

Committee on Civil Rules of Procedure for Limited Jurisdiction Courts

MEETING AGENDA

Tuesday, October 25, 2011

10:00 AM to 3:00 PM

Judicial Education Center * 541 East Van Buren * Copper Room * Phoenix, AZ

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

Item no. 1	Call to Order. Introductory comments. Approval of the September 28, 2011 meeting minutes.	<i>Mr. Julien, Chair</i>
Item no. 2	Presentation of revisions included in the current draft of the Justice Court Rules of Civil Procedure (“JCRCP”).	<i>Staff</i>
Item no. 3	Discussion of and action on specific draft rules: Rule 122: General provisions regarding discovery Rule 130: Settlement conferences Rule 131: Pretrial conferences Rule -- Pretrial motions regarding evidence (deleted) Rule 133: Trial, change of judge, etc. Rule 140: Entry of default judgment Rule 148: Forms	<i>All</i>
	Lunch.	
Item no. 4	Discussion of and action on other draft rules, the tables, and the Committee’s report to the Arizona Judicial Council.	<i>All</i>
Item no. 5	Discussion of this Committee’s next steps; formal approval of the Chair’s authority concerning comments and revisions pending the filing of a rule petition.	<i>Mr. Julien</i> <i>All</i>
Item no. 6	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.

ARIZONA SUPREME COURT
Committee on Civil Rules of Procedure in Limited Jurisdiction Courts (“RCiP.LJC”)
Draft Minutes
 September 28, 2011

Members present:

Hon. Paul Julien, Chair
 Hon. Hugh Hegyi
 Hon. Jill Davis
 Hon. Timothy Dickerson
 Hon. Maria Felix
 Hon. Gerald Williams
 Mary Blanco
 Veronika Fabian

Members present (cont’d):

David Hameroff
 Stanley Hammerman
 Emily Johnston
 Nathan Jones
 William Klain
 George McKay
 David Rosenbaum
 Anthony Young
 (All members present)

Guests:

Hon. Rebecca Berch
 Anne Ronan
 Jon Hultgren
 Richard Groves
 Eric Lougin
 Floyd Bybee
 Theresa Barrett

Staff: Mark Meltzer, Julie Graber

1. Call to Order; stakeholder input; approval of meeting minutes. The Chair called the meeting to order at 10:05 a.m. The Chair requested a summary of stakeholder input concerning the proposed rules that had been received subsequent to the August 11 Committee meeting.

The Chair noted that he and staff had attended a meeting of the State Bar’s Civil Practice and Procedure Committee (“CPPC”). Mr. Klain, the CPPC’s chair, said that after RCiP.LJC’s rule petition is filed, the CPPC would prepare formal comments. The CPPC’s comments are subject to approval by the Bar’s Board of Governors. A CPPC subcommittee lead by Ms. Anne Ronan has been formed to review a final version of the rules.

Judge Dickerson and Judge Davis reviewed their respective judge meetings in Cochise and Mohave Counties, both of which were attended by the Chair. Comments were generally positive on having a set of civil rules for justice court cases. Questions were asked about whether motions would be eliminated, and how simple the rules will be. It was noted that most judges have their own way of processing a civil case, and every judge wants the draft rules to embody their individual way of doing things.

Judge Felix summarized comments made during the Justice of the Peace Association meeting earlier this month, where the Chair presented the draft rules. It appeared to be the consensus at this meeting that pretrial conferences should be optional rather than mandatory. Other comments that were made included: there should be limits on the number of motions to extend time; complaints should be verified and should include supporting documents; discovery should not be permitted; and the rules should allow entry of a judgment by the court, even without a motion to do so, when an answer does not state a defense. Finally, Judge Williams noted these additional

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comments: judges are lenient in enforcing rules when one of the litigants is self-represented; depositions should be abolished in justice court cases; and there were concerns that eliminating rules may eliminate rights of litigants. In general, the judges were interested in having a set of civil rules that was easier to read.

Staff reported on his presentations to the Limited Jurisdiction Court Administrators Association and the Committee on Superior Court. The LJCAA was interested in whether these draft rules would apply to small claims; they do not, with exceptions, such as the rule on default. COSC inquired on whether the rules would have provisions for appeals; they do not, appeals are covered by the Superior Court Rules of Appellate Procedure (“SCRAP”).

The Chair noted that the Supreme Court was considering a global review of the rules of civil procedure for the superior court. The Chair then asked the members to review the minutes of the prior meeting.

Motion: A motion was made to approve the August 11, 2011 meeting minutes. The motion was seconded and it carried unanimously. **RCiP.LJC 11-012**

2. How simple should the rules be? The Chair opened a discussion about the level of simplicity the justice court rules should strive to achieve. Judge Hegyi began the discussion. He said that the rules should be simple enough to be briefly explained to self-represented litigants, and they should be intuitive for those litigants. He acknowledged that the current version of the rules is a good simplification of the existing rules, but that alone may not provide the degree of simplification he thinks is necessary.

Judge Hegyi envisions a process where a default is efficiently entered if no answer is filed. If an answer is filed, the clerk would send the parties a notice to appear for a conference with a “conference officer.” The conference officer would quickly determine if a settlement could be reached, and if so, the settlement would be memorialized and sent to the judge for entry. If there was no settlement, the parties would exchange exhibits and a list of witnesses; and the conference officer would provide deadlines for other disclosures and discovery, if discovery was appropriate. This schedule would be memorialized and sent to the judge, who would provide a trial date; and if there was any issue about whether particular discovery could be undertaken, the judge would rule on it. The entire process envisioned by Judge Hegyi could be conducted in about fifteen minutes.

Judge Hegyi feels that this conference would streamline justice court procedures, and is similar to what is done by the Maricopa County Superior Court in domestic cases. The process would be helpful for self-represented litigants because (1) the case would require only two court appearances, one for the conference and the second for trial; (2) the litigant would know after the first appearance when the trial is scheduled; and (3) the process requires that very little be done in writing, which would level the playing field for litigants with little education.

Judge Hegyi believes that this process will provide self-represented litigants with a feeling that they have participated in the legal process, and it will reduce feelings of frustration and alienation. Some of the rules that have already been drafted may be incorporated into his proposed process, but even if his proposal requires additional meetings, he thinks that this Committee should seize a once-in-a-generation opportunity for meaningful change.

Judge Williams questioned whether a conference is more efficient in resolving a case than a motion. For example, he can decide a motion for judgment on the pleadings more quickly than he can conduct a conference. Eviction hearings are accelerated by necessity, but the civil case track is not as speedy. Judge Williams added that while answers are filed in about 20 percent of collection cases, even in many of those cases the defendant answers that money is owed “but...[with some other explanation for non-payment].” Judge Hegyi suggested a rule whereby the judge could review the pleadings in those cases and enter judgment sua sponte if there’s no meritorious defense. On the other hand, Judge Hegyi believes that if there is a triable issue under the pleadings, the litigants should have an opportunity to explain their positions in court, because responding to motions and particularly motions for summary judgment can be baffling for self-represented individuals.

Mr. Klain offered support for Judge Hegyi’s view, but commented that he would be cautious about eliminating rights that exist under the current rules. He noted that a proposed amendment to Rule 56 would allow the judge to grant summary judgment for a non-moving party, or for a moving party on grounds not raised by that party. However, who would explain to a self-represented litigant why their case is now over without ever having a “day-in-court” if there was a similar provision in justice court?

Mr. Klain raised the possibility of having two sets of justice court rules: a short set, perhaps four pages, which would be comprehensible to self-represented litigants; and a longer set, like the current draft version, for use by attorneys. The parties would presumptively use the short set, but could “opt in” to use the long set. Mr. Klain also offered a third option: that the judge would determine which set of rules applied. Judge Williams felt that if a self-represented litigant opted for the simplified rules initially, and then later retained an attorney, the attorney might be unfairly bound by the earlier election. Judge Davis observed that a short set of rules might result in a process similar to one used in small claims lawsuits, where there are no rules and the parties are simply encouraged to speak with one another about resolving the case.

Mr. Jones’ concept of simplicity included allowing discovery only upon motion, as is done in limited jurisdiction courts in Nevada. He added that judges in Coconino County justice courts conduct all proceedings because there are no conference officers or mediators, and he questioned whether remote courts would have the available resources if these conferences became mandatory. He believes that the existing draft represents consensus and compromise. He also believes that self-represented litigants are better able to understand these rules than we might suppose, but that it would enhance their understanding if they knew where to look in the rules for answers.

Mr. Rosenbaum observed that much of what Judge Hegyi proposed is included in the current draft of the justice court rules. The current draft includes rules for filing, service, answering, and the like, and even under Judge Hegyi's proposal, rules such as these would be necessary. He noted that the Committee retained discovery and motions in the draft rules because litigators have stated that those rules serve to streamline the process rather than slow it. He also questioned whether courts have sufficient resources to conduct an early, fifteen-minute conference in every disputed case. However, early judicial action that facilitates settlement might be built-in to the existing draft. If the Committee supports early judicial intervention, it should be optional because it might not work in every court. He reminded the members of the values of due process and judicial precedent, and the rules should embody these principles.

Mr. Hammerman commented that appearing in justice court can be intimidating for anyone. It begins with a long line for security, continues with another line at the clerks' counter, and is followed by a wait in the courtroom. He believes that Judge Hegyi's proposal is no less intimidating than the current process. He added that the rules are inherently fair, but they need to be administered more justly. For example, even in situations where he has filed a meritorious motion for judgment on the pleadings, it's been denied so that a defendant can have a day-in-court. Mr. Hammerman said that he's been surprised at trials by witnesses who were never disclosed. Most litigants and some lawyers don't read the rules, and clerks may not have time to answer questions. The process should be explained in a few pages that litigants will actually read and follow. The Chair agreed that additional training on civil procedure would benefit judges and their staff.

Mr. Young expressed his concerns that oversimplification of the rules could dilute due process, and could transform all justice court procedures to the small claims level. He does not support a small claims approach for all cases under \$10,000. He mentioned that oversimplification could discourage litigants if it makes them feel that "the deck is stacked against them." The rules need to promote predictability and consistency.

Ms. Johnston stated that \$10,000 is a significant sum for most self-represented litigants, and the rules should fairly serve these litigants as well as those with counsel. Ms. Johnston expressed concern that when self-represented litigants oppose parties who are represented, attorneys will opt for whatever set of rules is disadvantageous for self-represented individuals. She also felt that conference officers who are not law trained might give litigants the impression that they are not getting a "real" judge on their case.

Ms. Fabian believes that Judge Hegyi's proposal does not provide enough support for consumers. She stated that plaintiffs make mistakes when they file lawsuits, and discovery is her tool for determining those cases in which mistakes were made. She asked why a consumer who owes \$10,001 should have more rights than a consumer who owes slightly less.

The Chair inquired whether volunteer lawyers for self-represented litigants might level the field. One of the members responded that this would be a good opportunity for new lawyers to get

experience, but that most of them would want cases in the superior or federal courts, and would decline to serve as volunteers in justice court cases.

Judge Dickerson expanded on the volunteer ADR program that exists under Cochise County Local Rule 12. Volunteer mediators, many of whom are retired and who have a variety of educational backgrounds, get hours of training before serving in the program. In arbitrations conducted by these volunteers, the rules of evidence are loosely applied, and either side can appeal a volunteer's arbitration decision and have a trial de novo before a justice of the peace. In those Cochise County cases in which an answer is filed and that are not disposed of by motion, eighty percent are resolved by ADR. The Cochise County judges therefore have fewer trials, and he considers the program successful. He acknowledged that other justice courts might not have the resources to establish a similar ADR program.

Judge Dickerson is concerned that if there were two sets of rules, attorneys will opt out of the simple set and self-represented litigants would still have to deal with the more complex set. He is in favor of discovery only for good cause. He added that the limited jurisdiction court reference manuals contain only "the basics" for civil cases, and that more training in civil cases would benefit judges. Staff turnover can also hinder the ability of the clerks to become knowledgeable about the rules and respond to questions from self-represented litigants.

Mr. Hameroff felt that Judge Hegyi's proposal could dispose of a certain percentage of the cases, but not all of the cases. Ms. Blanco stated that giving self-represented litigants an option on which rules applied was too complicated, and that we should have only one set for all cases. She also stated that most cases conclude by default judgment, and the Committee is trying to create a complex scenario for a minority of the cases, that is, those cases where answers are filed. She added that her court is in downtown Phoenix, yet despite the dense population, the court had difficulty in finding a suitable number of volunteer mediators.

Judge Felix added that Pima County Consolidated Justice Courts had over 1400 new civil filings during August. She re-iterated the views expressed at the JP association meeting, that the rules about pretrial proceedings should be permissive rather than mandatory.

Mr. McKay emphasized the view that proceedings in justice court are important, and that these courts should continue to function as a respected component of the court system. For defendants in justice court, the money at stake is considerable. Oversimplification minimizes the protections afforded by law. The litigants deserve these careful protections, and not a ten-minute, television-style version of court proceedings.

Judge Hegyi observed that some of the members appeared to agree with him, and others appear to support the draft rules. Judge Hegyi agreed that the draft rules simplify the existing rules, but the public criticizes the courts for taking too long and for being too confusing, and the draft rules should therefore be even simpler. He questioned whether the average self-represented litigant would understand the current version of the draft.

The Chair thanked the members for expressing their views, and especially Judge Hegyi for initiating this re-evaluation of the rules. The Chair noted that staff throughout this process has listened to the philosophy underlying the members' comments, and has attempted to incorporate the essence of their concepts within the draft rules.

3. Disclosure concerning assigned debts in collection cases. The Chair continued with an issue concerning assigned debts in collection cases, specifically, how to provide the defendant-debtor with information about the identity of the original creditor. Ms. Fabian stated that this information, along with the terms of the contract and documentation of the last payment, should be provided early in the litigation, perhaps as attachments to the complaint. She said she benefits from early disclosure to determine if statutes of limitation, choice of law, and other defenses might be available.

The Chief Justice entered the room and briefly thanked the members of the Committee for their time and effort on this project.

Mr. Klain then reiterated his prior position: that the rules should not single out a class of plaintiffs by requiring heightened disclosure. Whether information should be disclosed depends on the particular case, and if a defendant is entitled to the information, there is a process under the discovery rules for obtaining it. Judge Williams stated that the rules should not require attaching documents to complaints; in light of the number of complaints that proceed to default, such a requirement would burden the courts with unnecessarily thick case files. Mr. Hammerman reminded the members that the draft rules are procedural, not evidentiary, and that the rules should not require production of items such as original contracts that contradict federal lending laws. He said that the rules should not have different disclosure standards for plaintiffs and defendants. He mentioned that the members previously discussed this issue, and resolved it by a formal motion at the June 9 meeting, and a member read aloud a portion of the June 9 minutes. Members then made and voted on motions:

Motion: A motion was made to include in the rule on the content of the complaint (currently Rule 111) a requirement that the complaint include, in actions to recover on a debt, the identity of the original owner of the debt. The motion was seconded and it carried unanimously. **RCiP.LJC 11-013**

Motion: A motion was made that the disclosure requirements, currently set out in paragraphs (c), (d), and (e) of Rule 122 concerning pretrial conferences, be removed to a new, separate rule on disclosure statements, for inclusion with the rules on discovery. The motion was seconded and it carried unanimously. **RCiP.LJC 11-014**

Motion: A motion was made and seconded that a requirement currently contained in Rule 122(c)(4), entitled "copies of documents concerning assigned debts", be removed from the new disclosure rule and that it remain in the rule on pretrial conferences, so that plaintiffs in assigned debt cases would be required to bring specified documents to the pretrial conference. Comments concerning this motion included the following:

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- The documents might not be available at the time of the pretrial conference.
- What is the sanction if the documents aren't brought to the pretrial conference? Without a sanction, the requirement is not useful.
- The requirement unfairly singles out a particular class of plaintiffs.
- Creditor-plaintiffs already have a duty under the disclosure rule to disclose any exhibits they will use to prove a case, and this rule is cumulative and unnecessary.
- In cases where disclosure statements have been exchanged before the pretrial conference, this requirement is redundant.

The motion passed, 8-6-1. **RCiP.LJC 11-0015**

The discussion on this last motion revealed that issues concerning the language of this rule still remain, and Mr. Young, Mr. Hammerman, Ms. Fabian, and Judge Williams as a workgroup will discuss them and propose solutions. At this point Mr. Hammerman left the meeting, designating Mr. Hultgren as his proxy. Mr. Hultgren noted that at the pretrial conference in certain precincts, the clerk provides the parties with a form to complete, the parties return the completed form to the clerk, and the conference is over without the parties ever seeing the judge. Mr. Young stated the workgroup would consider this scenario in addressing issues under the pretrial rule.

Action: The workgroup will report at the next Committee meeting.

4. Default procedures. Defaults occur in a majority of civil cases in justice courts, and the members proceeded to review the default procedures set out in draft Rule 140. Ms. Blanco noted that in her court, attorneys may file a motion for default judgment concurrently with the application for entry of default, or they may file the motion after the application. Members indicated that their practices vary, with some filing the motion at the same time as the application, and others filing the motion thereafter. Attorneys prepare their own forms of judgment. Ms. Blanco stated that her court prepares default judgments if the plaintiff is self-represented, although one member expressed concern about this. Ms. Blanco suggested that the draft rule should include a time period, perhaps sixty days, after the default is entered in which to file a motion for default judgment.

The discussion encompassed what should occur if an answer is filed after the ten-day grace period, but prior to the entry of a default judgment. Some members held the view that on the tenth day the door is shut, and the answer should no longer be considered by the court; or that if the court receives an answer, it should set the matter for a pretrial conference to inform the defendant that the answer was untimely. Others stated that the length of the grace period is within the court's discretion; if an answer is filed any time before entry of judgment, the case should be set for a pretrial conference and proceed on the merits. While some courts apparently require a motion to set aside a default in this scenario, other courts forego this because the motion is not readily understood by self-represented parties, and because the defendant did what was requested, i.e., file an answer, even though it may not have been timely.

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5. Next steps. There are a number of issues that must still be discussed. The Chair proposed another meeting on October 25 at the Judicial Education Center in Phoenix. Mr. Klain asked the members to review R-11-0010, abrogating Rule 13(f) and amending Rule 15(a)(1), as well as a proposal the State Bar is considering concerning Rule 56, which he will provide.

6. Call to the Public; Adjourn. There was no response to a call to the public. The meeting was adjourned at 3:05 p.m.

The next meeting date is tentatively set for **Tuesday, October 25, 2011.**

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Part I: General provisions.

Rule 101: Application and interpretation.
Rule 102: Duties of a party.
Rule 103: Court conduct.

Part II: The parties to a lawsuit.

Rule 104: Naming the parties.
Rule 105: Substitution of parties during a lawsuit.
Rule 106: Third party practice; intervention; interpleader.

Part III: Presenting claims and defenses in a lawsuit; filing documents with the court; signatures.

Rule 107: Definition of “*pleading*”; interpretation of pleadings.
Rule 108: Preparing a document for filing with the court.
Rule 109: Signatures on documents filed with the court.

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

Rule 110: Starting a lawsuit; content of a complaint.
Rule 111: Lawsuits involving multiple parties or multiple claims.
Rule 112: Case number and filing date; issuance of a summons by the court clerk; content of a summons; notice to defendant; replacement summons.
Rule 113: Serving a summons and complaint.

Part V: Responding to a lawsuit.

Rule 114: Deadline for filing a written response with the court after service of a complaint, or after service of a third party complaint, cross-claim or counterclaim.
Rule 115: How to calculate time.
Rule 116: Filing a response to a complaint.
Rule 117: Counterclaims and cross-claims.
Rule 118: Third-party complaint.
Rule 119: Amended and supplemental pleadings.
Rule 120: Serving documents on other parties after a summons and complaint.

Part VI: Disclosure Statements and Discovery.

Rule 121: Duty to serve a disclosure statement.
Rule 122: General provisions regarding discovery.
Rule 123: Depositions upon oral examination.
Rule 124: Interrogatories to parties.

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Rule 125: Request for production of documents, electronically stored information, and things;
request for entry upon land for inspection and other purposes.

Rule 126: Requests for admissions.

Rule 127: Discovery violations.

Part VII: Motions.

Rule 128: Motions.

Rule 129: Motion for summary judgment.

VIII. Settlement conference and pretrial conference.

Rule 130: Settlement conference.

Rule 131: Pretrial conference.

Part IX: Trial.

Rule 132: Matters concerning trial.

Rule 133: Setting a lawsuit for trial; trial by jury or to the court; question of foreign law; change
of precinct or judge; disability of a judge during trial; verdict or decision.

Rule 134: Procedure for jury trials.

Rule 135: Findings in a trial to the court.

Rule 136: Consolidated and separate trials.

Rule 137: Witnesses and interpreters.

Rule 138: New trial.

Part X: Judgment.

Rule 139: Judgment.

Rule 140: Entry of default judgment.

Rule 141: Correcting or setting aside a judgment or an order.

Rule 142: Stay of proceedings to enforce a judgment.

Rule 143: Harmless error.

XI. Dismissal of lawsuits.

Rule 144: Dismissal of lawsuits.

XII. Special Proceedings.

Rule 145: Civil arrest warrant.

Rule 146: Deposits with the court; proceedings against sureties.

Rule 147: Enforcement of a judgment or order

XIII. Forms and Tables.

Rule 148: Forms.

Tables.

Part I: General provisions.

Rule 101: Application and interpretation.

a. Title of these rules. These rules are called the Justice Court Rules of Civil Procedure (“*JCRCP*”).

b. Application of these rules. These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts.

c. Interpretation of these rules. These rules should be interpreted so that civil lawsuits are resolved speedily, inexpensively, and justly.

d. Relationship of these rules to the Arizona Rules of Civil Procedure. These rules replace the Arizona Rules of Civil Procedure. In addition, certain Arizona Rules of Civil Procedure that are specifically referred to in these rules also apply in justice courts. Arizona Rules of Civil Procedure that have been incorporated by reference are listed in Table 1.

Rule 102: Duties of a party.

a. Meaning of “party” and “person”. Everyone who makes a claim in a lawsuit or who is required to file a written response to a claim is a “*party*”. A “*person*” includes a business or an organization.

b. Duties of a party. A party has the following duties to the court and to the other parties in a lawsuit:

(1) To provide copies of filed documents. A party has a duty to provide to other parties a copy of every document the party files with the court; see further Rule 120.

(2) To provide disclosure and discovery. A party has a duty to serve a disclosure statement, and a duty to comply with disclosure requirements and discovery requests; see further Rules 121 through 126.

(3) To appear in court. A party has a duty to attend all scheduled court proceedings; see further Rules 130, 131, and 132. A party who is represented by an attorney may appear in court through the attorney, unless otherwise ordered by the court.

(4) To provide a current address and telephone number. Until the lawsuit is concluded, a party is required to advise the court in writing of any change in their mailing address or telephone number.

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(5) To give notice of settlement. A party is required to notify the court if a lawsuit that is set for trial has settled before the trial date, and whether the settlement will be by entry of a judgment or by dismissal of the lawsuit.

c. Duties of parties representing themselves. Parties who represent themselves have a duty to read these rules and to know the rules that apply to their lawsuit.

d. Duties of attorneys. An attorney who appears in a civil lawsuit in justice court, or who requests permission to withdraw or to substitute as counsel, must meet the requirements of Rule 5.1 of the Arizona Rules of Civil Procedure concerning appearances, withdrawal, and substitution.

Rule 103: Court conduct.

a. Conduct in court. Parties and witnesses who appear in court must conduct themselves in an orderly, courteous, and dignified manner. Arguments and remarks during a court hearing, other than questions to a witness, must generally be addressed to the court, not to the other parties or their attorneys.

b. Exclusion of minors. The court may exclude from the courtroom children whose presence is not necessary as parties or witnesses.

c. Agreements between parties. During a lawsuit, parties or attorneys will not be bound by an agreement unless the agreement is in writing and has been signed by the parties, or unless the agreement has been made orally in court upon the record if a record is made, or is entered in the written records of the court.

d. Lost or destroyed records. If the court's record of a lawsuit or any portion of a lawsuit has been lost or destroyed, a substitute record may be supplied as provided by Rule 80(h) of the Arizona Rules of Civil Procedure.

Part II: The parties to a lawsuit.

Rule 104: Naming the parties.

a. "Plaintiff" defined; multiple plaintiffs. A lawsuit is a dispute between parties who make claims and parties against whom the claims are made. A plaintiff is the party who makes a claim by filing a lawsuit. There can be more than one plaintiff in a lawsuit, but each plaintiff must be a "real party in interest," that is, someone who has actual damages or whose rights are in dispute.

b. "Defendant" defined; multiple defendants. A defendant is the party who is sued in a lawsuit. More than one defendant may be named in a single lawsuit if the claim or claims involves the same transaction(s) or event(s), and if the lawsuit will involve an issue that applies to all defendants.

c. Other situations. Lawsuits by or against any of the following are governed by Rule 17 of the Arizona Rules of Civil Procedure: partnerships, executors, administrators, guardians, trustees, a personal representative, a bailee, a city, town, or county, or a surety, assignor, endorser, minor (child), an incompetent person, or a person authorized by a statute to sue for the benefit of another person.

d. "Necessary" and "indispensable" parties. If a person who is not a party to the lawsuit is "necessary" for a fair hearing of the lawsuit as determined by Rule 19(a) of the Arizona Rules of Civil Procedure, then upon motion of any party the necessary person shall be made a party, served with the lawsuit, and required to participate in the lawsuit. If a person described in Rule 19(a) of the Arizona Rules of Civil Procedure cannot be made a party for any reason, then the court will use the factors in Rule 19(b) of the Arizona Rules of Civil Procedure to determine if the absent party is "indispensable", or whether the lawsuit should proceed with only the current parties.

e. Adding or dismissing a party. A new party may be added under the provisions of Rule 119(a); a summons will be issued and must be served on the new party if appropriate. An existing party may be dismissed as provided in Rule 144.

Rule 105: Substitution of parties during a lawsuit.

Parties may be substituted in a lawsuit in the following situations, and as provided by Rule 25 of the Arizona Rules of Civil Procedure:

a. Death of a party during a lawsuit as provided in Rule 25(a).

b. Death of a defendant after a personal injury lawsuit has started as provided in Rule 25(b).

c. Incompetency during a lawsuit as provided in Rule 25(c).

d. Transfer of interest during a lawsuit as provided in Rule 25(d).

e. Public officers as provided in Rule 25(e).

Rule 106: Third party practice; intervention; interpleader.

a. Third party practice. If a defendant contends that another person who was not named as a party by the plaintiff is completely or partially responsible for the plaintiff's damages, the defendant may file a third party complaint against that person as provided by Rule 118.

b. Intervention. When a person has an interest in the subject matter of a lawsuit between other parties and that interest might be affected by a decision in the lawsuit, or a person has a claim or defense in common with a claim or defense in a lawsuit between other people, the person may be

able to join the lawsuit as a plaintiff or as a defendant. Joining a lawsuit in this way is called “intervention,” as provided by Rule 24 of the Arizona Rules of Civil Procedure.

c. Interpleader. When a person or organization might be exposed to double or multiple liability because of claims made against them, that person may file a lawsuit against those who have the claims, and the court will determine each party’s rights and liabilities. This type of action is called an “interpleader,” as provided by Rule 22 of the Arizona Rules of Civil Procedure.

Part III: Presenting claims and defenses in a lawsuit; filing documents with the court; signatures.

Rule 107: Definition of “pleading”; interpretation of pleadings.

a. “Pleading” defined. A “pleading” is a document a party files with the court that states or that responds to a claim or a defense in a lawsuit. Claims, responses, and defenses must be stated in one of the following pleadings:

1. A complaint;
2. An answer to the complaint;
3. A counterclaim;
4. An answer to a counterclaim;
5. A cross-claim;
6. An answer to a cross-claim;
7. A third-party complaint;
8. An answer to a third-party complaint.

Additional information about these pleadings is contained in Rules 110, 111, 116, 117, 118, and 119.

b. Simple and concise statements. Statements in pleadings must be simple and concise.

c. Interpretation of pleadings. The court will interpret pleadings to do justice.

Rule 108: Preparing a document for filing with the court.

a. Document; caption. The word “document” in this rule includes a pleading as defined in Rule 107(a). The first page of every document that is filed with the court must include a caption that contains the name of the court where the document is being filed, the names of the parties, and the name of the document. Every document filed with the court after the complaint must also include a case number. See Rule 112(a) concerning the case number.

b. Format. A party must file a document with the court on paper, except that a party may file a document electronically if the court has electronic filing available. These rules apply to both electronic and paper filings. Electronic filings must be in a format allowed by the court. Paper

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filings must be on only one side of white 8.5 x 11 inch paper, with one inch margins on the top, bottom, and sides of the page. Documents provided by the court do not need to meet these requirements. The court may issue documents such as notices or orders in either paper or electronic formats.

c. Attachments to documents (“exhibits”). Exhibits may be attached to a document that is filed with the court. An exhibit is considered a part of the document to which it is physically or electronically attached and an exhibit does not require a separate caption.

d. Sensitive data. A document or exhibit that is filed with the court must not include a person’s social security number or a financial account number, except as allowed by Rule 5(f) of the Arizona Rules of Civil Procedure; and the court may take any action specified in Rule 5(f) for a violation of this requirement.

e. Filing documents. The original of every document must be filed with the court, but attachments to documents that are filed with the court may be copies. Documents are deemed filed with the court when they are delivered to and accepted by the court.

Rule 109: Signatures on documents filed with the court.

a. Signature. Every document that is filed with the court, except for exhibits, must be dated and signed by the party’s attorney or, if a party has no attorney, it must be signed by the party. An electronic document can be signed with an electronic signature. When a document is filed by two or more parties, at least one of the parties who are filing the document must sign it. Any document that is filed without being signed and dated may be stricken by the court.

b. Effect of a signature. A signature of an attorney or a party on any document confirms that the person who is signing has read the document; that, to the person’s best knowledge, the statements in the document are truthful; and that the document is filed in good faith, and not to harass another party or to delay the lawsuit. If the court finds that a document has been filed in violation of this rule, the court may impose on the signer a monetary penalty or any other penalty permitted under Rule 127(b).

c. “Verification” of a pleading. If a “*verification*” is required on a pleading by A.R.S. § 22-216 or by law, the pleading shall contain the following verification above the signature and date lines:

“I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.”

A verified pleading must be verified by the party who files it or by a person on behalf of a party if the person is acquainted with the facts.

d. Affidavits; declarations under penalty of perjury. An affidavit is a statement that is sworn to before an authorized official such as a notary. When a party or person is required by these rules

or by law to submit an affidavit, the person or party may, instead of swearing before an official, provide a signed statement under oath, which is shown by adding the following words at the end of the statement:

“I declare under penalty of perjury that the foregoing is true and correct. Signed on the ___ day of ____, 20__.”

The person must place their signature directly below those words.

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

Rule 110: Starting a lawsuit; content of a complaint.

a. Starting (“commencing”) a lawsuit. A lawsuit is started (“commenced”) by filing a complaint with the court.

b. Contents of a complaint. A complaint must include:

1. The proper name of every plaintiff and of every defendant. If a defendant’s name is unknown, a complaint may identify this defendant by a fictitious name, and the complaint may be amended when that defendant’s true name becomes known. This paragraph also applies to defendants in a third-party complaint.
2. A statement that the court has legal authority over the subject matter of the claim(s) and over the defendant(s) (“*jurisdiction*”); and a statement explaining why the justice court precinct where the lawsuit is filed is the proper location (“*venue*”).
3. In actions to recover on an assigned debt, the identity of the original owner of the debt;
4. A short and clear statement of the factual basis of each claim, and that shows that each claim has a legal basis.
5. A demand that the court award money or another type of remedy allowed by law. If the requested remedy is an amount of money, and the amount can be calculated with certainty, the complaint shall state the amount. If the amount of money cannot be calculated with certainty, a specific amount does not need to be stated, but the complaint must generally describe the damages and it must state that the amount requested does not exceed the jurisdictional limit of the justice court.

c. Contents of a counterclaim, cross-claim and third-party claim. Claims that are made in a counterclaim, cross-claim or third-party claim must include the same contents that a complaint must include as described in Rule 110(b).

Rule 111: Lawsuits involving multiple parties or multiple claims.

a. Multiple claims. A plaintiff may state in a single complaint as many claims as the plaintiff has against a defendant, even if the claims are not related. Claims involving multiple transactions or occurrences must be stated separately so that each claim is clearly presented. Each claim must have its own basis for jurisdiction in the court in which it is brought, and any claim is subject to dismissal if there is no basis for jurisdiction.

b. Separate trials concerning claims or parties. The court may make orders, including orders for severance of claims or for separate trials of claims, which will prevent a party from being embarrassed, delayed, prejudiced, or put to unreasonable expense because the party has been joined in a lawsuit.

c. Judgment given on specific claims. If there are multiple plaintiffs, one plaintiff need not be interested in each of the claims made by the other plaintiffs; and if there are multiple defendants, each defendant need not be interested in defending against all of the claims that are made in the lawsuit. Judgment may be given for one or more of the plaintiffs according to their individual rights, and against one or more of the defendants according to their individual liabilities.

Rule 112: Case number and filing date; issuance of a summons by the court clerk; content of a summons; notice to defendant; replacement summons.

a. Case number and filing date. The clerk will provide a case number for a complaint when it is filed with the court, and will stamp on the complaint the date that it was filed with the court.

b. Issuance of the summons. A summons is a document that is issued by the court when a complaint is filed that requires a defendant to respond to the complaint. A summons must be substantially the same as Form 1 of Rule 148. The clerk will issue one summons for each defendant named in the complaint and will provide the summons to the plaintiff for the plaintiff to serve on each defendant. The plaintiff must arrange for a copy of the summons and complaint to be served on each defendant as provided by Rule 113.

c. Content of the summons. The summons commands each defendant to file with the court a written response to the complaint within the time period stated in the summons. The summons must notify each defendant that if a response to the complaint is not filed within the time period stated in the summons, the plaintiff may ask the court to enter a default judgment against the defendant, as provided in Rule 140.

d. Notice to defendant. Before serving the summons and complaint, the plaintiff must attach to each summons a “notice to defendant” substantially in the form included as Form 2 of Rule 148. The court may not grant a default judgment against a defendant unless the affidavit of service, affidavit of publication, or other proof of service establishes that the notice to defendant was served upon the defendant with the summons and complaint.

e. Replacement summons. The court will issue a replacement summons if needed and upon request.

Rule 113: Serving a summons and complaint.

a. Personal service on individuals in the State of Arizona. Except as provided in the following paragraphs of this rule, the summons and complaint must be personally served on each individual defendant who is found in the State of Arizona by a constable or by a private process server who is registered as provided in Rule 4(e) of the Arizona Rules of Civil Procedure. Personal service under this paragraph means those methods of service described in Rule 4.1(d) of the Arizona Rules of Civil Procedure. Promptly after service upon a defendant, the constable or process server must prepare an affidavit as proof that the defendant was served, and the proof of service must be filed with the court. An affidavit of attempted service should be filed with the court only as an exhibit to a motion.

b. Service on a corporation, partnership, limited liability company, or association within the State of Arizona. Service of a summons and complaint within the State of Arizona upon a corporation, a partnership, a limited liability company, or an association must be made by personally serving an officer, a partner, or a managing or general agent, or by serving any other agent authorized by law to receive service on behalf of the organization. The constable or process server must prepare an affidavit as proof that a corporation, a partnership, a limited liability company, or an association was served, and the proof of service must be filed with the court.

c. Special situations for service of the summons and complaint on a defendant in the State of Arizona. Service of the summons and complaint within the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.1 of the Arizona Rules of Civil Procedure:

1. upon a minor (a child under the age of 18): see Rule 4.1(e)
2. upon a minor with a guardian or conservator: see Rule 4.1(f)
3. upon an incompetent person: see Rule 4.1(g)
4. upon the State of Arizona: see Rule 4.1(h)
5. upon a county, municipal corporation, or other governmental subdivision: see Rule 4.1(i)
6. upon other governmental entities: see Rule 4.1(j)
7. upon a domestic corporation if an authorized officer or agent is not found within Arizona: see Rule 4.1(l)
8. by alternative or substituted service: see Rule 4.1(m)
9. service by publication: see Rule 4.1(n)

Proof of service upon any of the above defendants or using one of the above methods must be promptly prepared by the constable or private process server who completed service, and the proof of service must be filed with the court, except that proof of service by publication must be filed as provided by Rule 4.1(n).

d. Service on an individual outside the State of Arizona. Except as provided in paragraph (e), an out-of-state individual may be personally served with a summons and complaint by someone who is authorized to serve process under the laws of the state where service is made on the individual. The person who completed service must promptly prepare an affidavit as proof that a defendant was served, and the proof of service must be filed with the court. If the defendant lives outside the State of Arizona, service may in the alternative be made by certified mail, with a return receipt showing restricted delivery to the defendant. The return receipt with defendant's signature must be filed with the court with an affidavit of service as provided by Rule 4.2(c) of the Arizona Rules of Civil Procedure. Service by certified mail is complete on the date that defendant signed the receipt, as shown on the return receipt, and if there is no date of defendant's signature on the return receipt, or if the date is not legible, then service is complete on the date that the return receipt is filed with the court.

e. Special situations for service of the summons and complaint on a defendant outside the State of Arizona. Service of the summons and complaint outside the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.2 of the Arizona Rules of Civil Procedure:

1. under the Nonresident Motorist Act: see Rule 4.2(e)
2. service by publication: see Rule 4.2(f)
3. upon a corporation, partnership, or unincorporated association located outside Arizona but within the United States: see Rule 4.2(h)
4. upon individuals in a foreign country: see Rule 4.2(i)
5. upon a minor or incompetent person in a foreign country: see Rule 4.2(j)
6. upon a corporation or association in a foreign country: see Rule 4.2(k)
7. upon a foreign state or political subdivision of a foreign state: see Rule 4.2(l)

Proof of service upon any of the above defendants or using one of the above methods must be prepared by the person who completed service, and the proof of service must be filed with the court, except that proof of service under the Nonresident Motorist Act must be made as provided by Rule 4.2(e), and proof of service by publication must be filed as provided by Rule 4.2(f).

f. Amendment of summons or proof of service. A summons or a proof of service may only be amended as provided in Rule 4(h) of the Arizona Rules of Civil Procedure.

g. Acceptance of service. A defendant may sign a written acceptance of service of a summons and complaint that is witnessed by a notary public, and the acceptance of service must then be returned to the plaintiff and filed with the court. The date of service is the date that the signed and notarized acceptance is filed with the court.

h. Jurisdiction. A justice court may exercise personal jurisdiction over the parties who have been properly served to the full extent permitted by the constitutions of the State of Arizona and of the United States.

i. Dismissal because of lack of service; service on some but not all defendants. The court after at least twenty days notice to plaintiff may dismiss a complaint as to any defendant who has not been served with the summons and complaint within 120 days after the filing date of the complaint. Before the dismissal date, if the plaintiff shows good reasons why a defendant has not been served, the court may extend the time for service. When some but not all of the defendants in a lawsuit have been timely served, the court may dismiss from the lawsuit the defendants who have not been served, and allow the plaintiff to proceed against the defendants who have been served.

Part V: Responding to a lawsuit.

Rule 114: Deadline for filing a written response with the court after service of a complaint, or after service of a third party complaint, cross-claim or counterclaim.

a. Time to respond after service of a summons and complaint or after service of a summons and a third-party complaint. Except as otherwise stated in these rules, a defendant who is served with a summons and complaint or who is served with a summons and a third-party complaint **within the State of Arizona** must file a written answer or response with the court within **twenty days** of the date of service. A defendant who is served with a summons and complaint or a summons and a third-party complaint **outside the State of Arizona** must file a written answer or response with the court within **thirty days** of the date of service.

b. Time to respond after service of a counterclaim or cross-claim. A party who is served with a counterclaim or a cross-claim must file a written answer or response with the court within **twenty days** of service.

c. Calculations of time. Time shall be calculated as provided in Rule 115.

d. Failure to respond: default. A party who has been properly served with a complaint, a third-party complaint, a counterclaim, or a cross-claim and who fails to file a written answer or response within the time allowed may be defaulted as provided in Rule 140.

Rule 115: How to calculate time.

a. Basic rules.

(1) Day of the act or default. In calculating any period of time specified or allowed by these rules, by any local rules, by order of a court, or by any applicable statute, the day of the act or default from which the designated period of time begins to run shall not be included.

(2) If the time period is less than eleven days. When the period of time specified or allowed is less than eleven days before including any additional time allowed under paragraph (b) of this rule, then intermediate Saturdays, Sundays and legal holidays shall not be included in the calculation of time. When the period of time is eleven days or

more, intermediate Saturdays, Sundays and legal holidays shall be included in the calculation.

(3) ***Last day.*** The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

b. Additional time for mailing or e-mailing. Except as provided in Rule 114(a), if a party is required to do something within a specified period of time after service of a document, and the document is served by first class postal mail, or by e-mail, then five calendar days are added after the specified period would otherwise expire under Rule 115(a). The term “mail” used in this rule includes every type of professional delivery service except same day hand-delivery. This paragraph does not apply to the distribution of a notice of entry of judgment as provided by Rule 139(f).

Rule 116: Filing a response to a complaint.

a. Defendant’s response to a complaint or a third party complaint. A response to a complaint or a response to a third party complaint is made by filing one of the following four documents with the court:

(1) ***An answer.*** An answer must include short and clear statements that admit or deny the facts in the complaint, or that state that a party does not have enough knowledge concerning specific allegations of the complaint to admit or deny them. An answer must also state a party’s factual defenses to the complaint, and any legal defenses or affirmative defenses under paragraph (c).

(2) ***A motion to dismiss the complaint.*** A motion to dismiss on the following grounds may be made under this rule before an answer is filed:

(A) A motion to dismiss for lack of jurisdiction (jurisdiction is the authority of the court over the subject matter of the lawsuit or over a defendant);

(B) A motion to dismiss for improper venue (venue is the location where the lawsuit is filed);

(C) A motion to dismiss for improper service of the summons and complaint;

(D) A motion to dismiss because the complaint does not state a valid claim even if the facts alleged in the complaint are assumed to be true.

(3) ***A motion for a more definite statement.*** This motion must allege that the complaint is unclear. A motion for a more definite statement must point out the defects that make the complaint unclear, and the types of details that should have been provided.

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(4) *A motion to strike the complaint.* This motion must allege that the complaint contains immaterial, impertinent, or scandalous allegations, and that it should be stricken partially or entirely.

(5) *Proceedings after a motion made under this rule.*

(A) If the court grants a motion to dismiss, and if no permission to amend the complaint is granted by the court, the court shall enter judgment as provided in Rule 139.

(B) If the court grants a motion for a more definite statement or a motion to strike the complaint, the plaintiff shall have twenty days after the motion is granted to file an amended complaint, and the defendant shall have twenty days after service of the amended complaint to file an answer to the amended pleading.

(C) If the court denies a motion under this rule, the defendant shall file an answer to the complaint within twenty days after the motion has been denied.

b. Waiver of defenses. Except for a lack of jurisdiction over the subject matter, a defense that might have been presented by a motion under paragraph (a)(2) of this rule is waived if it is not made before an answer is filed.

c. Affirmative defenses. An affirmative defense is a defense based on certain legal principles. Examples of affirmative defenses are: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of limitations, and waiver.

d. Misidentified defenses and counterclaims. If a party mischaracterizes a defense as a counterclaim, or if a party mischaracterizes a counterclaim as a defense, the court in the interest of justice may treat it as if it was properly named.

Rule 117: Counterclaims and cross-claims.

a. Required counterclaim. A defendant must file a counterclaim for any claim that the defendant has against the plaintiff if the defendant's claim arises out of same transaction, occurrence, or event that is described in the plaintiff's complaint.

b. Permitted counterclaim. A defendant may file a counterclaim for any claim that the defendant has against the plaintiff that does not arise out of the transaction, occurrence, or event that is described in the plaintiff's complaint.

c. Filing counterclaim with the answer; failure to file counterclaim. A defendant must file a counterclaim at the time the defendant files an answer under Rule 116. If a defendant fails to file

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a counterclaim with an answer, the defendant may file a motion under Rule 119(a) requesting that the court allow defendant to file an amended answer with a counterclaim.

d. Cross-claim. In a case where there are two or more defendants, a defendant may state as a cross-claim any claim that the defendant has against another defendant arising out of the same transaction, occurrence, or event that is described in the plaintiff's complaint. The cross-claim must be stated by a defendant at the time the defendant files an answer or other response to the complaint, unless the court allows an amendment under Rule 119(a).

e. Filing a response to a counterclaim or cross-claim. A party who is served with a counterclaim or a cross-claim must file a written response with the court pursuant to the provisions of Rule 116. A response must be filed within twenty days after service of the counterclaim or cross-claim, as provided in Rule 114(b), or as ordered by the court.

f. Counterclaim or cross-claim exceeding the jurisdiction of the justice court. If a claim filed pursuant to this rule exceeds the jurisdiction of the justice court, the lawsuit shall be transferred as provided by law.

Rule 118: Third-party complaint.

a. Reason for a third-party complaint. If a defendant contends that another person who is not named as a party in the lawsuit is fully or partly responsible for plaintiff's damages, the defendant may file a third-party complaint against that person.

b. Service of a third-party complaint. The defendant shall request the clerk to issue a summons for the third-party complaint as provided in Rule 112. The defendant shall serve the third-party defendant with a summons and the third-party complaint in the same manner as an initial summons and complaint, and as provided in Rule 113. The third-party defendant shall file a response to the third-party complaint as provided in Rule 116.

Rule 119: Amended and supplemental pleadings.

a. Amendments to pleadings. A party may amend a pleading one time before a response has been served. If no response is required, a party may amend a pleading within twenty days after the pleading was filed. Thereafter, and upon a party's motion, the court may permit the filing of an amended pleading at any stage of the proceeding and on such terms as may be just. Leave to amend shall be freely given when justice requires.

b. Amendments to conform to the evidence. When a party raises issues at trial that were not stated in the pleadings, the court may rule that the pleadings are conformed to the evidence and decide the matter based on the facts presented at trial. If evidence is objected to at trial on the ground that the evidence is not relevant to the pleadings, and the objecting party would be prejudiced by going forward, the court may grant a continuance to enable the objecting party to conduct discovery concerning the evidence, or the court may decline to admit the evidence.

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c. Relation back of amendments. If a party seeks to amend a pleading to add claims that are otherwise barred by a statute of limitations, the amended pleading may relate back if the criteria of Rule 15(c) of the Arizona Rules of Civil Procedure are met.

d. Supplemental pleadings. Upon motion, the court may permit the filing of a supplemental pleading that asserts claims or defenses that have arisen since the date of the original pleading. If the court decides that the filing of a supplemental pleading is appropriate, it may also order the opposing party to file a response to the supplemental pleading, and set a time for the opposing party to file a response.

Rule 120: Serving documents on other parties after a summons and complaint.

a. Application of this rule. There are two types of service under these rules. Service of the summons and complaint or a third-party complaint must be completed as provided in Rule 113. All other documents that are filed with the court by any party after service of the summons and complaint or a third-party complaint must be served on the other parties as provided by this Rule 120.

b. General rule. A complete and exact copy of every document that is filed with the court must be served on every party in the lawsuit before or promptly after the document is filed, by a method that is specified in paragraph (c) of this rule. Copies of documents to parties in default, as defined in Rule 140, must be provided as required by Rule 140.

c. Methods of serving a document on the other parties. A party serves a document on other parties under this rule:

- (1) By hand-delivery to the party;
- (2) By hand-delivery at the party's place of business to a person in charge, or if no one is in charge, by leaving the document at the party's place of business;
- (3) If the party has no place of business, by hand-delivery at the party's residence to someone of suitable age and discretion who lives there;
- (4) By mailing the document with first class postage via U.S. mail to the party's last known address; or by using any type of professional delivery service that produces a written confirmation of delivery; or
- (5) By delivering the document by any method, including electronically, if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system, to that method of service, or if the court orders service by that method.

d. Party represented by an attorney. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

e. Noting the method of service. On the last page of a document that is filed with the court, the party who is serving the document under paragraphs (c) and (d) must state the date and method used to serve the other parties. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage. A statement of service may be in the following form:

*“A copy has been or will be mailed/e-mailed/hand-delivered [select one]
“on [insert date] to:*

*“Name of opposing party or attorney
“Address of opposing party or attorney”*

f. Service of a motion after entry of judgment. Service of a motion that requests that a judgment be modified, vacated, or enforced must be served on the party as if serving a summons and complaint under Rule 113.

g. Documents that are not filed with the court. Copies of the following documents must be served on every party as required by this rule, but are not filed with the court unless the court requests:

- (1) Subpoenas (Rules 123(c) and 137(b));
- (2) Discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, and responses to these requests. (Rules 123, 124, 125, and 126);
- (3) Disclosure statements (Rule 121).

Part VI: Disclosure Statements and Discovery.

Rule 121: Duty to serve a disclosure statement.

a. Disclosure of information. Within forty days after the defendant has filed an answer, or at a time directed by the court, each party must serve on the other parties a written disclosure statement. Every party’s disclosure statement must include the following information:

(1) A list of trial witnesses. This list must include the names, addresses, and telephone numbers of the witnesses the party will call if the matter goes to trial, and a brief description of the testimony of each witness. If a witness is going to offer expert testimony, the list shall include the expert’s qualifications, and a summary of the opinions of the expert.

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(2) ***A list of other witnesses.*** This list must include the names, addresses, and telephone numbers of persons who will not be called as witnesses, but who have information that may be favorable or unfavorable concerning the event or transaction that is the subject of the lawsuit.

(3) ***Copies of exhibits.*** A party must provide copies of any documents or exhibits the party will use to support a claim or defense, including copies of electronically stored documents. If the party intends to use at trial any document, object, or exhibit that cannot be easily copied, the party must make the item reasonably available for inspection by the other parties at the pretrial conference or as otherwise agreed to by the parties.

(4) ***Copies of documents concerning assigned debts.*** In lawsuits for the collection of an assigned debt, the plaintiff must provide a copy of the ~~original~~ contract on which the claim is based, including any contracts signed by the defendant; the most recent billing statement sent by the original creditor to the defendant; evidence of the date of the last payment made on the alleged debt; and written assignments of the debt showing that the plaintiff is the real party in interest.

(5) ***Statements of an opposing party.*** Parties must provide with their disclosure any statements given by an opposing party in either written or recorded form.

(6) ***A list of other documents.*** This list must include all other relevant documents that are known to exist, whether these other documents are favorable or not and whether they exist in paper or electronic formats, and their location, if known. A party may provide copies of these documents rather than a list of documents.

The disclosure statement must be signed by the party who prepared it, and by the party's attorney if represented, and it must be served on the other parties as provided in Rule 120(c).

A party is not required to disclose information that is legally privileged or that has been prepared specifically for litigation, except as provided in Rule 122(f)(3) of these rules and as provided in Rule 26.1(f) of the Arizona Rules of Civil Procedure.

b. Disclosure of new information. If a party discovers new or different witnesses or documents that will be used at trial, the party has a duty to serve upon the other parties: (1) a statement containing the additional witness information, or (2) copies of the new documents. Service of these items shall be made as provided in Rule 120(c). The duty to make the disclosures required by this rule is a duty that continues until the lawsuit is concluded.

e. Penalties for failure to disclose. Disclosures by a party must include enough information that other parties will not be surprised by a witness or exhibit at trial. The court may penalize any party who fails to disclose or who fails to timely disclose witnesses or exhibits, 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 party who was harmed by inaccurate, untimely, or lack of, disclosure. The court may also impose any other penalty that is reasonable and appropriate for a disclosure violation, as set forth in Rules 37(a), 37(b), 37(c) and 37(d) of the Arizona Rules of Civil Procedure.

Rule 122: General provisions regarding discovery.

a. Scope of discovery. Discovery is a process for obtaining additional information about a lawsuit. Parties may discover any non-privileged information that is relevant to the facts or issues involved in a lawsuit, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, and including additional details concerning disclosures made under Rule 121.

A party may obtain discovery concerning the existence, description, nature, custody, condition and location of any records, 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 trial if the requested information appears reasonably calculated to lead to the discovery of admissible evidence.

b. Discovery methods. A party may request discovery from another party by one or more of the following methods: depositions upon oral examination (see Rule 123); written interrogatories (see Rule 124); request for production of documents or things, or for permission to enter upon land or other property for inspection and other purposes (see Rule 125); requests for admissions (see Rule 126); and requests for physical and mental examinations (see Rule 122(f)(6)).

c. Timing of discovery. Methods of discovery may be used in any sequence unless otherwise ordered by the court. A party may file a motion requesting the court to enter an order concerning the sequence of discovery by explaining how it would be for the benefit or convenience of parties or witnesses, or why it would be in the interests of justice.

d. Protective orders and limitations on discovery. 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 a 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. The court on its own initiative may limit discovery or it may limit specific discovery methods.

e. 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.

f. Specific discovery issues.

(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 that may satisfy all or part of a judgment that may be entered in a lawsuit. Information concerning the insurance agreement is not by reason of disclosure or discovery 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 his or her own statement made to another party or the other party's representative without showing a need for the statement. Otherwise, a party may not obtain discovery of materials prepared for litigation by another party or by the other party's representative, unless the party seeking discovery shows the court that the party has 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.*** When pursuant to A.R.S. § 12-2506(B) a party alleges in his or her answer 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, the answering party shall provide the identity, location, and facts supporting the claimed liability of the non-party within 150 days from the filing of the 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 upon motion showing good cause, reasonable diligence, and lack of unfair prejudice to the parties.

(6) ***Court-ordered medical examination of a party.*** 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, a party may file a motion in the court where the lawsuit is pending requesting an order that the party or person 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.

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g. Agreements among parties. The parties may agree to modification of discovery procedures as provided by Rule 29 of the Arizona Rules of Civil Procedure.

Rule 123: Depositions upon oral examination.

a. Definition; before whom a deposition may be taken. A deposition provides an opportunity to question another party or a witness while the other party or witness is under oath. A deposition is taken out of court before an officer authorized to administer oaths, without a judge present. A certified court reporter in Arizona may administer oaths.

No deposition shall be taken before a person who is a relative or an employee of a party, or an attorney for a party or an employee or relative of an attorney for a party, or who is financially interested in the lawsuit. 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. Notice of deposition. A notice of deposition shall be served at least ten days before the date of the deposition on the person being deposed and on the parties to the lawsuit. The notice of deposition must state the name of the person who will be deposed; the location of the deposition; the date and starting time of the deposition; and the name of the court reporter who will be present. When a party deposes another party, a notice of deposition must also include the following language:

“If you fail to appear for your deposition, the party who sent this notice may file a motion asking that the court order you to appear. If the court orders you to appear for your deposition, the court may also order that you pay the expenses, including attorneys’ fees, of the other parties because of your failure to appear. If you fail to appear for your deposition after the court has ordered you to appear, the court may impose additional sanctions against you, including an order that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that your answer be stricken and that judgment be entered against you by default.”

c. Procedure. Except as provided in paragraphs (a) and (b) above, the procedures for a deposition are contained in Rule 30 of the Arizona Rules of Civil Procedure. The attendance of a witness at a deposition may be obtained with a subpoena, as provided in Rule 45 of the Arizona Rules of Civil Procedure.

d. Use of depositions in court proceedings. Depositions may be used in court proceedings as set forth in Rule 32 of the Arizona Rules of Civil Procedure.

Rule 124: Interrogatories to parties

a. Definition. Interrogatories are written questions that are sent by a party to another party, and which must be answered in writing and under oath by the party to whom the interrogatories are sent.

b. Notice of service of interrogatories. Interrogatories must be served with a notice that provides the specific calendar date that the answers are due based on the time calculation under Rule 115 and paragraph (c) of this rule. The notice must also include the following language:

“If you do not answer these interrogatories by the date provided in this notice, the party who served them may file a motion asking that the court order you to answer them. If the court enters that order, the court may also require you to pay expenses, including attorneys’ fees, incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional sanctions against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default.”

c. Time for answers to interrogatories. Answers to interrogatories are due forty days from the date they are served, plus five days for service by mail as provided in Rule 115(b).

d. Procedure. Except as provided by paragraph (b) and (c) above, the procedures for using interrogatories are contained in Rules 33 and 33.1 of the Arizona Rules of Civil Procedure.

Rule 125: Request for production of documents, electronically stored information, and things; request for entry upon land for inspection and other purposes

a. Definition. A party may serve on any other party a request to produce and to permit the party making the request 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 122(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 122(a).

b. Notice of request. A request under this rule must be served with a notice that provides the specific calendar date that the answers are due based on the time calculation under Rule 115 and paragraph (c) of this rule. A notice of a request made to another party under this rule must contain the following language:

“If you do not comply with the requests that have been made in this notice, the party who served them may file a motion asking that the court order you to comply. If the court enters that order, the court may also require you to pay expenses, including reasonable

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attorneys' fees, incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional sanctions against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default."

c. Time for response to request. A response to a request under this rule is due forty days from the date the request is served, plus five days for service by mail as provided in Rule 115(b).

d. Procedure. Except as provided in paragraphs (b) and (c) above, the procedures for making requests under this rule are contained in Rule 34 of the Arizona Rules of Civil Procedure.

Rule 126: Requests for admissions

a. Definition. A party may serve on any other party written requests to admit the truth of specific facts in the lawsuit.

b. Notice of requests. Requests for admissions must be served with a notice that provides the specific calendar date that the responses are due based on the time calculation under Rule 115 and paragraph (c) of this rule. The notice must also include the following language:

"If you do not respond to these requests for admissions by the date provided in this notice, your failure to respond may be considered as an admission of the requests."

c. Time for response to requests. Responses to requests for admissions are due forty days from the date they are served, plus five days for service by mail as provided in Rule 115(b).

d. Effect of admission; second notice. If a party has not responded to requests for admissions by the date specified in a notice under paragraph (b) of this rule, then the party making the requests must serve a second notice on the party to whom the requests were made in substantially the following form:

"[Case Caption][Notice]

"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 to some or all of the requests.

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“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]. Each request that you do not respond to by that date will be taken as true in this lawsuit.

“Date and signature: _____”

“[Notation of service under Rule 120(e)]”

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.

e. Procedure. Except as provided in paragraphs (b), (c), and (d) above, the procedures for making requests under this rule are contained in Rule 36 of the Arizona Rules of Civil Procedure.

Rule 127: Discovery violations.

a. General rule. A party may file a motion with the court requesting a court order that requires another party or a person to disclose information or to provide discovery responses in the following situations:

1. If a party fails to disclose information that is required under Rules 122; to appear at a deposition under Rule 124, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6) of the Arizona Rules of Civil Procedure; to answer an interrogatory under Rule 125; to respond to a request for production or to permit entry upon property under Rule 126; or to appear for a medical examination under Rule 123(f)(6).
2. If a person who is not a party fails to obey a subpoena that requires them to appear as a witness at a deposition under Rule 124, or to answer a question at a deposition, or to designate a representative under Rule 30(b)(6) of the Arizona Rules of Civil Procedure.

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

The court may also assess an appropriate sanction, as provided in Rule 26(f) of the Arizona Rules of Civil Procedure, against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct during discovery.

b. Procedure. Procedures for requesting sanctions for discovery violations and sanctions that the court may impose are governed by Rule 37 of the Arizona Rules of Civil Procedure. However, the provisions of Rule 37(a)(2)(C) and Rule 37(e) of the Arizona Rules of Civil Procedure shall not apply to civil cases in justice courts, except as provided in paragraph (c) below.

c. Discovery motion filed by an attorney. An attorney who files a motion under this rule must certify in the motion that counsel has been unable to satisfactorily resolve the matter after a good faith attempt to personally consult with the opposing party.

d. Failure to provide electronically stored information. Absent exceptional circumstances, a court may not impose sanctions under this rule on a party or a person 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.

Part VII: Motions.

Rule 128: Motions.

a. Defined. A motion is a request by a party (the “*moving party*”) for the judge to take certain action or to enter a particular order.

b. Application of this rule. This rule applies to motions made under these rules, including but not limited to: motions under Rule 116 (a motion in response to a complaint), Rule 127 (a motion for sanctions), Rule 128(g) (a motion for judgment on the pleadings), Rule 138 (a motion for new trial), and Rule 141 (a motion for relief from a judgment or an order). This rule also applies to motions that may not be provided by these rules. This rule does not apply to motions that are made in open court during a conference, hearing, or trial, or to motions brought under Rule 129 (motion for summary judgment).

c. Form of a motion; service; required notice. A motion shall be in writing, and shall comply with the format required by Rule 108. The original motion shall be filed with the court. The moving party must include the following notice at the beginning of the motion:

“You have a right to file a written response to this motion within ten days from the date this motion was served. Your response must be filed with the court, and copies of your response must be served on the other parties as provided by Rule 120.”

d. Content of a motion. A motion shall state the specific action that the moving party is requesting the court to take, or the specific order that the moving party is requesting the court to enter. A motion shall include the facts and reasons that support the request. A motion shall identify any statutes, cases, or other legal authority that supports the request made by the moving party. A motion that is made pursuant to one of these rules shall identify that rule.

e. Proceedings on a motion. Any party opposing a motion shall have ten days after the motion is served, as calculated under Rule 115, to file a response to the motion with the court. The time to respond to a motion remains in effect even if the court has set a pretrial conference. The court may treat a party’s failure to respond to a motion as the party’s consent that the motion be granted. Within five days, as calculated under Rule 115, after a response is filed, the moving

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party may file with the court a reply to the response, but a reply shall not be required. A response and a reply, if any, must be served on the other parties as provided by Rule 120(c).

f. Hearing on a motion. The court may rule on motions brought under this rule with or without a hearing. Every party shall receive at least five days advance notice from the court if a hearing is set on a motion. The court may treat a moving party's failure to attend a hearing on a motion as consent by that party that the motion be denied; and it may treat a responding party's failure to attend a hearing as consent that the motion be granted.

g. Motion for judgment on the pleadings. After the pleadings in a case have been filed, any party may file a motion for judgment on the pleadings. The motion shall be granted if, for purposes of the motion only, all of the allegations in the pleadings are considered to be true, and a party would be entitled to judgment in their favor on those allegations as a matter of law. If matters outside the pleadings are presented to the court, the motion shall be treated as a motion for summary judgment under Rule 129.

Rule 129: Motion for summary judgment.

a. Parties who may file a motion for summary judgment. Any party who has filed a claim, counterclaim, cross-claim, or third party complaint, or any party against whom such a claim has been made, may file a motion requesting the court to enter judgment in the party's favor without a trial.

b. Time for filing a summary judgment motion, response, and reply; required notice. A motion for summary judgment may be filed no sooner than the date that the answer is filed or is due, and no later than ninety days before the date set for trial. A response to the motion may be filed by an opposing party within thirty days after the motion has been served. A reply to the response may be filed by the moving party within fifteen days after the response has been served, but a reply shall not be required. The date for filing a response or reply shall be calculated in the manner provided by Rule 115.

The party must include the following notice at the beginning of a party's motion for summary judgment:

"This motion asks the court to rule against you without holding a trial. You have a right to file a written response to this motion within thirty days from the date this motion was served."

c. Summary judgment motion and proceedings. A summary judgment motion and the opposing party's response to the motion must each include:

(1) A statement of facts, with each of the facts stated separately in numbered paragraphs or numbered sentences. A statement of facts shall be supported by affidavits, exhibits, or other material that establishes each fact by admissible evidence. It is not sufficient for a party who opposes a motion for summary judgment to merely deny facts; if a fact is

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disputed, evidence must be presented by the opposing party that establishes a factual dispute.

(2) A memorandum of law that summarizes the issues, provides legal authority in support of the party's position, and describes why the motion should be granted or denied by the court.

Notwithstanding Rule 129(e), the failure to file a response by a party who does not have the burden of proof on a claim or defense is not a sufficient basis for granting a summary judgment motion.

The court may rule on a motion for summary judgment with or without a hearing. The court shall grant the motion if the record before the court shows that there is no genuine issue as to a material fact, and that the moving party is entitled to judgment as a matter of law. The court may grant the motion completely or partially. If the motion is partially granted, the court shall advise the parties of the issues that remain undecided, and it shall set those issues for trial. A summary judgment motion may be granted on the issue of liability only if there is a genuine issue regarding the amount of damages.

d. Affidavits. Affidavits must meet the requirements of Rule 109(d). Affidavits in support of or opposed to a summary judgment motion must be based on personal knowledge and must contain only facts that would be admissible in evidence at trial. If affidavits or exhibits cannot be presented by the opposing party within the time allowed for a response to the motion, the opposing party may ask the court for more time to respond by stating the reasons why additional time is required. The court may impose a sanction if an affidavit is submitted in bad faith, or if an affidavit is filed only to delay the lawsuit.

VIII. Settlement conference and pretrial conference.

Rule 130: Settlement conference.

a. Purpose. Each precinct individually or in cooperation with the presiding judge or justice of the peace for the county may establish a program through which a neutral, trained individual (a "mediator"), with the authorization of the court, can confer with the parties before the first court date, or thereafter, to assist them in reaching a settlement of the lawsuit. The provisions of this rule apply to those justice courts that have established such a program.

b. Notice of a settlement conference. Within a reasonable time after a response to a complaint has been filed, the court or the mediator shall provide the parties a written notice of a date, time, and place for a settlement conference. The notice shall be provided to the parties at least thirty days before the conference date, and shall include a telephone number that a party may call to participate in the settlement conference.

c. Appearance at the settlement conference; providing documents. Every party must appear at the conference and must participate in good faith. A party may appear and participate by

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telephone or in person. Each party at a settlement conference must have authority to settle the lawsuit, or must have a representative available who has the authority to settle the lawsuit. At or before the conference, a party must provide to an opposing party any documents that are relevant to settling the lawsuit.

d. Settlement agreement. The parties and the mediator shall discuss a settlement of the lawsuit at the settlement conference. Statements made by a party at the settlement conference, or a party's conduct, including offers of payment or willingness to accept an offer, are inadmissible to establish a claim or defense unless otherwise allowed by law. If a settlement is reached, the mediator shall put the terms of the settlement in writing, and will have the parties sign the agreement. If a party has appeared by telephone, the mediator will mail the agreement to the party for signature, and the party must promptly sign and return the agreement to the mediator.

e. Notice to the court. The mediator will notify the court whether the settlement conference resulted in a settlement agreement. If an agreement was reached, the court will vacate any pending court dates. If an agreement was not reached, the court shall will set the case for a pretrial conference. If a settlement was not reached because a party failed to participate in good faith, the mediator will inform the court of the manner in which the party failed to show good faith; and the court may order an appropriate sanction against that party at the pretrial conference. Not appearing at a settlement conference without a good reason is a failure to participate in good faith.

f. Further court action. If the court was notified by the mediator that a lawsuit was settled, the court may dismiss the lawsuit sixty days after the date of the settlement conference. If during that sixty day period a party notifies the court that the terms of the settlement agreement have not been fulfilled, the court may set the lawsuit for a pretrial conference.

g. Settlement conference with the trial judge. In precincts where a mediation program has not been established, a judge who will hear the lawsuit may conduct a settlement conference. The judge must advise the parties that during a settlement conference, the court may meet with the parties separately, and that the court may receive information from a party that would not be admissible at a subsequent trial. If the parties then agree, the court conduct a settlement conference.

Rule 131: Pretrial conference.

a. Scheduling a pretrial conference; required appearance; penalties. The court should set a pretrial conference upon receiving notification that a settlement was not reached at a settlement conference, or that the terms of the settlement agreement were not fulfilled. In those lawsuits where a Rule 130 settlement conference is not conducted, the court should set a pretrial conference only after the parties have had adequate time to exchange disclosure statements.

The parties must personally attend a pretrial conference, unless the court for a good reason allows a party to appear by telephone. The court may penalize a party for a failure to appear at the pretrial conference or for other violations of this rule. These penalties include, but are not

limited to, preventing proposed evidence from being admitted, granting judgment, or dismissing the lawsuit.

The court may rule on a pending motion before the pretrial conference, and the court will vacate the pretrial conference if the result of the court's ruling on the motion is either a judgment or a dismissal, but a pending motion will not otherwise vacate a pretrial conference.

b. Purpose of a pretrial conference. At a pre-trial conference, the parties and the court discuss (1) the status of the lawsuit, including whether the parties served disclosure statements; (2) whether there is any further possibility of settlement; (3) whether the parties are engaging or intend to engage in the use of discovery under Rules 123 through 126; and (4) a date for trial. The parties must be prepared to advise the court if they intend to file any motions; the number of witnesses they will call at trial; and how much time they expect they will need for presenting their case at trial. In addition to setting a lawsuit for trial, the court may enter orders at the pretrial conference that will promote an efficient resolution of the lawsuit, including limitations on discovery.

c. Good faith settlement hearing. In any lawsuit where it is alleged that two or more defendants are jointly liable for plaintiff's damages, and a settlement is entered into by one of the defendants, the court, upon petition of any party, must make a formal determination whether the settlement was 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.

Part IX: Trial.

Rule 132: Matters concerning trial.

a. Preparation of a pretrial statement. When the court sets a trial date, or at any time thereafter, the court may order that the parties jointly or individually prepare and file a pretrial statement at a specified date before the trial. The pretrial statement should include a summary of facts that are not in dispute; a statement of the factual and legal issues to be determined at trial; a list of each party's witnesses; if deposition testimony is going to be presented, a list of deposition page and line reference numbers that will be offered at trial; a list of each party's exhibits, and the basis of any party's objection to an exhibit. The court may impose any penalty permitted under Rule 127(b) for a violation of these requirements.

b. Motion to postpone a trial date. After a trial date has been scheduled, the court may grant a motion for postponement of the trial only if there are good reasons, or if the parties agree to a postponement. The mere filing of a motion to postpone a trial does not vacate the trial date. The failure of a plaintiff to appear at the time set for trial may result in dismissal of the lawsuit, and the failure of a defendant to appear at the time set for trial may result in a judgment for the plaintiff.

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c. Pretrial motions regarding the admissibility of evidence. If the parties cannot agree on the admissibility of particular evidence at a trial, a party may file a written motion before trial regarding its admission or exclusion. These motions are not governed by Rule 129 of these rules; they are instead governed by Rule 7.2 of the Arizona Rules of Procedure, or as otherwise ordered by the court.

Rule 133: Trial by jury or to the court; question of foreign law; change of precinct or judge; disability of a judge during trial; verdict or decision.

a. Setting a lawsuit for trial. In those precincts that do not conduct a pretrial conference, (1) the court may set a date for trial once an answer has been filed; or (2) a party may request the court to set a trial date after the parties have served disclosure statements.

b. Trial by jury or to the court. A party may demand a trial by jury as provided in Rule 38 of the Arizona Rules of Civil Procedure. 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. If a demand for trial by jury has not been timely made under Rule 38, the trial will be before the judge without a jury; but even if no party has demanded a jury, the court may order a trial by jury of any or all of the issues.

c. Order of a trial; time limitations. The order of a trial by jury will be as provided by Rule 39 of the Arizona Rules of Civil Procedure. Rule 39, so far as applicable, will also govern a trial to a judge. The court may impose reasonable time limits for a trial or for any portion of a trial.

d. Change of precinct or judge for cause or as a matter of right. A party in a justice court lawsuit who believes they cannot have a fair and impartial trial before the justice of the peace, or in that judge's precinct, must proceed as provided in Arizona Revised Statutes § 22-204 and Rule 42(f)(2) of the Arizona Rules of Civil Procedure. A party in a justice court lawsuit has a right to a change of judge as a matter of right in the same manner as provided in Rule 42(f)(1) of the Arizona Rules of Civil Procedure.

e. Disability of a judge. If a judge who starts a trial or a hearing becomes unable to proceed, the trial or hearing may continue with another judge as provided by Rule 63 of the Arizona Rules of Civil Procedure.

f. Verdict or decision. The jury's verdict or the decision of the judge sitting without a jury will be announced as provided by law, and judgment will be entered accordingly.

Rule 134: Procedure for jury trials.

a. Jury trial procedures. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided in Rules 38, 39, 47, 48, 49, and 51 of the Arizona Rules of Civil Procedure.

b. Motion for judgment as a matter of law. Motions for judgment as a matter of law during a jury trial, and related motions under Rule 50, must be made as provided by Rule 50 of the Arizona Rules of Civil Procedure.

Rule 135: Findings in a trial to the court.

a. General rule. In a case tried to the court without a jury, the court, if requested before trial, will make specific findings concerning the facts. The court will also state its conclusions of law based upon those findings. Findings of fact will not be set aside on appeal unless they are clearly erroneous, and due regard will be given to the opportunity of the trial judge to determine the credibility of a witness. Findings of fact and conclusions of law may be stated orally and recorded in open court following the close of the evidence, or the findings may be in an order or memorandum filed by the trial judge. A request for findings is not required for purposes of appeal.

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 will render conclusions of law based on the agreed statement of facts.

Rule 136: Consolidated and separate trials.

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

b. Separate trials. In furtherance of convenience or to avoid prejudice, or when separate trials will further judicial economy, the court 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.

Rule 137: Witnesses and interpreters.

a. General rule. A witness is a person who provides sworn testimony during a lawsuit. A witness may be sworn with a solemn affirmation rather than an oath. The testimony of a witness at trial must be presented in person or by deposition, unless the parties agree otherwise or as the judge allows for a good reason. The admissibility of a witness' testimony will be determined by the Arizona Rules of Evidence.

b. Subpoena. The appearance of a witness for trial may be compelled by subpoena, as provided in Rule 45 of the Arizona Rules of Civil Procedure.

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c. Interpreters. The court must provide an interpreter for a party or for the testimony of a witness as provided by law, and the court may determine the amount of the interpreter's compensation.

Rule 138: New trial.

a. Grounds and procedure. Under certain circumstances a party may request a new trial. The circumstances and procedures for a motion for new trial are detailed in Rule 59 of the Arizona Rules of Civil Procedure.

b. Time for filing. A motion for new trial shall be filed within 15 days after entry of judgment, except for a motion for new trial filed after service by publication and default, as described in Rule 59(j).

Part X: Judgment.

Rule 139: Judgment.

a. Definition and requirements. A judgment is a final written order of the court that decides all of the claims in the lawsuit, and that can be appealed. A judgment must be signed by the judge, and filed and entered by the court.

b. Judgments involving multiple claims or multiple parties. An order that decides some but not all of the claims, or that concludes the lawsuit as to some but not all of the parties, is not a judgment that can be appealed, unless the order states that there is no just reason for delay and it specifically directs entry of the judgment.

c. Form of judgment prepared by a party. A form of judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A copy of a judgment prepared by a party must be served on the other parties as provided by Rule 120. A party who prepares a judgment and submits it to the court must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit. The court shall not approve or sign a judgment prepared by a party until the expiration of five days, as calculated under Rule 115, after the proposed judgment has been served upon the opposing parties. An opposing party may file a written objection to the form of the judgment within that time. The requirements of this paragraph shall not apply to parties in default under Rule 140.

If a party who submits a judgment also claims court costs and/or attorneys' fees, those claims must be submitted to the court at the same time as the judgment that the party prepared.

d. Court costs. The prevailing party may request that the party's costs of the lawsuit, to the extent allowed by law, be included in the amount of the judgment. The party claiming costs shall submit a verified statement of costs to the court and to the other parties not later than five days after the court has made a decision that entitles a party to a judgment. The party against whom costs are claimed may file an objection to those costs within five days after receipt, and

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the court shall then rule upon the objections and enter the approved amount, if any, in the judgment.

e. Attorneys' fees. If a party has made a claim for attorneys' fees in a pleading, the party may request that their attorneys' fees be included in the amount of the judgment. The party shall file a motion with the court stating the legal basis of the claim for fees, with an affidavit and supporting exhibits, including any contract that provides for attorneys' fees. The motion must be filed no later than five days after the court has made a decision that entitles the party to judgment. The opposing party may file a response to the motion within the time allowed by Rule 128. The court may set a hearing on the motion, but the court may not enter judgment until the issue of attorneys' fees has been resolved.

f. Notice of entry of judgment. The court shall provide every party who is not in default with a copy of the judgment entered by the court. A failure of the court to provide this copy does not affect the time to appeal or authorize the court to relieve a party's failure to appeal within the time allowed.

g. Voluntary reduction in the amount of a judgment. A party in whose favor a verdict or judgment has been rendered may reduce the amount of the judgment as provided in Rule 58(b) of the Arizona Rules of Civil Procedure.

h. Entry of judgment after death of a party. Judgment may be entered after the death of a party upon a verdict or decision on an issue of fact that was rendered during the party's life.

i. Motion to alter or amend a judgment. A motion to alter or to amend a judgment shall be made as provided in Rule 59(l) of the Ariz. R. Civ. P.

Rule 140: Entry of default judgment.

a. When a default judgment may be entered. A default judgment may be entered pursuant to this rule against a party who was served with a complaint, counterclaim, cross-claim, or third party complaint, and who failed to file an answer or otherwise respond within the time allowed by these rules.

b. Application for entry of default judgment. A party seeking a default judgment must file an application requesting the court to enter a default judgment. The application must be substantially the same as the form shown in Rule 148. The application must request either (1) that the court enter a default judgment without a hearing, or (2) that the court set a hearing for entry of a default judgment.

c. Mailing the application. The party who files an application with the court must mail a copy of the application, including every affidavit and exhibit attached to the application, to the party claimed to be in default, as follows:

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- (1) If the address of the party claimed to be in default is known, the application must be mailed to that address.
- (2) If the current address of the party claimed to be in default is unknown, the application must be mailed to the party's last known address.
- (3) If the current address of the party claimed to be in default is unknown, and there is no last known address of the party, the party requesting the entry of default must state this in the application.
- (4) If the party who files the application knows that the party claimed to be in default is represented by an attorney concerning this lawsuit, the application must also be mailed to that attorney, whether or not the attorney has formally appeared in the lawsuit.

A party filing an application must also serve the application on the other parties in the lawsuit as provided by Rule 120.

d. Answer or response. If the party claimed to be in default files a written answer or other response with the court within ten days after the application was mailed pursuant to paragraph (c) of this rule, the court cannot enter a default judgment against that party. If the party claimed to be in default files a written answer after the ten-day period but before the entry of a default judgment, the court may decline to enter a default judgment and may instead allow the lawsuit to proceed as if the answer was timely.

e. Entry of a default judgment without a hearing. The application may request the entry of a default judgment without a hearing if the claim is for a specific amount, or if the claim is for an amount that can be determined by a mathematical calculation. The party requesting the entry of a default judgment without a hearing must attach to the application a supporting affidavit concerning the claimed amount, along with exhibits that prove the amount of the claim.

A default judgment that is entered without a hearing may include an award of reasonable attorneys' fees if: (i) the complaint requested attorney's fees; (ii) an award of attorney's fees is allowed by law; (iii) the application includes a separate affidavit with supporting exhibits concerning the amount of the fees; and (iv) if the fee request is based on a written contract, the contract is submitted with the application. A default judgment entered without a hearing may also include an award of court costs [by attaching to the application a verified statement of costs.]

The court may set a matter for a default hearing even though the requirements of this paragraph may otherwise be met. The court will not enter a default judgment against a minor child or an incompetent person without a hearing.

f. Entry of default judgment with a hearing. If the party who files the application has a claim that is not for a specific amount, or if the amount of the claim cannot be determined by a

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mathematical calculation, the party must request that the court set a default hearing to determine the terms of the judgment.

If the party against whom judgment will be entered has a known address, the party applying for default must serve that party and their attorney, if any, with a written notice of the hearing at least three days before the default hearing date. That party or their attorney may participate if they appear-at the default hearing.

The court may receive evidence at a default hearing, and the court must provide a jury trial when the law requires one. The court may enter a default judgment against a minor child or an incompetent person only if that child or person was represented at the hearing by a guardian or by legal counsel.

A default judgment entered at a hearing may include an award of attorneys' fees and costs when established in the manner provided in paragraph (e) of this rule.

g. Form of default judgment. A form of default judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A party may submit a form of default judgment at the time an application is filed, or at the time of a default hearing. A party who prepares and submits a judgment must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit and to the party or parties in default.

h. Default judgment against the State. A default judgment will be entered against the State or an officer or agency of the State only if the party requesting the default judgment proves the party's claim by satisfactory evidence.

i. Default judgment after service by publication. A default judgment may be entered against a party who was served by publication only if a verbatim record of the default proceeding is made and maintained by the court.

j. Setting aside a default judgment. The court may set aside a default judgment for a good reason. A default judgment may be set aside as provided in Rule 141(c).

Rule 141: Correcting or setting aside a judgment or an order.

a. Clerical mistakes. The court at any time may correct a clerical mistake in a judgment, in an order, or in another part of the court's record that occurred as a result of an oversight or omission of the court, and it may do so on its own motion or on motion of a party, and after such notice, if any, that the court requires.

b. Misstatement or miscalculation. When a judgment misstates the name of a party, or when a sum of money has been miscalculated or misstated, and in the court's record there is a verdict or other document that shows the correct name or the correct calculation, then the court may correct the judgment after notice to the parties. If the correction affects the amount of a judgment, a party may collect only the corrected amount.

c. Mistake, inadvertence, excusable neglect. A party may file a motion asking the court for relief from a final judgment, order, or proceeding based on one or more of the following:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence that with the exercise of due diligence could not have been discovered in time to file a motion for a new trial;
- (3) Fraud, misrepresentation, or other misconduct of an opposing party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged; or a prior judgment upon which it is based has been reversed or vacated; or it is no longer equitable that the judgment should have prospective application;
- (6) Any other reason that justifies relief from the judgment.

A motion under this subsection must be filed within a reasonable time, and for reasons (1), (2), and (3), within six months after the judgment or order was entered, or after the proceeding occurred. The filing of a motion under this paragraph does not affect the finality of a judgment, nor does it suspend the operation of a judgment. This rule does not limit the power of the court to relieve a party from a judgment, order, or proceeding if a fraud was committed upon the court; and this rule does not limit the power of the court to grant relief to a defendant served by publication, as provided by Rule 140(j).

Rule 142: Stay of proceedings to enforce a judgment

a. Pending motion under Rule 138 or Rule 141. The court may stay proceedings for enforcing a judgment while a motion under Rule 138 or Rule 141 is pending. The court may impose conditions as may be proper for the security of the affected parties.

b. Conveyances, instruments, or perishable property. A judgment directing the execution of a conveyance or instrument, or directing the sale of perishable property, may be stayed by the court with conditions for deposits or security as may be proper.

c. Judgment against the State or a political subdivision. Money judgments against the State or any political subdivision are automatically stayed when an appeal is filed.

d. Judgments entered under Rule 139(b). A judgment entered by the court pursuant to Rule 139(b) may be stayed until the entry of subsequent judgments or upon conditions as may be appropriate to protect the rights of the parties.

Rule 143: Harmless error.

Harmless error. An error by the trial court is not a good reason for setting aside a verdict, order, or judgment, or for granting a new trial, unless the error has affected a substantial right of a party, or the error has resulted in a substantial injustice, as provided in Rule 61 of the Arizona Rules of Civil Procedure.

XI. Dismissal of lawsuits.

Rule 144: Dismissal of lawsuits.

a. Application of this rule. This rule applies to a complaint, a counterclaim, a cross-claim, and a third party complaint.

b. Voluntary dismissal before a response has been filed. A complaint or a third-party complaint may be dismissed by a notice that is filed by the plaintiff or by the third-party plaintiff at any time before a response has been filed under Rule 116. A counterclaim or a cross-claim may be dismissed by a notice filed by the claimant at any time before a response has been filed under Rule 117(e).

c. Voluntary dismissal by agreement of the parties. A lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by all of the parties who have appeared in the lawsuit. A particular claim or claims in a lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by the parties to that claim or claims.

d. Dismissal in other circumstances. Except as provided in paragraphs (b), (c), and (e), a lawsuit or claim shall be dismissed only upon motion and by court order, and only on terms and conditions that the court determines are fair and proper. Dismissal of a complaint will not result in dismissal of a counterclaim unless agreed to by the parties.

e. Dismissal for failure to conclude a lawsuit within ten months. If a final judgment has not been entered within ten months from the date a lawsuit is filed, or if a party has not filed a written motion to extend the time for entry of judgment to a particular date, the court shall mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that unless this requirement is met within two months from the date of mailing, the court will dismiss the lawsuit for failure to have judgment timely entered. If the requirement has not been met within two months from the mailing of the court's notice, the court may dismiss the lawsuit without further notice to the parties.

f. Dismissal without prejudice. A dismissal without prejudice means that a claim can be re-filed if all other legal requirements, including statutes of limitation, have been met. A dismissal under paragraphs (b), (c), or (e) of this rule is “*without prejudice*” unless the notice or agreement to dismiss states that the dismissal is “*with prejudice*,” in which event the lawsuit or claim cannot be re-filed.

XII. Special Proceedings.

Rule 145: Civil arrest warrant.

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a. Definition. A “civil arrest warrant” is an order issued in a non-criminal lawsuit, which is directed to any peace officer in the state, to arrest the person named in the warrant and to bring that person before the court.

b. When a warrant may be issued. On motion of a party or on its own motion, the court may issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

(1) Has been ordered by the court to appear in person at a specific time and location, and after receiving actual notice of the order that includes a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

(2) Has been personally served with a subpoena to appear in person at a specific time and location that includes a warning that failure to appear may result in the issuance of a civil arrest warrant, and has failed to appear as the subpoena commanded.

c. Procedures. The content of a civil arrest warrant, the time and manner of execution of a warrant, the duty of the court after execution of a warrant, and procedures for forfeiture of bond, shall be as provided in Rule 64.1 of the Arizona Rules of Civil Procedure.

Rule 146: Deposits with the court; proceedings against sureties.

a. Voluntary deposit of money or thing. In a lawsuit where some or the entire claim is for a money judgment, the disposition of money, or an object that is capable of being delivered, a party after giving notice to the other parties and after obtaining the permission of the court may deposit the money or thing with the court.

b. Deposit of money or thing by court order. If a party has in its possession money or an object that is capable of being delivered, and the money or thing is the subject of the lawsuit and is held by the party as trustee for another party or that belongs or is due to another party, the court may order that the money or thing be deposited in court, or otherwise delivered to a party, on conditions that are just and subject to further order of the court. The procedure is governed by Rules 67(b) and (c) of the Arizona Rules of Civil Procedure.

c. Proceedings against sureties. The court’s jurisdiction over a surety, and the enforcement of the surety’s liability, are as provided by Rule 65.1 of the Arizona Rules of Civil Procedure.

Rule 147: Enforcement of a judgment or order

a. Writ of execution. The process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be as provided by law.

b. Supplemental proceedings to enforce a judgment. To enforce the judgment or a writ of execution upon the judgment, the judgment creditor or a successor in interest when a successor has been shown to the satisfaction of the court, may obtain discovery from any person, including

the judgment debtor, in the manner provided in the Arizona Rules of Civil Procedure or as otherwise provided by law.

c. Enforcement of an order concerning non-parties. Orders in favor of a person not a party to a lawsuit, or requiring obedience by a person not a party to a lawsuit, may be enforced by the same process as are orders concerning a party.

XIII. Forms and Tables.

Rule 148: Forms.

a. Forms adopted by the Arizona Supreme Court. Parties may use forms adopted by the Arizona Supreme Court for civil cases in justice court. The forms will be maintained and made available on the website of the Administrative Office of the Courts. The Executive Director of the Administrative Office of the Courts is authorized to modify these forms in response to changes in state laws or procedures, and to make other necessary administrative amendments or technical corrections. A party must add the name and address of the specific justice court precinct where the lawsuit is filed at the top of each form.

b. Additional forms. The following forms are in the appendix to these rules:

- Form 1: Summons
- Form 2: Notice to defendant

Tables.

- Table 1: Arizona Rules of Civil Procedure that have been incorporated by reference
- Table 2: Cross-reference of the JCRCPC to the Arizona Rules of Civil Procedure
- Table 3: Treatment of the Arizona Rules of Civil Procedure in the JCRCPC
- Table 4: Due dates under the JCRCPC

Table 4: Due dates under the JCRCPC

Document:	Date it is due:
Answer	20 days from service of summons and complaint [served in Arizona] -or- 30 days from service of summons and complaint [served outside Arizona]
Response to a motion	10 days from service of the motion
Reply in support or a motion	5 days from service of the response
Response to a motion for summary judgment	30 days from service of the motion
Reply in support of motion for summary judgment	15 days from service of the response
Disclosure statements	40 days from filing of an answer
Answers to interrogatories, responses to requests for production and requests for admissions	40 days from service of the discovery request

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Form 1: Summons

PLAINTIFF(S) ATTORNEY INFORMATION:

Name/Address/Phone

_____ COUNTY JUSTICE COURT, STATE OF ARIZONA
_____ JUSTICE COURT
[Justice Court street address, city, zip code, and phone number]

Plaintiff(s) Name/Address/Phone
V.

CASE NUMBER _____
SUMMONS
CIVIL

Defendant(s) Name/Address/Phone

THE STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT(S):

1. You are summoned to respond to this complaint by filing a written answer and paying the required fee.
2. Your answer to the complaint must be received by this court within twenty (20) calendar days from the date you were served, or 30 calendar days if you were served outside the State of Arizona. If the 20th calendar day is a Saturday, Sunday, or holiday, you will have until the next working day to file your answer. When calculating these time periods, do not count the day you were served with the summons.
3. This court is located at (physical address) : _____
4. You may obtain an answer form from the court listed above or visit www.azturbocourt.gov to prepare your answer electronically.
5. You are required to pay a fee when filing your answer with the court.
6. You must provide a copy of your answer to the plaintiff(s) or to the plaintiff's attorney.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITH THE COURT WITHIN THE TIME INDICATED ABOVE, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU, AS WAS REQUESTED IN THE PLAINTIFF(S) COMPLAINT.

Date: _____

Judge's Signature {COURT SEAL}

REQUEST FOR REASONABLE ACCOMMODATION FOR PERSONS WITH DISABILITIES MUST BE MADE TO THE COURT BY PARTIES AT LEAST 3 WORKING DAYS IN ADVANCE OF A SCHEDULED COURT PROCEEDING.

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Form 2: **Notice to Defendant: A lawsuit has been filed against you!**

You have been sued in justice court. You have rights and responsibilities as a defendant in this lawsuit.

1. In a justice court lawsuit:

- People may represent themselves, or they may hire an attorney to represent them. A family member or a friend cannot represent a person in justice court unless the family member or friend is an attorney.
- A corporation can be represented by an officer of the corporation. A limited liability company (“LLC”) can be represented by a managing member. A corporation or an LLC may also be represented by an attorney.
- If you represent yourself, you have the responsibility to properly complete your court filings and to file them when they are due.
- The rules of procedure for justice courts are in writing, and are called the Justice Court Rules of Civil Procedure (“JCRCP”). You have the responsibility to follow the rules that apply in your lawsuit. The rules are available in many public libraries, and at the courthouse. The rules are also available online at www.xxxxxxx.gov.
- The clerks and staff at the court are not allowed to give you legal advice. If you’d like legal advice, you may ask the court for the name and phone number of a local lawyer referral service, the local bar association, or a legal aid organization.

2. A “*plaintiff*” is a person who files a lawsuit against a defendant. You must file an answer or other response to plaintiff’s complaint **in writing** and **within twenty days** from the date you were served with the summons and complaint (thirty days if you were served out-of-state.)

- If you do not file an answer within this time, the plaintiff can ask the court to enter a “*default*,” and this might result in a judgment against you. File your answer within the required time to prevent a default judgment from being entered against you.
- Answer forms are available at the courthouse, on the Supreme Court’s website at www.azcourts.gov , or at www.azturbocourt.gov
- You must provide to the plaintiff a copy of any document that you file with the court, including your answer.

3. You may bring a claim against the plaintiff if you have one. When you file your answer or written response with the court, you can also file your “*counterclaim*” against the plaintiff.

4. You must pay a filing fee to the court clerk when you file your answer. If you cannot afford to pay a filing fee, you may apply to the court for a fee waiver or deferral, but you must still file your answer on time. You must notify the court of your correct address and phone number until the lawsuit is over.

5. You can try to work out the dispute with the plaintiff. You may contact the plaintiff or plaintiff’s attorney and try to reach an agreement to settle the lawsuit.

- However, until an agreement is reached you must still file your answer and participate in the lawsuit.

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Form 8: Application _____ County Justice Courts, State of Arizona
_____ Justice Court
Address of Court

Plaintiff
Pltf address

APPLICATION FOR ENTRY OF
DEFAULT JUDGMENT

vs.

Defendant
Deft address

1. Defendant _____ [name] was served with the summons and complaint on _____ [date], as shown by the evidence of service that has been filed with the court. Defendant has failed to answer or otherwise respond to the summons and complaint within the time allowed by law.

2. Defendant: DO NOT IGNORE THIS NOTICE. A default judgment will be entered against you if you do not file an answer or other written response with the court shown above WITHIN TEN WORKING DAYS of the filing of this application.

Defendant must mail a copy of the answer or other written response to the plaintiff at plaintiff's address shown above promptly after it is filed with the court.

3. Pursuant to the Servicemen's Civil Relief Act, 50 United States Code §§ 501, et. seq., plaintiff states under oath that the defendant:

- is presently serving active duty in the United States armed forces
- is not presently serving active duty in the armed forces
- defendant's present military status is unknown.

Plaintiff provides the following facts in support of the statement concerning defendant's active duty military status: _____.

4. Plaintiff requests the entry of a default judgment: with a hearing, or without a hearing

5. If plaintiff requests entry of default judgment without a hearing:

Plaintiff avows that the claim is for a specific amount of money, or is for an amount that can be determined by mathematical calculation, and that the following amount of principal and interest is owed as of this date:

Principal: \$ _____
Interest: \$ _____
Total: \$ _____

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Attached is an affidavit supporting the amount of the claim.

There are no exhibits (documents) attached that support the amount of the claim.

Attached are the following exhibits supporting the amount of the claim:

6. Attached is a statement of court costs in the amount of \$ _____

7. Attorneys' fees are are not requested.

Plaintiff's complaint requested attorneys' fees: Yes No

The following law allows an award of attorneys' fees: _____

Attached is a separate affidavit with supporting exhibits concerning the fee amount.

If the request for attorneys' fees is based on a written contract, the contract is attached to the attorneys' fee affidavit.

8. Recap:

\$ _____ Principal and interest

\$ _____ Court costs

\$ _____ Attorneys' fees

\$ _____ Total amount requested

I certify that I will mail a copy of this Application for Entry of Default Judgment to the defendant claimed to be in default at the address shown above.

I certify that I have no known address for defendant.

The defendant was served by publication or by alternative service.

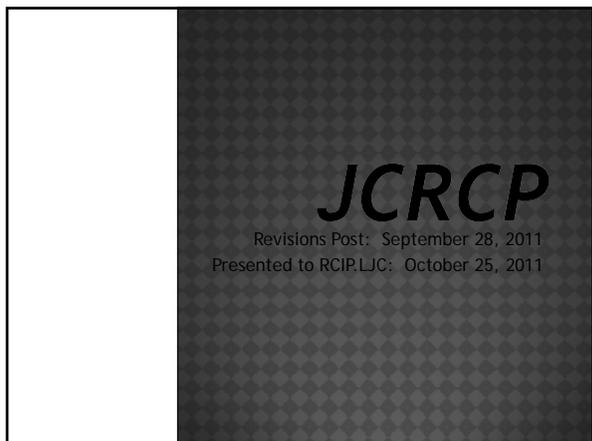
I certify that I will also mail a copy of this application to defendant's attorney _____ [name of the attorney].

I certify that I will also mail a copy of this application to the other parties in the lawsuit as required by Rule 120.

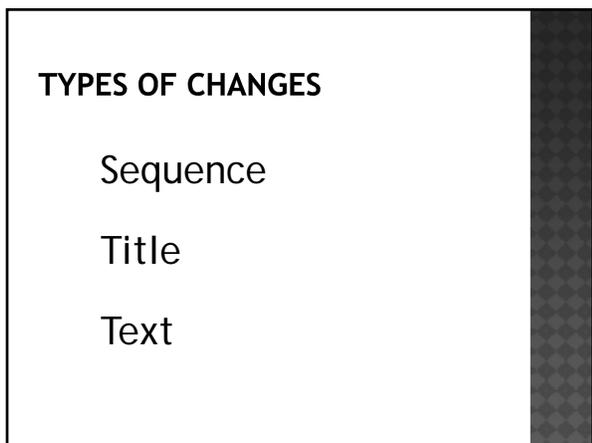
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: _____

Signature: _____



JCRCPP
Revisions Post: September 28, 2011
Presented to RCIP.LJC: October 25, 2011

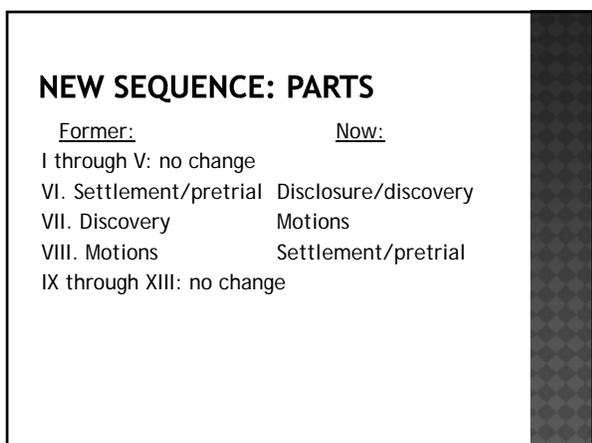


TYPES OF CHANGES

Sequence

Title

Text



NEW SEQUENCE: PARTS

<u>Former:</u>	<u>Now:</u>
I through V: no change	
VI. Settlement/pretrial	Disclosure/discovery
VII. Discovery	Motions
VIII. Motions	Settlement/pretrial
IX through XIII: no change	

NEW SEQUENCE: RULES

Reversed order. Now:

Rules 110: Starting a lawsuit, content of a complaint

...is before...

Rule 111: Lawsuits involving multiple parties or multiple claims

NEW TITLES: PARTS

Former: Part VII: Discovery

Now: Part VI: Disclosure Statements and Discovery

NEW TITLES: RULES

Rule 103:

Former: Conducting a lawsuit

Now: Court conduct

Rule 110 (previously 111)

Former: Filing a complaint with the court; content of the complaint; case number and filing date

Now: Starting a lawsuit; content of a complaint

NEW TITLES: RULES

Rule 112

Former: Issuance of the summons by the court clerk; content of the summons; notice to defendant; replacement summons

Now: Case number and filing date; issuance of a summons by the court clerk; content of a summons; notice to defendant; replacement summons

Rule 113

Former: Service of the summons and complaint

Now: Serving a summons and complaint

NEW TITLES: RULES

Rule 120

Former: Service of documents on other parties after the summons and complaint

Now: Serving documents on other parties after a summons and complaint

Rule 129:

Former: Sanctions for discovery violations

Now: Discovery violations

NEW TITLES: RULES

Rule 132

Former: Requirements for trial

Now: Matters concerning trial

Rule 133

Former: Trial by jury or to the court, question of foreign law; change of judge or disability of a judge during trial; verdict or decision

Now: Setting a lawsuit for trial; trial by jury or to the court, question of foreign law; change of precinct or judge; disability of a judge during trial; verdict or decision

NEW TITLES: RULES

Rule 137

Former: Witnesses

Now: Witnesses and interpreters

Rule 140

Former: Entry of default; default judgment

Now: Entry of default judgment

NEW AND DELETED RULES

New rule:

Rule 121: Duty to serve a disclosure statement

Deleted rule:

Rule 132: Pretrial motions regarding evidence

⦿ But see new Rule 132(c):

c. Pretrial motions regarding the admissibility of evidence. If the parties cannot agree on the admissibility of particular evidence at a trial, a party may file a written motion before trial regarding its admission or exclusion. These motions are not governed by Rule 129 of these rules; they are instead governed by Rule 7.2 of the Arizona Rules of Procedure, or as otherwise ordered by the court.

REVISIONS RE: E-FILING

Rule 109: Signatures on documents filed with court

a. Signature. Every document that is filed with the court, except for exhibits, must be dated and signed by the party's attorney or, if ~~the~~ a party has no attorney, it must be signed by the party. An electronic document can be signed with an electronic signature. When a document is filed by two or more parties, at least one of the parties who are filing the document must sign it. Any document that is filed without being signed and dated may be stricken by the court.

REVISIONS RE: E-FILING

Rule 120(c): Methods of service

....

A party serves a document on other parties under this rule:

...

(5) By delivering the document by any method, including electronically, if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system, to that method of service, or if the court orders service by that method.

STAFF'S CHANGES TO TEXT

Rule 101: Application and interpretation.

Former: *Title of these rules.* These rules shall be known and cited as the Justice Court Rules of Civil Procedure ("*JCRCP*").

Now: *Title of these rules.* These rules are called the Justice Court Rules of Civil Procedure ("*JCRCP*").

STAFF'S CHANGES TO TEXT

Rule 104: Naming the parties.

Former: *a. "Plaintiff" defined; multiple plaintiffs.* A plaintiff is the party who files a lawsuit. There can be more than one plaintiff in a lawsuit if each plaintiff makes a claim concerning the same transaction(s) or event(s). Each plaintiff must be a "*real party in interest*," that is, someone who claims to have been damaged or whose rights are in dispute.

Now: *a. "Plaintiff" defined; multiple plaintiffs.* A lawsuit is a dispute between parties who make claims, and parties against whom the claims are made. A plaintiff is the party who makes a claim by filing a lawsuit. There can be more than one plaintiff in a lawsuit, but each plaintiff must be a "*real party in interest*," that is, someone who has actual damages or whose rights are in dispute.

STAFF'S CHANGES TO TEXT

Rule 111(b): Contents of a complaint

...

- 3. In actions to recover on an assigned debt, the identity of the original owner of the debt;

STAFF'S CHANGES TO TEXT

Rule 120(b): Serving documents

b. General rule. ~~A true and correct~~ A complete and exact copy of every document that is filed with the court must be served on every party in the lawsuit

STAFF'S CHANGES TO TEXT

Rule 131: Pretrial conferences

~~*Former:* a. Scheduling a pretrial conference; required appearance; penalties. The court shall set a pretrial conference upon receiving notification that a settlement was not reached at a settlement conference, or that the terms of the settlement agreement were not fulfilled. In those lawsuits where a Rule 121 settlement conference is not conducted, the court shall set a pretrial conference within one hundred twenty days after a response to the complaint has been filed.~~

Now: a. Scheduling a pretrial conference; required appearance; penalties. The court should set a pretrial conference upon receiving notification that a settlement was not reached at a settlement conference, or that the terms of the settlement agreement were not fulfilled. In those lawsuits where a Rule 121 settlement conference is not conducted, the court should set a pretrial only after the parties have had adequate time to exchange disclosure statements.

STAFF'S CHANGES TO TEXT

New rule 133(a)

a. Setting a lawsuit for trial. In those precincts that do not conduct a pretrial conference, (1) the court may set a date for trial once an answer has been filed; or (2) a party may request the court to set a trial date after the parties have served disclosure statements.

STAFF'S CHANGES TO TEXT

Rule 133(c): Change of judge, etc.

c. Change of precinct or judge for cause or as a matter of right. A party in a justice court lawsuit who believes they cannot have a fair and impartial trial before the justice of the peace, or in that judge's precinct, must proceed as provided in Arizona Revised Statutes § 22-204 and Rule 42(f)(2) of the Arizona Rules of Civil Procedure. A party in a justice court lawsuit has a right to a change of judge as a matter of right in the same manner as provided in Rule 42(f)(1) of the Arizona Rules of Civil Procedure.

STAFF'S CHANGES TO TEXT

Rule 135: Findings in a trial to the court

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 will render judgment conclusions of law based on the agreed statement of facts.

STAFF'S CHANGES TO TEXT

Rule 137: Witnesses and interpreters

a. **General rule.** A witness is a person who provides sworn testimony during a lawsuit. A witness may be sworn with a solemn affirmation rather than an oath. The testimony of a witness at trial must be presented in person or by deposition, unless the parties agree otherwise or the judge allows for a good reason. The admissibility of a witness' testimony will be determined by the Arizona Rules of Evidence.

...

b.c. **Interpreters.** The court ~~may appoint~~ must provide an interpreter for a party or for the testimony of a witness ~~during a trial~~ as provided by law, and the court may determine the amount of the interpreter's compensation.

STAFF'S CHANGES TO TEXT

Rule 139: Judgment

Former: "costs"

Now: "court costs"

DEFAULT ISSUES

1. There are conflicting views regarding when the documents should be filed:

File an application for entry of default and a motion for entry of default judgment simultaneously, or

File them at least ten days apart

Reality: both documents are often filed at the same time

DEFAULT ISSUES

2. Should these documents be filed as one unified document or as two separate documents?

Two documents:

- More paper
- More docket entries

DEFAULT ISSUES

3. When is the "entry of default?"

Is it when the application is filed?

-or-

Is it when the clerk enters a default in the record?

McAuliffe: The filing of the application is "...sufficient to constitute entry of default."

MJG vs. Moon: The entry of default "is premised on the actual entry of a default in the court record...."

DEFAULT ISSUES

4. What happens when the plaintiff (usually a self-represented litigant) files an application for entry of default, but no motion for entry of default judgment is thereafter filed?

5. When a motion for entry of default is filed under Rule 55(b), is the court required to hold the motion for an additional ten days pursuant to Rule 7.1?

6. Does Rule 55(b) require that a motion for entry of default judgment be mailed to the party in default?

7. Is the party in default required to respond to the motion, or to file an answer?

DEFAULT SOLUTIONS

1. Only one document is filed.
2. The document is entitled "Application for entry of default judgment"
3. The filer requests the entry of a default judgment "with a hearing" or "without a hearing"
4. For entry of a default judgment without a hearing, the filer attaches an affidavit and exhibits (Rule 55(b) materials)
5. The document with attachments is mailed to the party in default

DEFAULT SOLUTIONS

Now the party in default has the knowledge of the specific relief the filer is requesting

If the party in default choose, they can respond by filing an answer

If the filer is requesting a hearing, the proposed rule requires that a notice of hearing be served on the filer

CHANGES BY THE LJC

Rule 140(d):

d. Answer or response. If the party claimed to be in default files a written answer or other response with the court within ten days after the application was mailed pursuant to paragraph (c) of this rule, the court cannot enter a default judgment against that party. If the party claimed to be in default files a written answer after the ten-day period but before the entry of a default judgment, the court may decline to enter a default judgment and may instead allow the lawsuit to proceed as if the answer was timely.

CHANGES BY THE LJC

Rule 140(d): [Entry of default judgment with a hearing]

If the party against whom judgment will be entered has a known address, the party applying for default must serve that party and their attorney, if any, with a written notice of the hearing at least three days before the default hearing date. That party or their attorney may participate if they appear at the default hearing.

FORMS

1. Subpoena
2. Notice to defendant
3. Form of complaint
4. Form of answer
5. Form of counterclaim
6. Form of motion
7. Form of disclosure statement
8. Application for entry of default judgment

TABLES

Table 1: Arizona Rules of Civil Procedure that have been incorporated by reference

Table 2: Cross-reference of the JCRCP to the Arizona Rules of Civil Procedure

Table 3: Treatment of the Arizona Rules of Civil Procedure in the JCRCP

Table 4: Due dates under the JCRCP

UPCOMING SCHEDULE

October 26: Presentation to MCJC bench
October 28: Preview presentation to AJC
November 4: Presentation to COSC
Mid-November: Submit report to AJC staff
December 15: Formal presentation to AJC
January 10: Rule petition deadline

UPCOMING SCHEDULE

Normal comment period:
Comments due by May 10
File reply by June 30

May request two-phase comment period; e.g.,
Comments due in April
File an amended petition in May
Comments due in June
File a reply to those comments in July

CONCLUSION

"...nobody would claim that the new rules are perfect. You can always go back and find things that could be further improved...If any mistakes were made in the restyling project, they can easily be fixed."

Joseph Kimble, "Lessons in Drafting from the New Federal Rules of Civil Procedure" (2007)
