, and shall be so answered. The answers shall be only advisory to the court.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(o)	Arguments	X				See proposed Rule 47(c)

Rule 39(o). Arguments

The party having under the pleadings the burden of proof on the whole case shall be entitled to open and close the argument. Where there are several parties having several claims or defenses, and represented by different counsel, the court shall prescribe the order of argument among them.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(p)	Note taking by jurors	X				See proposed Rule 47(j)

Rule 39(p). Note Taking by Jurors

The court shall instruct that the jurors may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory for use during recesses, discussions and deliberations. The court shall provide materials suitable for this purpose. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall promptly destroy them.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39(q)	Memoranda	X	X			See proposed Rule 49(n). The words “by counsel” were deleted.

Rule 39(q). Memoranda

No post trial memoranda shall be filed by counsel, other than memoranda in support of or in opposition to a motion pursuant to Rule 50(b), 52(b), 59 or 60 of these Rules, unless otherwise specifically directed by the trial judge.

→ **PROPOSED RULE 40: Trial by jury or to the court; question of foreign law**

a. Trial by jury or to the court. *When a trial by jury has been demanded as provided in Rule 38, the trial of the issues so demanded shall be by a jury, unless all of the parties agree to a trial by a judge without a jury; or unless the court finds that there is not a right to a trial by jury as to some or all of the issues.*

Issues not demanded for trial by jury as provided in Rule 39 shall be tried by the court. Notwithstanding the failure of a party to demand a jury, the court in its discretion may order a trial by jury of any or of all of the issues.

b. Question of foreign law. *A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, 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 shall be treated as a ruling on a question of law.*

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c. Procedure applicable in trial by the court. *The rules prescribed for trial of actions before a jury shall govern in trials by the court so far as applicable.*

Rule 39.1: Trial of Cases Assigned to the Complex Civil Litigation Program

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
39.1	Trial of cases assigned to the complex civil litigation program				X	

Rule 39.1. Trial of Cases Assigned to the Complex Civil Litigation Program.

The court should employ trial procedures as are deemed necessary or appropriate to facilitate a just, speedy and efficient resolution of the case, including, but not limited to, time limits and allocation of trial time, sequencing of evidence and arguments, bifurcation of issues or claims, advance scheduling of witnesses and other evidence, pre-trial admission of exhibits or other evidence, electronic presentation of evidence, jury selection and juror participation issues and other means of managing or expediting the trial of a complex case.

Rule 40: Assignment of cases for trial

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
40	Assignment of cases for trial		X			See proposed Rule 41

Rule 40. Assignment of cases for trial

The superior courts shall provide by rule for the placing of actions upon the trial calendar:

1. Without request of the parties, or
2. Upon request of a party and notice to other parties, or
3. In such other manner as the court deems expedient.

→ **PROPOSED RULE 41: Assignment of cases for trial**

Local rules: *Each justice court precinct, or the justice court administrator for each county, shall provide and make available rules or policies for placing trials on a trial calendar.*

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Rule 41: Dismissal of Action

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
41(a)	Voluntary dismissal; by plaintiff or by order of court; effect		X			See proposed Rule 52(a)

Rule 41(a). Voluntary dismissal; by plaintiff or by order of court; effect

1. Subject to the provisions of Rule 23(c), or Rule 66(c), or of any statute, an action may be dismissed (A) by the plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (B) by order of the court pursuant to a stipulation of dismissal signed by all parties who have appeared in the action. Such an order may be signed by a judge, a duly authorized court commissioner, the clerk of court or a deputy clerk. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

2. Except as provided in paragraph 1 of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
41(b)	Involuntary dismissal; effect thereof		X			See proposed Rule 52(b)

Rule 41(b). Involuntary dismissal; Effect Thereof

For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
41(c)	Dismissal of counterclaim, cross-claim, or third-party claim		X			See proposed Rule 52(c)

Rule 41(c). Dismissal of counterclaim, cross-claim, or third-party claim

The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph 1 of subdivision (a) of this Rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
41(d)	Costs of previously dismissed action					Does this scenario ever occur?

Rule 41(d). Costs of previously dismissed action

If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until plaintiff has complied with the order.

→ **PROPOSED RULE 52: Dismissal of a case**

a. Voluntary dismissal. *A lawsuit may be dismissed by the plaintiff without an order of the court by filing a notice of dismissal at any time before the opposing party files an answer, a response to the complaint, or a notice of appearance. A lawsuit may also be dismissed by an order of the court pursuant to a written agreement to dismiss the lawsuit that has been signed by all of parties who have appeared in the lawsuit. Such an order may be signed by a judge, by the clerk of the court, or by a deputy clerk. Unless otherwise stated in the notice or order of dismissal, the dismissal is without prejudice, which means that the lawsuit can be refiled. However, if a lawsuit that made the same claim or that was based on the same facts has been previously dismissed, the second dismissal shall be with prejudice to refile the lawsuit.*

Except as provided in the paragraph above, an action will be dismissed at the plaintiff's request only by an order of the court and only upon such terms and conditions as the court deems proper. If a counterclaim has been filed by a defendant prior to the plaintiff's request for

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dismissal, the lawsuit shall not be dismissed if the defendant objects, unless the counterclaim can remain pending. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

b. Involuntary dismissal. If a plaintiff does not prosecute the lawsuit, or if a plaintiff does not comply with these rules or with any order of the court, a defendant may request that the court dismiss the lawsuit. A dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, is not a decision on the merits. Other than those exceptions, and unless the court in its order for dismissal states otherwise, a dismissal under this paragraph and any dismissal not provided for by this rule operates as a conclusion of the lawsuit upon the merits.

c. Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

Rule 42: Consolidation; Separate Trials; Change of Judge

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(a)	Consolidation	X				See proposed Rule 42. The word "actions" was changed to "lawsuits".

Rule 42(a). Consolidation

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions, or it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(b)	Separate trials	X				See proposed Rule 43.

Rule 42(b). Separate trials

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(c)	Abrogated				X	

Rule 42(c). Abrogated Oct. 10, 2000, effective Dec. 1, 2000

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(d)	Renumbered as Rule 38.1(i)					

Rule 42(d). Renumbered as Rule 38.1(i)

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(e)	Renumbered as Rule 38.1(j)					See proposed Rule 32(a)

Rule 42(e). Renumbered as Rule 38.1(j)

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
42(f)	Change of judge		X	X		See proposed Rule 53. A decision is needed from RCiP.LJC re: change of judge as a matter of right.

Rule 42(f). Change of Judge

1. Change as a Matter of Right.

(A) Nature of Proceedings. In any action pending in superior court, except an action pending in the Arizona Tax Court, each side is entitled as a matter of right to a change of one judge and of one court commissioner. Each action, whether single or consolidated, shall be treated as having only two sides. Whenever two or more parties on a side have adverse or hostile interests, the presiding judge or that judge's designee may allow additional changes of judge as a matter of

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right but each side shall have the right to the same number of such changes. A party wishing to exercise that party's right to change of judge shall file a "Notice of Change of Judge." The notice may be signed by an attorney; it shall state the name of the judge to be changed; and it shall neither specify grounds nor be accompanied by an affidavit, such as required by subsection (f)(2) of this rule, but it shall contain a certification by the party filing the notice or by the attorney that (i) the notice is timely, (ii) the party has not waived the right under subsection (f)(1)(D) of the rule, and (iii) the party has not previously been granted a change of judge as a matter of right in the case. A judge may honor an informal request for change of judge. When a judge does so, the judge shall enter upon the record the date of the request and the name of the party requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.

(B) Filing and Service. The notice shall be filed and copies served on the parties, the presiding judge, the noticed judge and the court administrator, if any, in accordance with Rule 5, Arizona Rules of Civil Procedure.

(C) Time. Failure to file a timely notice precludes change of judge as a matter of right. A notice is timely if filed sixty (60) or more days before the date set for trial. Whenever an assignment is made which identifies the judge for the first time or which changes the judge within sixty (60) days of the date set for trial, a notice shall be timely filed as to the newly assigned judge if filed within ten (10) days after such new assignment. A notice of change of judge is ineffective if filed within three (3) days of a scheduled proceeding unless the parties have received less than five (5) days' notice of that proceeding or the assignment of the judge. The filing of such an ineffective notice neither requires a change of judge nor precludes the party who filed it from subsequently filing a notice of change of judge that otherwise satisfies the requirements of this rule.

(D) Waiver. After a judge is assigned to preside at trial or is otherwise permanently assigned to the action, a party waives the right to change of that judge as a matter of right when:

(i) the party agrees to the assignment; or

(ii) after notice to the parties

(aa) the judge rules on any contested issue; or

(bb) the judge grants or denies a motion to dispose of one or more claims or defenses in the action; or

(cc) the judge holds a scheduled conference or contested hearing; or

(dd) trial commences.

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Such waiver is to apply only to such assigned judge.

(E) Cases Remanded From Appellate Courts. When an action is remanded by an appellate court and the opinion or order requires a new trial on one or more issues, then all rights to change of judge are renewed and no event connected with the first trial shall constitute a waiver.

(F) Assignment of Action. At the time of the filing of a notice of change of judge, the parties shall inform the court in writing if they have agreed upon a judge who is available and is willing to have the action assigned to that judge. An agreement of all parties upon such judge may be honored and, if so, shall preclude further changes of judge as a matter of right unless the judge agreed upon becomes unavailable. If no judge has been agreed upon, then the presiding judge shall immediately reassign the action.

If a judge to whom an action has been assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness or other legal incapacity, the parties shall be restored to their several positions and rights under this rule as they existed immediately before the assignment of the action to such judge.

2. Proceedings Based on Cause.

(A) Grounds. Grounds for proceedings based upon cause are stated in A.R.S. § 12-409 and proceedings under that statute shall be governed by this rule.

(B) Filing and Service. An affidavit shall be filed and copies served on the parties, the presiding judge and the court administrator, if any, in accordance with Rule 5, Arizona Rules of Civil Procedure.

(C) Timeliness and Waiver. An affidavit shall be timely if filed and served within twenty days after discovery that grounds exist for change of judge. No event occurring before such discovery shall constitute waiver of rights to change of judge based on cause.

(D) Hearing and Assignment. If a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409, the presiding judge or that judge's designee shall forthwith conduct or provide for a hearing to determine the issues connected with the affidavit. The hearing judge shall decide the issues by the preponderance of the evidence. Under § 12-409(B)(5) the sufficiency of any "cause to believe" shall be determined by an objective standard, not by reference to affiant's subjective belief. Following the hearing, the presiding judge or that judge's designee shall expeditiously reassign the action to the original judge or make a new assignment, depending on the findings of the hearing judge. If a new assignment is to be made, it shall be in accordance with the provisions of A.R.S. § 12-411.

3. Duty of Judge After Filing of Notice or Affidavit.

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(A) When a notice or an affidavit for change of judge is timely filed, the judge named in the notice or affidavit shall proceed no further in the action except to make such temporary orders as may be 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 shall also perform the functions of the presiding judge.

(B) 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 or affidavit shall proceed with the action.

→ **PROPOSED RULE 42: Consolidation of lawsuits**

Consolidation. *When lawsuits involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the lawsuits, or it may order all the actions consolidated, and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*

→ **PROPOSED RULE 43: Separate trials**

Separate trials. *The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury.*

→ **PROPOSED RULE 53: Change of judge**

Change of judge. *A party has a right to a change of judge for cause as provided in Rule 42(f) of the Arizona Rules of Civil Procedure. Proceedings concerning a change of judge for cause shall take place as provided by that rule.*

Rule 43. Witnesses; Evidence

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(a)	Definition of witness		X			See proposed Rule 44(a), which combines existing Rules 43(a), (b), and (d).

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Rule 43(a). Definition of witness

A witness is a person whose declaration under oath or affirmation is received as evidence for any purpose, whether such declaration is made on oral examination or by deposition or affidavit.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(b)	Affirmation in lieu of oath		X			See proposed Rule 44(a)

Rule 43(b). Affirmation in lieu of oath

Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(c)	Interpreters		X			See proposed Rule 44(b)

Rule 43(c). Interpreters

The court may appoint an interpreter of its own selection and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(d)	Limitation on examination of witness; exception				X	This provision was not included in the proposed rule because the exception may actually be the general rule.

Rule 43(d). Limitation on examination of witness; exception

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Only one attorney on each side shall conduct the examination of a witness until such examination is completed, except when the court grants permission for other attorneys to conduct the examination.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(e)	Deleted	--	--	--	--	

Rule 43(e). Deleted

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(f)	Form and admissibility of evidence		X			See proposed Rule 44(a)

Rule 43(f). Form and Admissibility of Evidence

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules or the Arizona Rules of Evidence.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(g)	Abrogated	--	--	--	--	

Rule 43(g). Abrogated

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(h)	Deleted	--	--	--	--	Comment states that subject matter is covered by R. Evid. 103

Rule 43(h). Deleted, effective Sept. 1, 1977

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(i)	Evidence on motions					See comment to existing Rule 7.1

Rule 43(i). Evidence on motions

When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(j)	Renumbered as Rule 39(c)	--	--	--	--	

Rule 43(j). Renumbered as Rule 39(c)

→ **PROPOSED RULE 46: Witnesses**

a) General rule. *A witness is a person who provides sworn testimony during a lawsuit. The testimony of a witness may be provided in court, through a deposition, or by an affidavit. During trial, the testimony of a witness shall be presented in person or by deposition. The admissibility of a witness' testimony shall be determined by the Arizona Rules of Evidence.*

b) Interpreter. *The court may appoint an interpreter for the testimony of a witnesses during a trial, and the court may determine the amount of the the interpreter's compensation. The compensation shall be paid by one or more of the parties as the court may direct, and may be taxed as a cost of the lawsuit, in the discretion of the court.*

Rule 44. Proof Records; Determination of Foreign Law

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(a)	Records of public officials				X	See Evidence Rule 902

Rule 44(a). Records of public officials

The records required to be made and kept by a public officer of the state, county, municipality, or any body politic, and copies thereof certified under the hand and seal of the public officer

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having custody of such records, shall be received in evidence as prima facie evidence of the facts therein stated.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(b)	Deleted	--	--	--	--	Comment states that this rule is deleted incident to the adoption of AZ Rules of Evid.

Rule 44(b). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(c)	Proof of records of notaries public				X	See Evidence Rule 902(8)

Rule 44(c). Proof of records of notaries public

Declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received in evidence as prima facie evidence of the facts therein stated.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(d)	Deleted	--	--	--	--	Comment states that this rule is deleted incident to the adoption of AZ Rules of Evid.

Rule 44(d). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(e)	Deleted	--	--	--	--	Comment states that this rule is deleted

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						incident to the adoption of AZ Rules of Evid. and Rule 44.1
--	--	--	--	--	--	---

Rule 44(e). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(e)1	Deleted	--	--	--	--	Comment states that this rule is deleted incident to the adoption of AZ Rules of Evid. and Rule 44.1

Rule 44(e).1. Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(f)	Deleted	--	--	--	--	Comment states that this rule is deleted incident to the adoption of AZ Rules of Evid.

Rule 44(f). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(k)	Proof of appointment of executor, administrator, or guardian; letters or certificate				X	See Evidence Rule 1005

Rule 44(k). Proof of appointment of executor, administrator, or guardian; letters or certificate

Whenever it is necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued in the manner provided by law, or a certificate of the proper clerk under official seal that the letters issued, shall be sufficient evidence of the appointment and qualification of the executor, administrator or guardian.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(m)	Comparison of handwriting				X	See Evidence Rule 901

Rule 44(m). Comparison of handwriting

In any action comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting them may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(n)	Deleted	--	--	--	--	

Rule 44(n). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(o)	Deleted	--	--	--	--	

Rule 44(o). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(p)	Deleted	--	--	--	--	

Rule 44(p). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(q)	Deleted	--	--	--	--	

Rule 44(q). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(r)	Deleted	--	--	--	--	

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Rule 44(r). Deleted, effective Sept. 1, 1977

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44(s)	Deleted	--	--	--	--	

Rule 44(s). Deleted, effective Sept. 1, 1977

Rule 44.1: Determination of foreign law

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
44.1	Determination of foreign law	X	X			See proposed Rule 40(b). The only proposed change is in the title of this rule

Rule 44.1. Determination of foreign law

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, 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 shall be treated as a ruling on a question of law.

→ **PROPOSED RULE 40(b): Questions of foreign law**

A party who intends to raise an issue concerning the law of a foreign country shall give notice by pleadings or other reasonable written notice. The court, in determining foreign law, 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 shall be treated as a ruling on a question of law.

Rule 45: Subpoena

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
45	Subpoena					Rule 45 was the subject of

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						extensive revisions that became effective 1/1/11. This rule requires RCiP consideration. Use Rule 84 form 9? Include Rule 64.1 text?
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Rule 45. Subpoena

Rule 46: Exceptions unnecessary

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
46	Exceptions unnecessary				X	

Rule 46. Exceptions unnecessary

Formal exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor. If a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47: Jurors

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(a)	Trial jury procedure; list; striking; oath		X			See proposed Rules 48(a) and (b)

Rule 47(a). Trial Jury Procedure; List; Striking; Oath

1. When an action is called for trial by jury, the clerk shall prepare and deposit in a box ballots containing the names of the jurors summoned who have appeared and have not been excused. The clerk shall then draw from the box as many names of jurors as the court directs. If the ballots are exhausted before the jury is completed, the court shall order to be forthwith drawn in the manner provided for other drawings of jurors, but without notice and without the attendance of officers other than the clerk, as many qualified persons as necessary to complete the jury.

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2. Alternatively, in any court where data processing equipment is used and random selection of trial jurors can be accomplished by such equipment, the court may direct the jury commissioner to cause a list of jurors to be printed, at random, by the use of such equipment and delivered to the court. The clerk shall then read the names of jurors in the order printed. If the number of names appearing on the printed form is exhausted before the jury selection is completed the court shall order additional jurors drawn in the same manner.

3. After the jury is completed, the clerk shall make a list thereof and deliver it to the parties for peremptory challenges. The parties shall exercise their challenges by alternate strikes, beginning with the plaintiff, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of remaining challenges but shall not deprive the other party of that other party's full number of challenges. The list shall then be delivered to the clerk who shall call the first eight names remaining on the list who shall constitute the trial jury, and to whom an oath or affirmation shall then be administered in substance as follows: "You do solemnly swear (or affirm) that you will well and truly try the issues now on trial and a true verdict render according to the law and the evidence, so help you God." If a juror affirms, the clause "so help you God" shall be omitted.

4. The court shall furnish counsel with the name, zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and felony conviction status of prospective jurors in writing before the voir dire examination is conducted on the day when jury selection is commenced within a specific time schedule as established by the court. The court shall keep all jurors' home and business telephone numbers and addresses confidential unless good cause is shown to the court which would require such disclosure.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(b)	Voir dire oath; examination of jurors; brief opening statements		X			See proposed Rules 48(c) and (d)

Rule 47(b). Voir Dire Oath; Examination of Jurors; Brief Opening Statements

1. Prior to examination of jurors with respect to their qualifications, an oath or examination shall be administered in substance as follows: "You do solemnly swear (or affirm) that you will well and truly answer all questions touching your qualifications to serve as a trial juror in the cause now on trial, so help you God." If a juror affirms, the clause "so help you God" shall be omitted.

2. Upon request and with the court's consent, the parties may present brief opening statements to the entire jury panel, prior to voir dire. The court may require counsel to present such opening statements.

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3. The court shall control voir dire and conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. In courts of record, voir dire shall be conducted on the record unless waived by the parties on the record. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors. The court shall ensure the privacy of prospective jurors is reasonably protected. The court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination. The court may permit written questions to be submitted following review and approval by the court.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(c)	Grounds of challenge for cause		X			See proposed Rule 48(e)

Rule 47(c). Grounds of challenge for cause

Challenges to jurors for cause in civil actions may be taken on one or more of the following grounds:

1. Want of any qualifications prescribed by statute to render a person competent as a juror.
2. Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of a family of either party, or a partner in business with either party, or when a surety on a bond or obligation for either party.
3. Having served as a juror or been a witness on a previous trial between the same parties in the same action.
4. Having formed or expressed an unqualified opinion or belief as to the merits of the action or showing such a state of mind as will preclude the juror from rendering a just verdict, but in the trial of any action the fact that a person called as a juror has formed an opinion or impression based upon rumor or newspaper statements about the truth of which that person has expressed no opinion shall not disqualify that person to serve as a juror in such action, if the person, upon oath, states that the person believes the person can fairly and impartially render a verdict therein in accordance with the law and evidence, and the court is satisfied of the truth of such statement.
5. The existence of a state of mind evincing enmity or bias for or against either party.
6. The presence of any grounds for disqualification specified in A.R.S. § 21-211.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(d)	Extent of examination; trial of challenge		X			See proposed Rule 48(e)

Rule 47(d). Extent of examination; trial of challenge

The examination of the jurors touching their qualifications to serve shall not be restricted to the grounds of challenge for cause, but may extend to any legitimate inquiry which might disclose a basis for exercise of a peremptory challenge. Challenges for cause shall be tried by the court. Upon the trial of the challenge to an individual juror for cause the juror challenged and any other material witness produced by the parties shall be examined on oath by the court and may be so examined by either party.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(e)	Manner of challenging; number of peremptory challenges		X			See proposed Rule 48(f)

Rule 47(e). Manner of challenging; number of peremptory challenges

Each side shall be entitled to four peremptory challenges. For the purposes of this rule, each case, whether a single action or two or more actions consolidated or consolidated for trial, shall be treated as having only two sides. Whenever it appears that two or more parties on a side have an adverse or hostile interest, the court may allow additional peremptory challenges, but each side shall have an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court. Any individual party, without consent of any other party, may challenge for cause.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(f)	Alternate jurors		X			See proposed Rule 48(g)

Rule 47(f). Alternate Jurors

The court may direct that not more than six jurors in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. If alternate jurors are impanelled, their identity shall not be determined until the

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end of trial. At the time of impanelment, the trial judge should inform the jurors that at the end of the case, the alternates will be determined by lot in a drawing held in open court. The trial judge shall also explain the need for alternate jurors and the procedure regarding alternates to be followed at the end of trial. The alternate, or alternates, upon being physically excused by the court at the end of trial, shall be instructed to continue to observe the admonitions to jurors until they are informed that a verdict has been returned or the jury discharged. In the event a deliberating juror is excused due to inability or disqualification to perform required duties, the court may substitute an alternate juror, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew. Each side is entitled to 1 peremptory challenge in addition to those otherwise allowed by law if 1 or 2 alternate jurors are to be impanelled, 2 peremptory challenges if 3 or 4 alternate jurors are to be impanelled, and 3 peremptory challenges if 5 or 6 alternate jurors are to be impanelled.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
47(g)	Juror notebooks		X			See proposed Rule 48(i)

Rule 47(g). Juror Notebooks

In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by the jurors during trial to aid them in performing their duties.

→ **PROPOSED RULE 48: Selecting a jury**

a. Qualifications of jurors; summoning jurors. *The qualifications for serving as a juror and the manner of summoning jurors to the court shall be as provided by law.*

b. List of jurors. *The clerk shall prepare a list of summoned jurors who have not been excused from jury service. The number of jurors on the list shall be determined by the trial judge. The list shall include the summoned juror’s zip code, occupation, employer, education level, and prior jury service. The clerk shall furnish a copy of the list to each party in the case that is going to trial.*

c. Examination of the jurors by the court. *After being assembled in open court and following the administration of an oath to truly answer questions asked of them during the jury selection process, the court in the presence of the parties may question the summoned jurors concerning their qualifications to serve as jurors in the lawsuit before the court. Based on a juror’s answers, the court in its discretion may excuse any summoned individual from serving as a juror in the lawsuit.*

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d. Examination of jurors by the parties. *The court in its discretion may also permit the parties to question the summoned jurors, subject to reasonable limitations set by the court. The court shall ensure that the privacy of the jurors is reasonably protected during the questioning, and it may terminate or limit questioning on grounds of abuse. The court may also direct that the parties submit written questions for the summoned jurors for the court's review and approval. The parties shall be permitted to question the summoned jurors concerning any legitimate inquiry which might assist the party in using a challenge of right.*

e. Challenge for cause. *A party may challenge a summoned juror's qualifications because the juror does not meet the legal requirements to serve as a juror; because of a relationship with a party or with a witness; because the juror has formed an opinion concerning the outcome of the lawsuit; or because the juror has a state of mind showing bias for or against a party. There shall be no limits on the number of summoned jurors challenged for cause. The determination of a challenge of a juror for cause shall be made by the trial judge.*

f. Challenge of right. *Each side shall be entitled to four challenges to summoned jurors of right, for any legitimate reason permitted by law. For purposes of this paragraph, each lawsuit, including lawsuits that have been consolidated for trial, shall be treated as having only two sides. The court may allow additional challenges for right if two parties on a side have adverse interests, in which case the other side shall have an equal number of challenges for right.*

g. Alternate jurors. *The court may permit alternate jurors to be selected. Each side shall have one additional challenge of right for each alternate juror that will be selected.*

h. Oath to jurors [new]. *After a trial jury has been selected, the clerk shall swear the jury to well and truly determine the case.*

i. Juror notebooks. *The court may in its discretion permit the jurors to have notebooks prepared by the parties that include documents and other exhibits for use by the jurors during trial to aid them in performing their duties.*

j. Note taking by jurors. *Before the parties make opening statements, the court shall instruct the jurors that each of them may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory during recesses, discussions and deliberations. The court shall provide materials suitable for this purpose. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall promptly destroy them.*

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Rule 48: Juries of less than eight; majority verdict

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
48	Juries of less than eight; majority verdict		X			See proposed Rule 49(g)

Rule 48. Juries of less than eight; majority verdict

The parties may stipulate that the jury shall consist of any number less than eight but not less than three, or that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

Rule 49: Special and General Verdicts and Interrogatories

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(a)	Return of a verdict by six or more jurors; presentation in court		X			See proposed Rule 49(h)

Rule 49(a). Return of a verdict by six or more jurors; presentation in court

When eight jurors have been impaneled to try the action, and if there has been no stipulation as provided in Rule 48 entered in the minutes of the trial as provided by A.R.S. § 21-102, the concurrence of six or more jurors shall be sufficient to render a verdict therein. When the eight jurors unanimously agree upon a verdict, the verdict shall be signed by the foreman and returned into court. When the jurors do not unanimously agree upon a verdict, but six or more agree, the jurors who agree shall each sign the verdict agreed upon, then notify the court of that fact, and thereupon the jury shall be returned into court and deliver to the court the verdict so signed. The court shall receive and cause the verdict to be read and recorded, and judgment shall be entered thereon.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(b)	Proceedings on return of verdict		X			See proposed Rule 49(i)

Rule 49(b). Proceedings on return of verdict

When the jurors have agreed upon a verdict, they shall be conducted into court by the officer having them in charge. The clerk shall read the verdict and shall inquire of the jury, or jurors agreeing, if it is their verdict. If any such juror disagrees as to the verdict, the jury shall again

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retire to consider the case further, but if no juror disagrees, the court shall receive the verdict and order it to be entered in the minutes, and the jury shall be discharged. Where a verdict is rendered by six or more jurors the verdict shall be received unless a juror signing the verdict disagrees therewith.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(c)	Defective or nonresponsive verdict		X			See proposed Rule 49(i)

Rule 49(c). Defective or nonresponsive verdict

If the verdict is informal or defective, the court may direct it to be reformed at the bar, and where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar, and the verdict may, if the jury assents thereto, be reformed in accordance with such computation. If the verdict is not responsive to the issue submitted to the jury, the court shall call the jurors' attention thereto, and send them back for further deliberation.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(d)	Fixing amount of recovery		X			See proposed Rule 49(i)

Rule 49(d). Fixing amount of recovery

When a verdict is found for the plaintiff in an action for recovery of money, and for the defendant upon a counterclaim or cross-claim for recovery of money, the jury shall find the amount of recovery on each claim, and the court shall render judgment in favor of the party entitled thereto for the difference in the amounts of such verdicts.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(e)	Special form of verdict not required		X			See proposed Rule 49(i)

Rule 49(e). Special form of verdict not required

No special form of verdict is required. Where there has been a substantial compliance with the law in rendering a verdict, the judgment shall be rendered and entered thereon notwithstanding a defect in the form of the verdict.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(f)	Polling jury; procedure		X			See proposed Rule 49(i)

Rule 49(f). Polling jury; procedure

When the verdict is announced either party may require the jury to be polled, which shall be done by the clerk asking each juror separately if the verdict returned is that juror's verdict. If any juror answers in the negative, the jury shall again be sent out for further deliberation, but if each juror concurs in the verdict it shall be received and noted in the minutes, except as provided by subdivision (c) of this Rule, and the jury shall be discharged.

When polling a jury at verdict, the judge and clerk shall not identify the individual jurors by name, but shall use such other methods or form of identification as may be appropriate to ensure an accurate record of the poll and to accommodate the jurors' privacy.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(g)	Special verdicts and interrogatories				X	

Rule 49(g). Special verdicts and interrogatories

The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence, or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding, or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
49(h)	General verdict accompanied by answer to interrogatories				X	

Rule 49(h). General verdict accompanied by answer to interrogatories

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The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.

→ ***PROPOSED RULE 49: Instructions to the jury; jury deliberations and verdict***

a. Preliminary instructions. Immediately after the jury is sworn, the court shall instruct the jurors concerning their duties and their conduct, the order of proceedings, the procedure for submitting written questions to a witness or to the court, the nature of evidence, and basic legal principles that apply. Instructions to the jury shall be given in a manner that makes them as readily understandable as possible by individuals who are not familiar with the legal system.

b. Requests for instructions. Before or at any time during the trial, and before submitting the case to the jury, any party may in writing request the court to instruct the jury on the matter described in the requested instruction. No party may contend that the court failed to give an instruction unless the party requested the instruction and the court refused to give the instruction to the jury.

c. Admonition to Jurors; Juror Discussions. If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial; except that the jurors shall be instructed that they will be permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, as long as they reserve judgment about the outcome of the case until deliberations commence. Notwithstanding the foregoing, the jurors' discussion of the evidence among themselves during recesses may for a good reason be limited or prohibited by the court.

d. Verdict, deliberations, and conduct of jurors.

1. The court before the jury begins to deliberate shall verbally instruct the jury in the presence of the parties on the law, the appropriate procedures to be followed during its deliberations, and the appropriate method for reporting the results of its deliberation.

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The court's instructions shall also be in writing and made available to the jurors during deliberations.

2. When the jurors retire to deliberate, they shall be kept together in some convenient place in the charge of a proper officer. The court in its discretion may permit jurors to separate while not deliberating. The court shall admonish the jury not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.

3. The court shall not require a jury to deliberate after normal work hours unless the court, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

4. Jurors shall have access to their notes and notebooks during deliberations.

e. Duty of officer in charge of jury. *The officer having charge of the jury shall not allow any communication to be made to them, nor shall the officer communicate to the jury except to ask them if they have agreed upon their verdict, unless by order of the court, and shall not, before the verdict is rendered, communicate to any person the state of the jury's deliberations or its verdict.*

f. Communication to court by jury. *When the jurors desire to communicate with the court during their deliberations, they shall make their desire known to the officer having them in charge who shall inform the court, and they may be brought into court, and through their foreman shall state to the court, either orally or in writing, what they desire to communicate.*

g. Majority verdict. *The parties may agree that the jury may consist of any number of jurors less than eight but not less than three, and that a verdict of a simple majority of the jurors will be taken as the verdict of the jury.*

h. Reaching a verdict. *When eight jurors hear the trial, the agreement of six or more jurors shall be required to reach a verdict. When all of the jurors agree upon the verdict, the verdict shall be signed by the foreperson, but when the jurors do not all agree, the verdict shall be signed by each juror who agrees with the verdict. No special form of verdict is required. The jury shall include in its verdict the amount of recovery on each party's claim or claims.*

i. Return of the verdict. *Upon reaching a verdict, the jury shall be returned to court by the officer in charge. The jury shall then deliver its verdict to the court in the presence of the parties, unless the presence of a party has been waived. The clerk shall read the verdict and inquire of the jury if that is its verdict. If any juror in the case of a unanimous verdict, or*

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otherwise if any juror who has signed the verdict, disagrees with the verdict that was read by the clerk, the jury shall again retire to deliberate. When the verdict is announced, any party may request that the jury be polled, which shall be done by the clerk asking each juror separately, but not by their name, if that is their verdict. If each juror agrees, the verdict shall be received, but if any juror answers in the negative, the jury shall again retire to deliberate. If the verdict is not responsive to the issue submitted to the jury, the court shall call this to the jury's' attention, and send the jury back for further deliberation. If the verdict contains a mathematical miscalculation, the court may with the parties recalculate the amount, and the verdict may, if the jury agrees, be revised pursuant to the recalculation.

j. Entry of verdict. *The court shall record the verdict that has been read and received, if proper, and shall enter judgment on the verdict. When a verdict is found for the plaintiff in an action for the recovery of money, and a verdict is also found for the defendant upon a counterclaim or cross-claim for recovery of money, the court shall render judgment in favor of the party entitled thereto for the difference in the amounts of such verdicts.*

k. Discharge of a jury after returning a verdict. *The court shall dismiss the jury after its verdict has been received and recorded by the court. When dismissing a jury at the conclusion of the case, the court shall advise the jurors that they are discharged from service and, if appropriate, the court shall release them from their duty of confidentiality and explain their rights regarding inquires from the attorneys, the media, or any person.*

l. Assisting Jurors at Impasse. *If the jury advises the court that it has reached an impasse in its deliberations, the court may, in the presence of the parties, inquire of the jurors to determine if or how the court can assist them in their deliberative process. After receiving the jurors' response, if any, the judge may direct that further proceedings occur as appropriate.*

m. Discharge of jury; new trial. *The jurors may, after the action is submitted to them, be discharged by the court when they have been kept together for such time as to render it altogether improbable that they can agree, or when a calamity, sickness or accident may, in the opinion of the court, require it. When a jury has been discharged without having rendered a verdict, the lawsuit may be tried again.*

n. Memoranda. *No memoranda shall be filed after trial other than memoranda in support of or in opposition to a motion pursuant to Rule __, __, __, or __ of these Rules, unless otherwise specifically directed by the trial judge.*

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Rule 50: Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
50	Judgment as a matter of law in actions tried by jury; alternative motion for new trial; conditional rulings		X			See proposed Rule 50

Rule 50. Judgment as a Matter of Law in Actions Tried by Jury; Alternative Motion for New Trial; Conditional Rulings

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

(2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for 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. Such a motion may be renewed by service and filing not later than 15 days after the entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(c) Same: Conditional Rulings on Grant of Motion for Judgment as a Matter of Law.

(1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for new trial, if any, by determining whether it should be granted if the judgment

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is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. In case the motion for new trial has been conditionally denied, the appellee on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 15 days after entry of the judgment.

(d) Same: Denial of Motion for Judgment as a Matter of Law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion 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 for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

→ **PROPOSED RULE 50: Judgment as a matter of law**

a. General rule. *If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against the party and may grant a motion for judgment as a matter of law against that party with respect to any claim or defense. Motions for judgment as a matter of law may be made at any time before the case is submitted to the jury.*

b. Reconsideration. *If the court does not grant a motion for judgment as a matter of law made under the previous paragraph, the court is considered to have submitted the lawsuit to the jury subject to the court's later deciding the legal questions raised by the motion. The court may reconsider the motion within fifteen days after the verdict has been returned by the jury.*

Rule 51: Instructions to Jury; Objections; Arguments

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
51(a)	Instructions to jury; objection		X			See proposed Rule 49(b)

Rule 51(a). Instructions to Jury; Objection

Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses

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or of the court as set forth in Rule 39(b)(10), the procedure for note-taking, the nature of evidence and its evaluation, any issues to be addressed, and the elementary legal principles that will govern the proceeding. The instructions shall be provided in a manner that makes them as readily understandable as possible by individuals unfamiliar with the legal system. Prior to the commencement of a jury trial or at such other time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Counsel shall be deemed to have waived request for other instructions except those which could not reasonably have been anticipated prior to trial. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. 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 of the objection. Opportunity shall be given to make the objection out of hearing of the jury. All communications between the court and members of the jury panel shall be in writing or on the record.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
51(b)	Instructions to jury; notations; filing transcript		X			See proposed Rules 49(a) and (d)

Rule 51(b). Instructions to jury; notations; filing transcript

1. The court shall either give or refuse the instruction as requested, or shall modify the instruction, indicating on the record the modifications made and give it as modified. The court's instructions may be used by the parties in the argument to the jury.
2. The written instructions shall be filed among the papers in the action and constitute a part of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed by the certified court reporter or authorized transcriber and filed with the clerk.
3. The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring from deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court. In limited jurisdiction courts, the court may record jury instructions electronically and provide these instructions to the jury for their use during deliberations.

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Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
51(c)	Renumbered	--	--	--	--	

Rule 51(c). Renumbered as Rule 39(n)

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
51(d)	Deleted	--	--	--	--	

Rule 51(d). Deleted, May 1, 1989, effective July 1, 1989

Rule 52: Findings by the Court; Judgment on Partial Findings

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
52(a)	Effect		X			See proposed Rule 51(a)

Rule 52(a). Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or minute entry or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
52(b)	Amendment		X			See proposed Rule 51(a)

Rule 52(b). Amendment

Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

Upon motion of a party made not later than 15 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the superior court an objection to such findings or has made a motion to amend them or a motion for judgment.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
52(c)	Judgment on partial findings					Workgroup #2 defers to the Committee. The meaning and intent of this rule is unclear

Rule 52(c). Judgment on Partial Findings

If during a trial without a jury a party has been fully heard on an issue and the court after determining the facts finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law if requested as required by subdivision (a) of this rule.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
52(d)	Submission on agreed statement of facts		X			See proposed Rule 51(b)

Rule 52(d). Submission on Agreed Statement of Facts

The parties to an action may submit the matter in controversy to the court upon an agreed statement of facts, signed by them and filed with the clerk and the court shall render judgment thereon as in other cases. The agreed statement, certified by the court to be correct, and the judgment shall constitute the record of the action.

→ **PROPOSED RULE 51: Findings in a trial to the court**

Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

a. General rule. *In a case tried to the court without a jury, the court if requested before trial shall make specific findings concerning the facts. The court shall also state its conclusions of law based upon those facts. Findings of fact shall not be set aside on appeal unless they are clearly erroneous, and due regard shall be given to the opportunity of the trial judge to determine the credibility of a witness.*

b. Agreed statement of facts. *The parties to a lawsuit may submit any contested issue to the court upon an agreed statement of facts that has been signed by the parties and filed with the court. The court shall render judgment based on the agreed statement of facts.*

Rule 53: Masters

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
43(a)	Appointment				X	

Rule 53(a). Appointment

(1) 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 by the court 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 addressed effectively and timely by an available superior court judge in the county in which the court sits.

(2) A master shall not have a relationship to the parties, counsel, 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 consent with the court's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) In appointing a master, the court shall consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(b)	Order appointing master				X	

Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

Rule 53(b). Order appointing master

(1) *Notice.* The court shall give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(2) *Contents.* The order appointing a master shall 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(i).

(3) *Entry of Order.* The court may enter the order appointing a master only after the prospective appointee has filed an affidavit disclosing whether there is any ground for disqualification under Rule 81 of the Rules of the Supreme Court of Arizona and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the grounds of disqualification.

(4) *Amendment.* The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(c)	Master's authority				X	

Rule 53(c). Master's authority

Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The master may be order impose upon a party any noncontempt sanction provided by Rules 37 or 45, and may recommend a contempt sanction against a party and sanctions (including contempt) against a nonparty.

Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(d)	Meetings and evidentiary hearings				X	

Rule 53(d). Meetings and evidentiary hearings

(1) Meetings. When a master is appointed, the clerk shall forthwith furnish the master with a copy of the appointing order. Upon receipt thereof, unless the appointing order otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys, to be held within twenty days after the date of the appointing order, and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and, if applicable, make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) Evidentiary hearings. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(e)	Master's orders				X	

Rule 53(e). Master's orders

A master who makes an order shall file the order and promptly serve a copy on each party. The clerk shall enter the order on the docket.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(f)	Draft reports				X	

Rule 53(f). Draft reports

Before filing a report, a master may submit a draft of the report to the parties for the purpose of receiving comments.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
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Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

53(g)	Master's reports				X	
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Rule 53(g). Master's reports

A master shall report to the court as required by the order of appointment. The master shall file the report and promptly serve a copy of the report on each party, unless the court directs otherwise.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(h)	Action on master's order, report, or recommendations				X	

Rule 53(h). Action on master's order, report, or recommendations

(1) *Time to object or move.* 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 from the time the master's final order, report, or recommendations are served, unless the court sets a different time.

(2) *Fact findings.* The court shall 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.

(3) *Legal conclusions.* The court shall decide de novo all objections to conclusions of law made or recommended by a master.

(4) *Procedural matters.* Unless the order of appointment 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.

(5) *Action.* In acting on a master's final order, report, or recommendations, the court shall consider and rule upon any objections and motions filed by the parties, and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(j)	Compensation				X	

Workgroup #2: 4/20/2011 with meeting changes
Existing + proposed rules

Rule 53(i). Compensation

(1) *Fixing compensation.* The court shall fix the master's compensation before or after judgment on the basis and terms stated in the order of appointment, but the court may set a new basis and terms after providing notice to the parties and an opportunity to be heard.

(2) *Payment.* The compensation fixed under Rule 53(i)(1) 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) *Allocation.* If a master's compensation is to be paid by a party or the parties, the court shall allocate payment of the master's compensation among the parties and may consider the nature and amount of the controversy, the means of the parties, the extent to which any party is more responsible than other parties for the reference to or use of a master, and any other factor the court deems relevant. An interim allocation may be amended by the court after providing notice to the parties and an opportunity to be heard.

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(j)	Repealed	--	--	--	--	

Rule 53(j). Repealed by Order dated Sept. 27, 2005, effective Jan. 1, 2006

Rule	Description	Applies as written	Applies w/ new language	Applies by reference	Does not apply	Comment
53(k)	Repealed	--	--	--	--	

Rule 53(k). Repealed by Order dated Sept. 27, 2005, effective Jan. 1, 2006