

**Committee on Civil Rules of Procedure for Limited Jurisdiction Courts**

**MEETING AGENDA**

**Thursday, March 31, 2011**

10:00 AM to 3:00 PM

State Courts Building \* 1501 W. Washington \* Conference Room 230 \* Phoenix, AZ

Conference call-in number: (602) 452-3192 Access code: 1112

Item no. 1	<b>Call to Order.</b> <b>Introduction of a new member.</b> <b>Approval of the March 2, 2011 meeting minutes.</b>	<i>Mr. Julien, Chair</i>
Item no. 2	<b>Further review of A.R.S. §§ 22-201 and 22-406. Review of <i>Preston vs. Kindred</i>.</b>	<i>Mr. Julien All</i>
Item no. 3	<b>Follow-up presentation concerning Rules 1 and 2.</b>	<i>Staff</i>
Item no. 4	<b>Presentation by workgroup #1 on Rules 3 through 25.</b>	<i>Judge Dickerson Ms. Blanco Mr. Hameroff Mr. Klain Mr. Young</i>
	<b>Lunch</b>	
Item no. 5	<b>Discussion of proposed Rules 1 through 25.</b>	<i>Mr. Julien All</i>
Item no. 6	<b>Discussion of next steps.</b>	<i>Mr. Julien All</i>
Item no. 7	<b>Call to the Public.</b> <b>Adjourn.</b>	<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 Tama Reily at (602) 452-3637. Requests should be made as early as possible to allow time to arrange accommodations.

***Please note the date of the next Committee meeting:***

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

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



**ARIZONA SUPREME COURT**  
*Committee on Civil Rules of Procedure in Limited Jurisdiction Courts*  
Draft Minutes  
 March 2, 2011

Members present:

Hon. Paul Julien, Chair  
 Hon. Jill Davis  
 Hon. Timothy Dickerson  
 Hon. Maria Felix  
 Mary Blanco  
 David Hameroff  
 Stanley Hammerman  
 Emily Johnston  
 Nathan Jones  
 William Klain  
 George McKay  
 David Rosenbaum  
 Roger Wood  
 Anthony Young

Member not present:

Hon. Gerald Williams

Guests:

Hon. Steven McMurry  
 Theresa Barrett

Staff:

Mark Meltzer  
 Lorraine Nevarez  
 Tama Reily

**1. Call to Order; Introductions.** The Chair called the meeting to order at 10:05 a.m. and welcomed the members and guests to the inaugural meeting of this Committee. The Chair provided an overview of the objectives of the Committee, which include the submission of a report to the Arizona Judicial Council by December 2011.

The Chair advised that Judge Williams was absent because of military reserve duty, and that Judge Adam had a new judicial assignment that necessitated her resignation prior to the first meeting. Each Committee member then provided brief biographical information. The Chair inquired whether members should be added to the Committee. He noted that Judge Adam had considerable expertise on the subject of self-represented litigants. The members supported adding a member to replace Judge Adam. The Chair added that he would work hard to reach consensus among the members.

The Chair reviewed materials that were included in the members' notebooks, including A.O. 2011-13, and he reminded the members of the availability of documents on the Committee's webpage (<http://www.azcourts.gov/cscommittees/CivilRulesofProcedureforLJCourts.aspx>). The Chair reviewed proposed written rules for conducting Committee business, and a motion was then made:

**Motion RCiP.LJC 11-001:** That the proposed rules for conducting Committee business be adopted as proposed. The motion was seconded and discussed.

**Action on RCiP.LJC 11-001:** The motion passed by a unanimous vote of the members.

**2. Roundtable discussion of the rules of civil procedure in limited jurisdiction courts in Arizona.** The members reviewed Arizona Revised Statutes § 22-211 concerning the application of the superior court rules of procedure in LJ courts. The members proceeded to a roundtable discussion of the strengths and weakness of the current rules. A summary of comments includes:

- There are many self-represented parties in LJ courts. It would promote consistency, equalize advantages, and reduce surprise if self-represented parties were aware of their rights and responsibilities under the rules.
- In cases with attorneys, fees may approach or exceed the amount in controversy, and this can lead to unhappy outcomes. Reducing the cost of litigation is desirable.
- Rules should have a plain meaning to the average person. It would also assist LJ judges if the rules had more clarity. Other goals should include uniformity, access, and education.
- Policy objectives of the rules such as promoting efficiency and achieving justice should be considered before drafting changes to the existing rules.
- Maricopa County Justice Courts have a “best practices” committee.
- Individual clerks have different areas of knowledge and levels of experience. Clerks cannot give legal advice, although clerks provide self represented litigants with handouts and checklists. Self-represented litigants frequently don’t read those materials thoroughly, and less written information might be more effective because it’s more likely to be read.
- Court websites can provide useful information for self-represented litigants in civil cases.
- The relatively new rules of procedure for eviction actions simplified the eviction process for all stakeholders, including landlords, tenants, and judges. That committee’s goal was to devise rules that were fair and that reduced confusion, and it now appears that the eviction rules have achieved that goal. The superior court rules of civil procedure apply in evictions only when they were specifically incorporated in the eviction rules.
- Evictions require an information sheet to be served with the complaint. Could an information sheet be provided with the complaint that’s served on a civil defendant? A suggestion was made that the sheet could include information about the consequences of a civil judgment.
- What documents should be attached to a complaint to give a defendant notice of the basis of a lawsuit; for example, what should be attached to a complaint for an unpaid credit card balance? Should essential documents be attached to a complaint or should they instead be attached to a subsequent filing, such as an application for entry of default?

- An organic approach should be used when creating rules so they are seen as a whole body. Other relevant rules could be cross-referenced in a rule. Rules should not be aspirations. Practice pointers should be in comments rather than in the rules.
- Some procedural rules are critical, and even self-represented litigants should be required to follow those rules. Rules ensure consistency.
- The majority of cases conclude with the entry of judgment by default. There should be focus on the fairness and due process of default procedures. If a defendant does file an answer it is sometimes cryptic and results in a judgment for plaintiff on the pleadings. There are very few jury trials, and trials don't present major issues concerning rules. Post-judgment proceedings present more rules issues. Litigants should be satisfied that the process was fair and not overly costly.
- The Legislature adopted § 22-211, and the Legislature could amend or repeal this statute. The Legislature should be made aware of the existence of this Committee, and it should be provided an opportunity to participate in the Committee's work.

The Chair thanked the members for their comments, and a break was then taken for lunch.

**3. RCiP.LJC workgroups.** Following the lunch break, the Chair reviewed a document entitled "workgroups and roadmap." RCiP.LJC will evaluate the existing rules of civil procedure in blocks. The preliminary block consisting of introductory Rules 1 and 2 was presented by staff in the afternoon.

Each of three remaining blocks of rules was assigned to one of three workgroups. It was noted that the first workgroup would report at the second Committee meeting on March 31, the next group at the third Committee meeting on April 20, and the final group at the fourth meeting. Each workgroup should be prepared to present to the Committee recommendations for draft rules within its block. The workgroups are as follows:

Workgroup #1: Commencement of the action, pleadings, and parties: rules 3 through 25, excluding rule 7 on motions and rule 16 on pretrial procedures. Workgroup #1 members are Judge Dickerson (Chair), Ms. Blanco, and Messrs. Hameroff, Klain, and Young.

Workgroup #2: Motions and pretrial procedures, depositions and discovery, trials: rules 7, 16, and 26 through 53. Workgroup #2 members are Judge Davis (Chair), Ms. Johnston, and Messrs. McKay and Wood.

Workgroup #3: Judgments, remedies, arbitration, and general provisions: rules 54 through 83. Workgroup #3 members are Judges Felix (Chair) and Williams, and Messrs. Hammerman, Rosenbaum, and Jones.

Each workgroup includes (a) a judicial member, (b) a member from a legal aid organization, and (c) representatives from Maricopa County, Pima County, and one other county.

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*Draft Minutes: March 02, 2011*

**4. Presentation regarding Rules 1 and 2, Arizona Rules of Civil Procedure.** Staff presented two proposed introductory rules for the Committee’s consideration. Staff noted provisions in the Justice 2020 Strategic Agenda and in A.O. 2011-13 that mentioned simplifying rules and processes. Staff referred members to a 1994 Supreme Court committee on the effective use of juries that had included a similar concept, which was that instructions to the average juror should be in “clear and understandable language.” Staff also referred to two articles in the *Arizona Attorney*, one in the February 2011 issue on drafting jury instructions that are comprehensible to lay persons; and the other in the November 2005 issue concerning Rule 1.

Five guidelines for simplification of LJ civil rules were suggested: 1) using common words and avoiding legal jargon; 2) using simple sentences; 3) identifying parties consistently; 4) including general provisions at the beginning; and 5) deleting rules with little or no application to LJ proceedings. Staff also compared the twelve page rules for magistrate courts in West Virginia with the existing 234 pages of the Arizona civil rules.

Staff also reviewed provisions in the Rules of Procedure for Eviction Actions, the Rules of Procedure in Civil Traffic and Civil Boating Violation Cases, the Arizona Rules of Protective Order Procedure, and pertinent provisions of Title 22 of the Arizona Revised Statutes concerning small claims.

Staff’s draft Rules 1 and 2 were discussed by the members. Revisions to the draft rules were proposed, and these will be incorporated in a document that staff will provide with the materials for the next Committee meeting.

**5. The roadmap.** The Chair reviewed the roadmap for future meetings.

An issue was raised concerning which of the two options that were described in AO 2011-13 would be preferable: a new set of specialized rules of civil procedure for limited jurisdiction courts in Arizona, or amendments to the existing rules of civil procedure that would be applicable only in limited jurisdiction courts? It was the sense of the members that this was a decision that should be made at the inception of the Committee’s work. The following motion was then made, seconded, and discussed.

**Motion RCiP.LJC 2011-002:** To adopt a freestanding, separate set of rules for justice court civil actions that may or may not incorporate the existing superior court rules of civil procedure, and for which there is not already a discreet set of procedural rules or statutes.

Members in favor of the motion believe that a separate set of rules for justice court civil actions would provide self-represented litigants with increased knowledge of their rights and responsibilities. This philosophy in part was incorporated in the eviction rules, and, like eviction cases, the majority of justice court civil cases do not proceed to trial. The eviction rules include safeguards that require landlords to give information to tenants at the inception of a case, and that require judicial officers to assure that due process is respected in the default process. LJ civil rules could adopt similar safeguards. Existing superior court rules could be cross-

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referenced in a new set of LJ rules to the extent that specific superior court rules were still useful in LJ proceedings. The text of certain existing rules could also be incorporated in the new LJ rules, although this would tend to increase the length of any new rules. Some of the existing rules rarely if ever get used in justice courts.

The opposing view was that dispensing with the existing rules would impair the predictability of outcomes. A new set of rules might eliminate the application of an established body of case law that has developed under the existing rules. Dispensing with the existing rules could also limit procedural options that are currently available to litigants. One option would be to simply annotate the existing rules with an indication of whether each rule does or does not apply in justice courts. Another option would be having a parallel numbering system for the superior and LJ rules, similar to what is used in federal rules (for example, Rule 56 of the federal civil rules and local district court civil Rule 56.1, both of which apply to summary judgment motions.)

**Action on RCiP.LJC 2011-002:** The motion carried, twelve in favor, one opposed.

The Chair noted that the scheduled May 26 meeting date falls before the Memorial Day weekend, and that the meeting date of June 16 conflicts with the State Bar Convention. After discussion, the members agreed to vacate these two dates, and in lieu to have a meeting on Thursday, June 9, 2011.

**6. Call to the Public; Adjourn.** There was no response to a call to the public. The meeting was adjourned at 2:35 p.m.

The next meeting date is **Thursday, March 31, 2011.**



22-201. Jurisdiction of civil actions

A. Justices of the peace have jurisdiction only as affirmatively conferred on them by law.

B. Justices of the peace have exclusive original jurisdiction of all civil actions when the amount involved, exclusive of interest, costs and awarded attorney fees when authorized by law, is ten thousand dollars or less.

C. Justices of the peace have jurisdiction concurrent with the superior court in cases of forcible entry and detainer when the amount involved, exclusive of interest, costs and awarded attorney fees when authorized by law, is ten thousand dollars or less.

D. Justices of the peace have jurisdiction to try the right to possession of real property when title or ownership is not a subject of inquiry in the action. If in any such action the title or ownership of real property becomes an issue, the justice shall so certify in the docket, at once stop further proceedings in the action and forward all papers, together with a certified copy of the docket entries in the action, to the superior court, where the action shall be docketed and determined as though originally brought in the superior court.

E. In a county with a population of more than two million persons, the justice of the peace of each justice precinct shall have original jurisdiction to hear the following actions that occur in the respective precinct in which the justice of the peace is elected:

1. Civil actions pursuant to subsections B and C of this section.

2. Small claims pursuant to chapter 5 of this title.

3. Civil traffic offenses unless a civil traffic offense is filed in a municipal court by a municipal officer or agent or by an officer employed by a law enforcement agency under contract to that municipality to provide law enforcement services.

4. Special detainers and forcible detainers pursuant to title 33, chapters 11 and 19 and forcible detainers pursuant to title 33, chapter 3 if the amount of rent requested is ten thousand dollars or less.

F. In actions between landlord and tenant for possession of leased premises, the title to the property leased shall not be raised nor made an issue.

G. If in any action before a justice of the peace a party files a verified pleading that states as a counterclaim a claim in which the amount involved, exclusive of interest and costs, is more than ten thousand dollars, the justice of the peace shall certify this in the docket, at once stop further proceedings in the action and forward all papers, together with a certified copy of the docket entries in the action, to the superior court, where the action shall be docketed and determined as though originally brought in the superior court. The party shall pay to the clerk of the superior court the same fees required to be paid by a defendant, and no other party in the action before the justice of the peace shall be required to pay any sum. If the party is finally adjudged to be entitled to recover on the counterclaim, exclusive of interest and costs, ten thousand dollars or less, the superior court may deny costs to the party and in addition, may impose costs, including reasonable attorney fees, on the party. The superior court shall have original jurisdiction of the action, but at any time in furtherance of convenience or to avoid prejudice, or if it

appears that the amount involved in the counterclaim, exclusive of interest and costs, is ten thousand dollars or less, it may remand the action, or any claim or counterclaim of which the justice court has jurisdiction, to the justice court and may order costs.

H. The justice of the peace may require arbitration or other dispute resolution methods that are approved by the supreme court in all civil actions, except forcible entry or detainer actions.

22-406. Civil action to recover penalty; procedure

The city or town may maintain a civil action in the municipal court for the recovery of a penalty or forfeiture provided for the violation of an ordinance. The action shall be brought and conducted as civil actions in justice of the peace courts.

SUPREME COURT OF ARIZONA  
En Banc

LETTIE PRESTON and RODENA ) Arizona Supreme Court  
PRESTON, Co-Personal ) No. CV-10-0292-PR  
Representatives of the Estate of )  
WILLIAM EVERETT PRESTON, on ) Court of Appeals  
behalf of the Estate of WILLIAM ) Division One  
EVERETT PRESTON, deceased; and ) No. 1 CA-CV 09-0106  
LETTIE PRESTON and RODENA )  
PRESTON on behalf of WILLIAM ) Maricopa County  
EVERETT PRESTON'S statutory ) Superior Court  
beneficiaries pursuant to A.R.S. ) No. CV2008-012783  
section 12-612(A), )  
)  
)

Plaintiffs/Appellants, )

v. )

KINDRED HOSPITALS WEST, L.L.C., )  
a Delaware limited liability )  
company, dba KINDRED HOSPITAL )  
ARIZONA-SCOTTSDALE; KINDRED )  
HEALTHCARE OPERATING, INC., a )  
Delaware corporation; KEVIN )  
NICHOLSON, Administrator; STEVE )  
SMITH, Executive Director; SCOTT )  
FLODEN, Executive Director, )  
)  
)

Defendants/Appellees. )  
)  
)  
)

**O P I N I O N**

Appeal from the Superior Court in Maricopa County  
The Honorable John A. Buttrick, Judge

**REVERSED AND REMANDED**

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Opinion of the Court of Appeals Division One  
225 Ariz. 223, 234 P.3d 450 (2010)

**AFFIRMED**

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WILKES & MCHUGH, P.A.  
By Melanie L. Bossie

Phoenix

And

LAW OFFICE OF SCOTT E. BOEHM, P.C.

Phoenix

By Scott E. Boehm

Attorneys for Lettie Preston, Rodena Preston, Estate of William Everett Preston, and Statutory Beneficiaries of William Everett Preston

HOLLOWAY ODEGARD FORREST & KELLY, P.C.

Phoenix

By Vincent J. Montell

Anthony J. Fernandez

Larry J. Wulkan

Attorneys for Kindred Hospitals West LLC, Kindred Hospital Arizona-Scottsdale, Kindred Healthcare Operating Inc, Kevin Nicholson, Steve Smith, and Scott Floden

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**B A L E S**, Justice

¶1 Arizona Rule of Civil Procedure 17(a) requires every action to be “prosecuted in the name of the real party in interest.” An action cannot be dismissed for failure to name the proper party, however, “until a reasonable time has been allowed after objection” for the real party in interest to ratify, join, or be substituted into the action. Ariz. R. Civ. P. 17(a). We hold that Rule 17(a) does not require a plaintiff to show that an initial failure to name the real party in interest resulted from an understandable mistake or difficulty in identifying the proper party.

**I.**

¶2 This lawsuit was filed by personal representatives on behalf of the Estate of William Everett “Billy” Preston. A Grammy Award-winning soloist, Preston also performed with the

Beatles and many other musicians. See, e.g., *The Beatles with Billy Preston, Get Back* (Apple Records 1969). In 2005, he was admitted to Kindred Hospitals in Scottsdale, Arizona. He died the next year. The complaint against Kindred Hospitals West, L.L.C. and other defendants (collectively "Kindred") alleges wrongful death, negligence, and elder abuse under the Adult Protective Services Act, Ariz. Rev. Stat. ("A.R.S.") § 46-455 (West Supp. 2010).

¶13 Kindred moved to dismiss the complaint, arguing that the personal representatives lacked standing to sue. Before entering the hospital, Preston had filed for bankruptcy under Chapter 11 of the United States Bankruptcy Code. After his death, the bankruptcy was converted to a Chapter 7 proceeding. Kindred argued that the claim belonged to the bankruptcy estate and therefore the bankruptcy trustee was the real party in interest. The personal representatives agreed but opposed the motion to dismiss, requesting an opportunity to join or substitute the trustee pursuant to Rule 17(a). The trustee also filed a declaration supporting the personal representatives' pursuit of the action.

¶14 The superior court granted Kindred's motion to dismiss, commenting that the purpose of Rule 17(a) is "to prevent the forfeiture of claims when the determination of the real party to bring suit is difficult to make or when an

understandable mistake has been made." Because the personal representatives knew of the bankruptcy, the superior court found that it was not difficult to determine the proper plaintiff and there was no understandable mistake.

¶15 The court of appeals reversed, stating that "the unambiguous language of the Rule itself, and well-established tenets of statutory construction lead us to conclude that neither an understandable mistake nor difficulty in determining the proper party is necessary to allow ratification, joinder, or substitution of the Bankruptcy Trustee under Rule 17(a)." *Preston v. Kindred Hosps. W., L.L.C.*, 225 Ariz. 223, 227 ¶ 16, 236 P.3d 450, 454 (App. 2010).

¶16 We granted Kindred's petition for review to consider the proper interpretation of Rule 17(a), an issue of statewide importance. The Court has jurisdiction under Article 6, Section 5(3) of the Arizona Constitution and A.R.S. § 12-120.24 (2003).

## II.

¶17 Whether Rule 17(a) requires a plaintiff to show that a failure to name the real party in interest resulted from an understandable mistake or difficulty in identifying the party is an issue of first impression in Arizona. Rule 17(a) provides:

Every action shall be prosecuted in the name of the real party in interest. . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for

ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

¶18 We apply principles of statutory construction to interpret court rules. *E.g.*, *State v. Aguilar*, 209 Ariz. 40, 47 ¶ 23, 97 P.3d 865, 872 (2004) (interpreting Ariz. R. Evid. 404(c)). Accordingly, if a rule is clear and unambiguous, we need not look beyond its “language to determine the drafters’ intent.” *Id.* at 47 ¶ 23, 97 P.3d at 872 (internal quotation marks and citation omitted). We give unambiguous language its “usual, ordinary meaning unless doing so creates an absurd result.” *Id.*

¶19 By its terms, Rule 17(a) does not require a plaintiff to prove an understandable mistake or difficulty in identifying the proper party in order to avoid dismissal. The accompanying notes, however, state that the rule is intended to “prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made.” Ariz. R. Civ. P. 17(a), State Bar Committee Notes, 1966 Amend. Kindred argues that these notes limit the application of Rule 17(a). But, in describing the purpose of the rule, the Committee Notes do not purport to specify the only circumstances in which substitution of the real party is permitted. Moreover,

the notes cannot alter the rule's clear text. See *Aguilar*, 209 Ariz. at 48 ¶ 26, 97 P.3d at 873 ("Although a comment may clarify a rule's ambiguous language, a comment cannot otherwise alter the clear text of a rule.").

¶10 Interpreting the federal counterpart to Rule 17, some federal courts have held that the trial court must find it was difficult to determine the proper party plaintiff or that an understandable mistake was made before allowing substitution of the real party in interest. See, e.g., *Wieburg v. GTE Sw. Inc.*, 272 F.3d 302, 308 (5th Cir. 2001) (citing cases interpreting Fed. R. Civ. P. 17(a)(3)). But not all federal courts require such a showing. See, e.g., *Esposito v. United States*, 368 F.3d 1271, 1275-77 (10th Cir. 2004) (cautioning against an "over-emphasis on the understandability" of the mistake); *Jenkins v. Wright & Ferguson Funeral Home*, 215 F.R.D. 518, 522 n.4 (S.D. Miss. 2003) (observing that the Advisory Committee Note to Rule 17(a) is in "apparent conflict with the Rule itself"). Having considered the federal cases, we decline to engraft requirements onto Rule 17 beyond those reflected in the text of the rule.

¶11 Moreover, even those federal courts that generally interpret Rule 17 to require a showing of understandable mistake or difficulty in identifying the proper party would not necessarily reach a different result in a case like this. Construing Federal Rule of Civil Procedure 17(a)(3) liberally to

allow amendments, federal courts ordinarily allow substitution of the real party in interest for an improperly named plaintiff with identical claims. See *Wieburg*, 272 F.3d at 309 (concluding that “in the light of Rule 17(a)’s purpose of preventing forfeitures . . . it was an abuse of discretion for the district court to dismiss the action without explaining why the less drastic alternatives of either allowing an opportunity for ratification by the Trustee, or joinder of the Trustee, were inappropriate”); *Advanced Magnetics, Inc. v. Bayfront Partners, Inc.*, 106 F.3d 11, 20-21 (2d Cir. 1997) (concluding that the proposed substitution of the real party in interest should have been granted under Fed. R. Civ. P. 17(a)).

¶12 Kindred also argues that Rule 17(a) must be construed in harmony with Arizona Rule of Civil Procedure 15(c). The latter rule, however, is not particularly relevant here. Rule 15(c) governs the relation back of amendments “changing the party against whom a claim is asserted,” ordinarily the defendant. When a real party in interest is substituted for an incorrectly named plaintiff with identical claims, Rule 17(a) itself provides the relevant relation-back rule, stating that the “substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.”

¶13 Finally, Kindred contends that construing Rule 17(a) as liberally allowing amendments to name the real party in

interest may lead to abuse, such as substitution of a plaintiff on the eve of trial after prolonged litigation. These concerns can be addressed by the trial court's exercise of its discretion under Rule 15(a) in ruling on motions to amend. See *Owen v. Superior Court (Donald)*, 133 Ariz. 75, 79, 649 P.2d 278, 282 (1982) (recognizing trial court's power to deny leave to amend where "there has been undue delay, dilatory action or undue prejudice"). Kindred has not argued that it would be prejudiced by the proposed amendment to substitute the plaintiff here (indeed, it is difficult to imagine how the substitution of one representative plaintiff for another with identical claims could result in prejudice), so we need not further address the circumstances in which a trial court may properly deny substitution of a real party in interest based on Rule 15(a).

### III.

¶14 We affirm the opinion of the court of appeals and remand this case to the superior court for further proceedings.

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W. Scott Bales, Justice

CONCURRING:

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Rebecca White Berch, Chief Justice

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Andrew D. Hurwitz, Vice Chief Justice

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A. John Pelander, Justice

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Robert M. Brutinel, Justice



**Current rules 1 and 2**

Rules of Civil Procedure for the Superior Courts of Arizona  
I. Scope of Rules--One Form of Action

**Rule 1. Scope of rules**

**These rules govern the procedure in the superior courts of Arizona in all suits of a civil nature whether cognizable as cases at law or in equity. They shall be construed to secure the just, speedy, and inexpensive determination of every action.**

HISTORICAL NOTES

**Source:**

Fed.Rules Civ.Proc., Rule 1, 28 U.S.C.A.  
Code 1939, § 21-201.

**Reviser's Notes:**

These rules of civil procedure are based on the federal rules of civil procedure. The rules adopted by the Arizona Supreme Court are identical to the federal rules except as to variances involving designations of courts and special federal procedures having no counterpart in this state, which are not indicated by reviser's notes, and except as to rules which differ in substance from the federal rules, which are indicated by reviser's notes. The numbering of the Arizona rules is based on the federal rules so that subject matter in a particular Arizona rule is analogous to subject matter in the federal rule of the same number, but subdivisions of the rules do not necessarily correspond.

16 A. R. S. Rules Civ. Proc., Rule 1, AZ ST RCP Rule 1

Current with amendments received through 1/1/11

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**Rule 2. One form of action**

**There shall be one form of action to be known as "civil action."**

HISTORICAL NOTES

**Source:**

Fed.Rules Civ.Proc., Rule 2, 28 U.S.C.A.  
Code 1939, § 21-202.  
16 A. R. S. Rules Civ. Proc., Rule 2, AZ ST RCP Rule 2

Current with amendments received through 1/1/11



**Proposed** Rule 1 (A version without markup is on the next page.)

Rule 1: Application, interpretation, and knowledge of these rules.

a. These rules apply to civil ~~eases~~ lawsuits in limited jurisdiction courts in Arizona, but these rules do not apply ~~not to eases concerning~~ evictions, small claims, civil traffic or civil boating proceedings, or protective orders ~~and~~ or injunctions against harassment.

b. These rules shall be interpreted so that civil eases lawsuits are resolved speedily, inexpensively, and justly. In limited jurisdiction courts, these rules replace the Arizona Rules of Civil Procedure. However, the Arizona Rules of Civil Procedure may serve as guides for interpreting these rules, and specific provisions of the Arizona Rules of Civil Procedure are adopted by reference in these rules. Also, upon motion of a party or upon the court's motion, an appropriate rule contained in the Arizona Rules of Civil Procedure may be invoked and utilized if a the procedure procedural rule is not contained in these rules or precluded by these rules. a court may use an appropriate procedure provided by the Arizona Rules of Civil Procedure.

c. Parties who represent themselves in a civil case in a limited jurisdiction court are presumed to have knowledge of these rules. References in these rules to a party include one party as well as many parties. When these rules refer to a party, it includes the party's attorney if the party has an attorney. ~~and the attorney is also presumed to have knowledge of these rules.~~

*Staff's note: The text in paragraphs (1) and (2) has been clarified. Workgroup #1 favored the word "lawsuits" over cases. The workgroup also favored a statement that a rule in the Ariz R Civ P may be "invoked" by a party or by the court. The last phrase in paragraph (c) has been deleted based on a comment that this is axiomatic.*

Rule 2: Document formats, signatures, and agreements.

a. ~~Every document filed with the court must include the names of the parties, the name of the court where the document is being filed, and the title of the document. Every document filed with the court after the complaint must also include a case number.~~

b. ~~A party may file documents with the court either electronically or on paper. These rules shall apply to both electronic and paper documents. Documents that are filed electronically must be in a format allowed by the court. Paper 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. The court may issue documents in either electronic or paper formats.~~

c. ~~A party who files a document with the court shall sign and date the document. When a party or person is required by these rules to provide a signed statement under oath, that oath may be shown by the following words: "I declare under penalty of perjury that the foregoing is true and correct. Signed on the \_\_\_ day of \_\_\_, 20\_\_," with a signature directly below the date on a paper document or /s/ and a typed name below the date on an electronic document.~~

~~d. The court may impose a penalty, including a monetary penalty, for a violation of Rule 2 (a),(b), or (c).~~

~~e. An agreement between the parties is not binding if it is disputed, unless it is in writing and it is signed by the parties, or it is made orally by the parties in open court and noted in the court's records.~~

*Staff's note: The provisions of this proposed rule have been deleted based on member comments that the proposed rule incorporates rules [Rules 4(b), 10(d), 11, 80(i), and 11(a)] that have been assigned to workgroups for review.*

### **Version of proposed Rule 1 without markup:**

#### **Part I: General provisions.**

##### **Rule 1: Application and interpretation.**

*a. Application.* These rules apply to civil lawsuits in limited jurisdiction courts in Arizona, but these rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or protective orders and injunctions against harassment.

*b. Interpretation.* These rules shall be interpreted so that civil lawsuits are resolved speedily, inexpensively, and justly. In limited jurisdiction courts, these rules replace the Arizona Rules of Civil Procedure. However, the Arizona Rules of Civil Procedure may serve as guides for interpreting these rules, and specific provisions of the Arizona Rules of Civil Procedure are adopted by reference in these rules. Also, upon motion of a party or upon the court's motion, an appropriate rule contained in the Arizona Rules of Civil Procedure may be invoked and utilized if a the procedural rule is not contained in these rules and if it is not precluded by these rules.

*Committee comment.* The primary source of these rules is the Arizona Rules of Civil Procedure. These rules should therefore be interpreted and applied consistently with any corollary rules contained in the Arizona Rules of Civil Procedure. A cross-reference table is provided with these rules to assist in fulfilling this objective. Notwithstanding, these rules are intended to benefit limited jurisdiction courts as well as self-represented and attorney-represented litigants in limited jurisdiction courts, including the benefits of resolving cases in limited jurisdiction courts with relative speed and economy but with a full measure of justice; and these intended benefits should also be used for guidance in interpreting these rules.





## **Rule 1: Application, interpretation, and knowledge of these rules.**

- a. Unless otherwise provided These rules apply to civil ~~cases~~ lawsuits in limited jurisdiction courts in Arizona,
- b. These rules shall be interpreted so that civil cases lawsuits are resolved speedily, inexpensively, and justly. In limited jurisdiction courts, these rules replace the Arizona Rules of Civil Procedure.
- c. The court may if moved by a party or on its own direct the use of an appropriate procedure provided by the Arizona Rules of Civil Procedure

d. Parties who represent themselves or attorneys practicing in a limited jurisdiction court are presumed to have knowledge of these rules. References in these rules to a party include one party as well as many parties.

*Staff's note: The text in paragraphs (1) and (2) has been clarified. Workgroup #1 favored the word "lawsuits" over cases. The workgroup also favored a statement that a rule in the Ariz R Civ P may be "invoked" by a party or by the court. The last phrase in paragraph (c) has been deleted based on a comment that this is axiomatic.*

## **Rule 2 Lawsuit Filing; Pleadings; Caption and format**

- a. A lawsuit is started by filing a complaint with the court. The defendant may file an answer to the complaint, a counterclaim, a cross-claim, or a third-party complaint.
- b. As used in these rules, the term "pleading" includes the following documents:
1. A complaint, and an answer to the complaint;
  2. A counterclaim, and a reply to a counterclaim;
  3. A cross-claim, and an answer to a cross-claim;
  4. A third-party complaint, and an answer to a third party
- c. *Defendant's name.* A complaint or third party complaint must state the proper name of a defendant or a third party defendant. If the name of a defendant or a third party defendant is unknown, they may be identified in a pleading by a fictitious name, and the pleading may be amended when that party's true name becomes known.
- d. *Claim for relief.* A claim for relief in a complaint, a counterclaim, a cross-claim or a third-party complaint must contain a short and **clear** statement of facts showing why the party making the claim is entitled to relief from the court. A claim must include the amount of money or other relief requested by a party.
- e. *Defenses.* If a party disputes a claim, the party's defense must be stated as a short and plain statement. A party's response to a claim must admit or deny each of the facts contained in the claim.
- f. *Misnamed defenses and counterclaims.* Counterclaims and cross-claims should be clearly identified as such in order for opposing party to properly file its reply.
- g. *Affirmative defenses.* An affirmative defense is **a justification, or an excuse.** A party who relies on an affirmative defense must state the affirmative defense in their pleading. Affirmative defenses include: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of limitations, waiver, and any other matter which is an affirmative defense.
- h. *Interpretation of pleadings.* All pleadings shall be interpreted by the court as to do substantial justice ( needed?)
- h. *Caption.* Every pleading shall include a caption containing the names of the parties, the name of the court where the document is being filed, and the name of the document. Every document filed with the court after the complaint shall include the assigned case number.
- i. *Format.* A party may file documents with the court on paper, or a party may file them electronically if the court has electronic filing available. These rules shall apply to both electronic and paper filings. Electronic filings shall be in a format allowed by the court. Paper filings shall 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 . Forms provided by the court need not meet these requirements. The court may issue documents such as notices, minutes, or orders in either paper or electronic formats.

### Rule 3. Filing a complaint.

a. A complaint shall be filed with the court. A Complaint may be filed without a Summons. The complaint shall include:

1. The proper names of all plaintiffs and defendants.
2. A statement that the court has jurisdiction and that venue is proper, and **the reasons for each. Is this necessary?**
3. A short and plain statement explaining the basis for the lawsuit, and a statement that the plaintiff is legally entitled to recovery.
4. A demand for money or other relief.

b. The court shall provide a case number on each complaint that is filed with the court. The court shall also record on the complaint the day and hour that it was filed. **Why do we need the hour?**

### Rule 4. Summons and Complaint; Issuance, content and Service of Process

a. Summons shall be issued shall identify the defendants to the lawsuit. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

- (1) Name of the court and its street address, city, and telephone number;
- (2) Notice that if the defendant to file with the court a written **answer or some other pleading to the complaint within the time period stated in the summons. The summons shall notify each defendant that if an answer or other pleading to the complaint is not filed, a default judgment may be entered against the defendant who fails to answer.**
- (4) A disclosure in substantially the following form: "Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible."
- (5) In a lawsuit, on a separate page served upon the self represented Defendant, the information contained in the Notice to Defendant: A Lawsuit Has Been Filed Against You! Substantially in the form included as Appendix A to these Rules.

Rule 4 b. If needed and upon request, the court may issue a replacement summons.

Rule 4 c. *Time to respond after service of the summons and complaint.* Except as otherwise stated in these rules, a party who is served with a summons and complaint within the State of Arizona shall file a responsive pleading with the court within **twenty days** of the date of service,

Rule 4 d. A party who is served with a summons and complaint outside the State of Arizona shall file a responsive pleading with the court within **thirty days** of the date of service. **In all cases the defendant is to provide a copy upon the plaintiff.**

Rule 4 e. *Personal service.* The summons shall be personally served on each defendant by a registered private process server **or a constable.** The **process server or constable shall prepare an affidavit or certificate as proof that a defendant was served, and the proof of service shall be filed with the court.**

Rule 4 c. *Service on an out-of-state defendant.*

1. An out-of-state defendant may be personally served by a person who is authorized to serve process under the laws of the state where service is made.
- 2 In the alternative be made by certified mail, with a return receipt showing restricted delivery to the defendant.
  - (a)The return receipt with defendant's signature shall be filed with the court by certificate of service.
  - (b) Service by certified mail is complete on the date that defendant signed the return receipt
  - (c) 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 and certificate of service is filed with the court.

*d. Acceptance of service.* A defendant may sign a written acceptance of service that is duly acknowledged before a notary public, and the acceptance of service shall then be filed with the court. Service is complete **from the date defendant signed the acceptance and shall be** filed with the court.

Rule 4 e. *Service on a minor.* Shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

*f. Service on corporations, partnerships, limited liability companies and associations.* Shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

Rule 4 f. *Service upon the State.* Shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

Rule 4 g. *Service upon a county or municipality.* Shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

Rule 4 h. Service upon persons or entities not otherwise provided in this rule, including but not limited to incompetent persons or unknown heirs, shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

Rule 4 i. Service outside the State of Arizona on persons or entities not otherwise provided in this rule, including but not limited to incompetent persons, unknown heirs, and persons or businesses in a foreign country, shall be made as provided in Rule 4.2 of the Rules of Civil Procedure.

Rule 4 j. Alternative or substituted service may be made as provided by Rule 4.1 of the Rules of Civil Procedure.

Rule 4 k. Service by publication shall be made as provided by Rules 4.1 and 4.2 of the Rules of Civil Procedure.

Rule 5 l. Service under the Nonresident Motorists Act may be made as provided in Rule 4.2(e) of the Rules of Civil Procedure.

Rule 4 m. A court of this state 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.

Rule 4 n. Failure to serve; inactivity;

1. Is service of the summons and complaint has not be made or there is no activity from the last filing or action of either party after nine months the court shall place and notify the plaintiff that the case has been placed on the inactive calendar for two months and shall be dismissed without prejudice at the expiration of the two months without further notice.

2. The court upon response to the Court's Notice Placing case on the Inactive Calendar or on motion may order the case to be continued on the inactive calendar for an additional three months without dismissal. After expiration of the additional three months the Court shall dismiss without prejudice without further notice if service has not been completed. Additional time shall not be granted.

Rule 5: Filing and service of documents after the summons and complaint.

Rule 5 a. A copy of an original document that is filed with the court after service of the summons and complaint, or in the case of a third party complaint, after service of a summons and third party complaint, shall be promptly served on every party to the case as provided by this rule.

Rule 5 b. After the time for appeal from a judgment has expired or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgment, shall be served by process service pursuant to Rules 4, 4.1 or 4.2, as applicable,

Rule 5 c. Parties shall file documents with the Court and deliver copies to the opposing party at the same time or after filing with the court.

Rule 5 d. A document is served under this rule:

1. By handing it to a person, if the person is a party to the lawsuit;
- 2 By leaving the document at the party's office with a clerk or other person in charge, or if no one is in charge, by leaving the document **in plain sight in the office;**
- 3 If the party has no office, by leaving the document at the party's residence with 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;
- 5 By delivering the document by any method, including electronically, if the party who is receiving the document has consents in writing to that method of service, or if the court orders service in that method.

Rule 5 e. If the party is represented by an attorney, service under this rule shall be made on the attorney unless the court orders service on the party.

Rule 5 f. Service of a motion or other pleading that requests that a judgment be modified, vacated, or enforced must be served on the party by process service, and as required by Rule 4.

Rule 5 g. Documents that are not filed with the court.

The following documents must be served on every party as required by Rule 9, but are not filed with the court:

1. Subpoenas service thereof unless an objection is filed with the court.
2. Discovery papers, including notices of depositions, interrogatories and interrogatory answers, and requests for production, admissions, and medical examinations
3. Disclosure statements

Rule 5 h Signing pleadings and other documents filed with the court.

1. *Signature.* Every pleading and document filed with the court shall be signed by the party or shall be signed by the party's attorney of record.

2. *Certification.* A signature of the party or attorney on any document confirms that the signer has read the document and that, to the signer's best knowledge, the document is truthful and that it is not filled to harass another party or to delay the lawsuit.

"I DECLARE (OR CERTIFY, VERIFY OR STATE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON (DATE). Followed by signature and date.

Rule 5(i). Filing with the court defined

The filing of pleadings and other papers with the court as required by these Rules shall be made by filing them with the court.

Rule 5(j). Proposed Orders and Proposed Judgments

(1) *Required Format.* A proposed order or proposed judgment shall be prepared as a separate document from a motion, stipulation, or other document. The proposed order or proposed judgment shall be prepared in accordance with these Rules.

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

(A) All written stipulations shall be accompanied by a proposed form of order. The party submitting the stipulation shall include with it copies to be conformed, together with envelopes stamped and addressed to each party in the lawsuit.

B) Any motion that is accompanied by a proposed form of order shall also include with it copies to be conformed for each party, together with envelopes stamped and addressed to each party in the lawsuit regardless if the opposing party has made an appearance .

Rule 5.1. Duties of Counsel

**Rule 5.1. Duties of Counsel a) Attorney of Record: Withdrawal and Substitution of Counsel.**

(1) *Attorney of Record: Duties of Counsel.* No attorney shall appear in any action or file anything in any action without first appearing as counsel of record.

- IN A CASE WHERE JUDGMENT HAS NOT BECOME FINAL WHERE A DIFFERENT ATTORNEY WILL APPEAR THERE MUST BE A NOTICE OF SUBSTITUTION OR ASSOCIATION OF COUNSEL BEFORE THE ATTORNEY MAY APPEAR.

An attorney of record shall be deemed responsible in all until the time for appeal from a judgment has expired or a judgment final after appeal or until there has been a formal withdrawal from or substitution in the case.

(2) *Withdrawal and Substitution.* No attorney shall be permitted to withdraw, or be substituted, as attorney of record in any pending action. The attorney may move to withdraw by written application setting forth the reasons therefore together with the name, residence and telephone number of the client, as follows:

(A) **BY APPROVAL OF THE CLIENT.** Where such application bears the written approval of the client, shall be by Notice and proposed order. The Application may be presented to the court *ex parte*. The withdrawing attorney shall give prompt notice, together with the name and residence of the client, to all other parties or their attorneys.

(B) Where such application does not bear the written approval of the client:

1. It shall be made by motion and shall be served upon the client and all other parties or their attorneys.

2. The motion shall be accompanied by a certificate of the attorney making the motion that

3. the client has been notified in writing of the status of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions, or
4. the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case.

(C) No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial, (i) unless **there is substitution of counsel** or the signature of the client stating that the client is advised of the trial date and has made suitable arrangements to be prepared for trial, or (ii) unless the court is satisfied for good cause shown that the attorney should be permitted to withdraw.

**b) Responsibility to Court.** Upon relocation, each attorney shall advise court and court administrator, in each of the counties in which that attorney has cases that are pending. **Notice of Change of address must be filed for each case pending before the court.**

**(c) Notice of Settlement.** It shall be the duty of counsel, or any party if unrepresented by counsel, to give the court prompt notice of the settlement of any **Any** unreasonable delay in the giving of such notice, the court may impose sanctions against counsel or the parties. Jury fees may be taxed as costs pursuant to statute and local rule.

#### **Rule 6(a). Computation**

**1. If it happened today, today doesn't count in the calculation**

**2. Less than 11 days, weekends and legal holidays are not counted**

**3. More the 11 days, weekends and legal holidays are counted**

**4. If the last day is a weekend or holiday, the next judicial day is the last day of the calculation**

#### **Rule 6(b). Enlargement**

**The Court may enlarge the time period.**

(1) With or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally extended by a previous order or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(d), (g) and (l), and 60(c), except to the extent and under the conditions stated in them,

#### **Rule 6(d). Orders to Show Cause**

a. The court, upon application supported by affidavit showing cause therefore, may issue an order requiring a party to show cause why the party applying for the order should not have the relief therein requested,

**b. The court may order the appearance** at such time as the court designates.

**c.** Any such order to show cause shall be **formally** served in accordance with the requirements of Rules 4, 4.1 or 4.2, as applicable

**d.** If the party to whom the order is directed has entered an appearance in the action, **may be served informally** in accordance with the requirements of [Rule 5](#) of these rules,

#### **Rule 6(e). Additional time after service under Rule 5(c)(2)(C) or (D)**

**If a notice or paper is served by rule 5(c) (mail) or rule 5 (d) (electronic means), 5 calendar days shall be added. If the last day is a weekend or holiday, the next judicial day is the last day of the calculation.** This rule has no application to the distribution of notice of entry of judgment required by [Rule 58\(e\)](#).



Proposed Rules 7, 8, 9, 10, Revised.

Rule 7. Pleadings allowed

The following pleadings are allowed: A complaint and answer, a counterclaim and reply, a cross-claim and answer, and a third-party complaint and answer.

Rule 8. General Rules of Pleading

Rule 8(a). Naming the Defendant

If the plaintiff does not know the name of the defendant, the defendant may be designated in the pleadings by a fictitious name, and the pleadings may later be amended to reflect the defendant's true name.

Rule 8(b). Claims for Relief

A claim for relief, whether it is stated in a complaint, counterclaim or other type of pleading, must contain a short and plain statement of the facts showing why the party is entitled to relief and a demand for judgment for a stated amount of money and/or for the other relief the party is requesting.

Rule 8(c). Defenses

In order to dispute a claim, a party must state in short and plain words the party's defense to each claim made and must admit or deny the facts stated in the other parties' claim. When a party mistakenly titles a defense as a counterclaim or a counterclaim as a defense, the court may, in the interest of justice, treat the pleading as if it had been properly titled.

Rule 8(d). Affirmative Defenses

In disputing a claim, a party must state, in their answer or reply, all the following defenses, which may apply: accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in

*Judge Dickerson*  
*March 15 2011*

bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, laches, license, payment, release, res judicata, statute of limitations, waiver, and any other matter which is an affirmative defense.

Rule 8(e). Construction of Pleadings

All pleadings shall be interpreted by the court as to do substantial justice.

Rule 9. Pleading Special matters – Omitted.

No Rule 10. Form of Pleadings – Omitted. Covered in Rules 1 & 2. Rule 10(f) became Rule 8(a).

## Rule 11. Signing of pleadings

(a) Signing of pleadings, motions and other papers; sanctions. -- Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney or record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee.

(b) Verification of pleading generally. -- When in a civil action a pleading is required to be verified by the affidavit of the party, or when in a civil action an affidavit is required or permitted to be filed, the pleading may be verified, or the affidavit made, by the party or by a person acquainted with the facts, for and on behalf of such party.

(c) Verification of pleading when equitable relief demanded. -- When equitable relief is demanded, and the party demanding such relief makes oath that the allegations of the complaint, counterclaim, cross-claim, or third-party claim are true in substance and in fact, the responsive pleading of the opposite party shall be under oath, unless the oath is waived in the pleading to which the responsive pleading is filed, and each material allegation not denied under oath shall be taken as confessed.

**PROPOSED RULE:**

**Rule 11: Signing of pleadings, motions and other papers (“documents”).**

- (a) **Signing of documents.** Except for exhibits, all documents filed shall be signed by the attorney or the party filing it if not represented. If any document filed is not signed, then it shall be stricken from the record unless it is signed promptly after the omission is called to the attention of the attorney or party.
- (b) **Certification of the signer.** The signature of the attorney or party on any documents constitutes a representation by the signer that the signer has read the document, and that to the best of the signer’s knowledge, the information stated in the document is true, and is not filed for the purpose of harassment or delay. If the Court finds that a document is filed in violation of this section, the court, upon a request of an attorney or party, or upon its own initiative, shall impose upon the person who signed the document an appropriate

sanction, which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorneys fees.

RULE 12: OMITTED FROM THIS DOCUMENT

### Rule 13. Counterclaim and cross-claim

(a) Compulsory counterclaims. -- A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) Permissive counterclaims. -- A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim exceeding opposing claim. -- A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) Counterclaim against the state. -- These Rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the state or an officer or agency thereof.

(e) Counterclaim maturing or acquired after pleading. -- A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted counterclaim. -- When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) Cross-claim against co-party. -- A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. The cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(h) Joinder of additional parties. -- Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

(i) Separate trials; separate judgments. -- If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

**Rule 13. Counterclaim and cross-claim.**

**(a) Mandatory counterclaim.** - A defendant must state as a counterclaim any claim that the defendant has against the plaintiff, regardless of the amount of the counterclaim. If the claim arises out of same transaction or event that is stated in the plaintiff's claim, it is mandatory that the counterclaim be filed at the time of the filing of the answer or other responsive pleading and shall be filed and served pursuant to Rule 5.

**(b) Permissive counterclaim.** A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

**(c) Failure to file counterclaim.** The failure of a defendant to institute a counterclaim permitted by this rule as a result of oversight, inadvertence or excusable neglect, may, by request to the court, file the counterclaim by amendment.

**(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 or event that is stated in the complaint. The cross-claim may be stated together with the defendant's answer and may be filed and served pursuant to Rule 5. An answer to a cross-claim is permitted but shall not be required.

**Rule 14. Third-party practice**

(a) When defendant may bring in third party. -- At any time after commencement of the action a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. A copy of all previous pleadings, as defined in Rule 7(a) of these Rules, that have been filed in the action shall be served together with the third-party complaint or be provided by the

third-party plaintiff to the person served promptly after service. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 10 days after serving the original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12, and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When plaintiff may bring in third party. -- When a counterclaim is asserted against a plaintiff, he may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

**Rule 14. THIRD PARTY COMPLAINTS.**

(a) If the defendant alleges that another person, who is not named as a party in the case, is wholly or partially responsible for the damages stated in the complaint, the defendant may file a third-party complaint against that person.

(b) A third-party summons and complaint shall be served upon the third party defendant in the same manner as an initial summons and complaint. A third-party complaint shall be answered in the same manner as is provided by Rule 12(a).

**Rule 15. Amended and supplemental pleadings**

(a) Amendments.

1. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within twenty days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires.

2. A party who moves for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion, which shall indicate in what respect it differs from the pleading that it amends, by bracketing or striking through the text to be deleted and underlining the text to be added. If a motion for leave to amend is granted, the moving party shall file and serve the amended pleading within ten days of the order granting the motion, unless the court otherwise orders.

3. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the

amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to conform to the evidence. -- When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation back of amendments. -- Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, plus the period provided by Rule 4(i) for service of the summons and complaint, the party to be brought in by amendment, (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on

the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. Service of process in compliance with Rule 4.1(h), (i) or (j) of these rules satisfies the requirement of clauses (1) and (2) hereof with respect to the state, county, municipal corporation or any agency or officer thereof to be brought into the action as a defendant.

(d) Supplemental pleadings. -- Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

#### **Rule 15. Amended and supplemental pleadings.**

**(a) Amendments.** A party may amend their pleadings one time before a responsive pleading is served. Upon motion, the court may permit the filing of an amended pleading at any stage of the proceeding and upon such terms as may be just. Upon motion, the court may also permit the filing of supplemental pleadings asserting claims or defenses which have arisen since the date of the pleading. The court may rule on motions with or without a hearing. If the court decides it appropriate, it may order the other party to file a response to the supplemental pleading and set the time for the response. Continuances to meet new matters asserted in amended or supplemental pleadings shall be granted if necessary to avoid surprise or prejudice to the opposing party.

**(b) Amendments to Conform to the Evidence.** When issues not stated in the pleadings are raised at trial by express or implied consent of the parties, 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 is not stated in the pleadings, and the objecting party is prejudiced by going forward, the court may grant a continuance to enable the objecting party to respond to the evidence.

**(c) Relation Back of Amendments.** If a party seeks to amend to add issues that are otherwise barred by a limitation, it may relate back if the tests and rules of ARCP 15(c) are met.

## Additional Rule 15 language – Relation Back

### **Rule 15(c). Relation back of amendments**

If a party asserting a claim or defense seeks to amend their pleading to add a new claim or defense, or add a new party to the lawsuit, and the time period provided by law for bringing the claim or defense, or for suing the new party, has ended, under certain circumstances called relation back the party may still bring the new claim or defense or sue the new party. Whether relation back applies to an amendment is controlled by the standards set forth in Rule 15(c) of the Arizona Rules of Civil Procedure.



# Draft of Proposed Rules of Civil Procedure for Justice Courts

*(Proposed Rule in Italics)*

## **Current Rule 17(a). Real party in interest**

Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the state so provides, an action for the use or benefit of another shall be brought in the name of the State of Arizona. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

## *Proposed Rule 17(a). Real party in interest*

*Every lawsuit shall be filed in the name of real party in interest, that is, the plaintiff must be the person or entity whose rights are at issue in the case. Examples include:*

- 1. an executor (person appointed by the deceased)*
- 2. an administrator (person appointed by the court)*
- 3. a guardian (person lawfully invested with the power)*
- 4. a bailee (person to whom property is given under contract)*
- 5. a trustee of an express trust (person holding property in trust)*
- 6. a party with whom or in whose name a contract has been made for the benefit of another*
- 7. a party authorized by statute may sue in that person's own name*

*Lawsuits on behalf of a real party in interest may be brought by an executor, administrator, or guardian appropriately appointed under Arizona law.*

*A reasonable time must be allowed to correct a mistake of the name of the real party in interest after an objection is made.*

*A judgment may be set aside upon the motion of any person interested for fraud or collusion on the part of the personal representative.*

## **Current Rule 17(b). Actions by personal representatives; setting aside judgment**

Actions for the recovery of personal property, debts or damages, and for the title to or possession of lands, or for any right attached thereto or arising therefrom, or for an injury or damage thereto may be commenced by an executor, administrator, or guardian appointed in this state in the same manner as if commenced by the testator or intestate, and judgment therein shall be as conclusive as if rendered in favor of or against the testator or intestate. The judgment may be set aside upon the application of any person interested for fraud or collusion on the part of the executor, administrator or guardian.

Proposed Rule 17(b). Lawsuits

Lawsuits by or against a personal representative, city, town, county, surety, assignor, endorser, infant or incompetent person shall be governed by Rule 17 (b), (c), (d), (f) and (g) of the Arizona Rules of Civil Procedure.

**Current Rule 17(c). Actions by or against personal representatives**

Actions for the recovery or possession of property, real or personal, or to quiet title thereto, or to determine an adverse claim thereto, and all actions founded upon contracts, may be maintained by or against an executor or administrator in all cases in which such actions might have been maintained by or against the testator or intestate.

Proposed Rule 17(c). Omitted

**Current Rule 17(d). Actions by or against county, city or town**

Actions brought by or against a county or incorporated city or town shall be in its corporate name.

Proposed Rule 17(d). Omitted

**Current Rule 17(f). Actions against surety, assignor or endorser**

The assignor, endorser, guarantor and surety upon a contract, and the drawer of a bill which has been accepted, may be sued without the maker, acceptor or other principal obligor when the latter resides beyond the limits of the state, or in such part of the state that the latter cannot be reached by ordinary process of law, or when the latter's residence is unknown and cannot be ascertained by the use of reasonable diligence, or when the latter is dead, or insolvent.

Proposed Rule 17(f). Omitted

**Current Rule 17(g). Infants or incompetent persons**

Whenever an infant or incompetent person has a representative, such as a general guardian, or similar fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative the infant or incompetent may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Proposed Rule 17(g). Omitted

**Current Rule 17(h). Bond of guardian ad litem or next friend**

If an action is brought for the minor by a next friend or guardian ad litem, the next friend or guardian ad litem shall not receive any money or property of the minor until such friend or guardian files a bond as security therefor in such form and with such surety as the court may prescribe and approve.

Proposed Rule 17(h). Omitted

**Current Rule 17(i). Consent of guardian ad litem or next friend; liability; compensation**

No person shall be appointed guardian ad litem or next friend except upon written consent filed in the action. A guardian or next friend shall not be personally liable for costs, unless by special order of the court. The court may allow the guardian or next friend a reasonable compensation for services to be taxed as part of the costs of the action.

Proposed Rule 17(i). Omitted

**Current Rule 17(j). Partnerships.**

Any partnership may sue and be sued in the name which it has assumed or by which it is known.

Proposed Rule 17(j). Partnerships

*Any partnership may sue and be sued in the name which it has assumed or by which it is known.*

**Current Rule 18(a). Joinder of claims**

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

Proposed Rule 18(a). Joining of claims

*A party may plead in a single civil lawsuit as many claims as that party has against an opposing party, even if the claims are not related.*

**Current Rule 18(b). Joinder of remedies; fraudulent conveyances**

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action, but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

Proposed Rule 18(b). Joining of remedies; fraudulent transfers

*A party may request any remedy to which the law entitles the party. Each claim must have its own basis for jurisdiction in the court in which it is brought or be subject to dismissal.*

*A party may pursue more than one claim, and the success of any claim need not be dependant upon the success of any other claim.*

**Current Rule 19(a). Persons to be joined if feasible**

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede the

person's ability to protect that interest (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

Proposed Rule 19(a). Persons to be joined if feasible

*If a person is who is not a party to the lawsuit is "necessary" to a just hearing of the lawsuit, under the criteria in 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.*

**Current Rule 19(b). Determination by court whenever joinder not feasible**

If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measure, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Proposed Rule 19(b). Determination by court whenever joining a party is not feasible

*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", meaning that the lawsuit should not proceed with only the current parties. If a party is found "indispensable", the lawsuit must be dismissed.*

**Current Rule 19(c). Pleading reasons for nonjoinder**

A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

Proposed Rule 19(c). Omitted

**Current Rule 19(d). Exception of class actions**

This rule is subject to the provisions of Rule 23.

Proposed Rule 19(d). Omitted

## **SUGGESTED REVISED RULES 20-25 (MERGED)**

### **Rule 20. Permissive joining of parties**

#### **Rule 20(a). Who may join or be joined as parties in a single lawsuit**

Multiple persons may join in one lawsuit as plaintiffs if they seek relief concerning the same transaction(s) or event(s), and if the lawsuit will involve any issue that applies to all these persons. Multiple persons may be sued jointly in one lawsuit as defendants if any right to relief is sought against them involving the same transaction(s) or event(s), and if the lawsuit will involve any issue that applies to all defendants. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their specific individual rights to relief, and against one or more defendants according to their specific individual liabilities.

#### **Rule 20(b). Separate trials**

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of another party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

### **Rule 21. Joining wrong parties or failure to join parties to lawsuit**

Joining a wrong party into a lawsuit is not ground for dismissal of the lawsuit. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the lawsuit and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

### **Rule 22. Interpleader**

Under certain circumstances, when multiple people have claims against someone that might expose that person to double or multiple liability, that person may file an action (as a plaintiff, cross-claimant or counterclaimant) against the people who have the claims (as defendants, cross-defendants or counterdefendants), **and the court will determine each party's rights and liabilities.** This type of action is called an interpleader and its procedures are set forth in and controlled by Rule 22 of the Arizona Rules of Civil Procedure.

### **Rule 23. Class actions (Omitted)**

#### **Rule 23.1. Derivative actions by shareholders (Omitted)**

#### **Rule 23.2. Actions related to unincorporated associations (Omitted)**

### **Rule 24. Intervention**

Under certain circumstances, if a person has an interest in the subject matter of a lawsuit between other people 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 defendant. Joining a lawsuit between other people in this way is called an intervention and its procedures are set forth in and controlled by Rule 24 of the Arizona Rules of Civil Procedure.

### **Rule 25. Substitution of parties during lawsuit**

#### **Rule 25(a). Death of a party during lawsuit**

(1) If a party dies and the claim by or against them is not extinguished **by the party's death**, the court may order substitution of the proper parties. A motion for substitution may be filed by any party or by the successors or representatives of the party that has died and shall be served on the parties as provided in [Rule 5](#) and upon the successors or representatives of the party that has died as provided in Rules 4, 4.1 or 4.2, as applicable. Unless a motion for substitution is filed not later than 90 days after a notice of the fact of the death is filed and served as provided in this subsection for the service of the motion, the lawsuit shall be dismissed as to the party that has died.

(2) If some but less than all plaintiffs or defendants die during a lawsuit in which a right involved may only continue to be asserted or defended by the parties that have not died, a notice of the fact of the death(s) shall be filed with the court and served upon all parties as provided for in subsection (a)(1) of this Rule and the lawsuit will continue as to the parties that have not died.

**Rule 25(b). Death of defendant after personal injury lawsuit started**

A lawsuit to recover damages for personal injuries shall not end because of the death of the defendant, and the personal representative of a defendant that dies during a lawsuit may be substituted as the defendant. After substitution, the lawsuit shall proceed to judgment as if the defendant had remained alive.

**Rule 25(c). Incompetency during lawsuit**

If a party becomes incompetent during a lawsuit, the court upon motion to substitute served as provided in subdivision (a) of this Rule may allow the lawsuit to be continued by or against the party's representative.

**Rule 25(d). Transfer of interest during lawsuit**

If a lawsuit involves an interest that is transferred during the lawsuit, the lawsuit may be continued by or against the original party, unless the court upon motion to substitute directs the person to whom the interest is transferred to be substituted in the lawsuit or joined with the original party. Service of the motion to substitute shall be made as provided in subsection (a) of this Rule.

**Rule 25(e). Public officers; death or separation from office during lawsuit**

When a public officer is a party to a lawsuit in an official capacity and during the lawsuit dies, resigns, or otherwise stops holding office, the lawsuit does not end and the person who replaces the officer in office is automatically substituted as a party. The procedures for this type of substitution are set forth in and controlled by Rule 25(e) of the Arizona Rules of Civil Procedure.

## **SUGGESTED REVISED RULES 20-25 (MERGED)**

### **Rule 20. Permissive joining of parties**

#### **Rule 20(a). Who may join or be joined as parties in a single lawsuit**

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#### **Rule 20(b). Separate trials**

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of another party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

### **Rule 21. Joining wrong parties or failure to join parties to lawsuit**

Joining a wrong party into a lawsuit is not ground for dismissal of the lawsuit. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the lawsuit and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

### **Rule 22. Interpleader**

Under certain circumstances, when multiple people have claims against someone that might expose that person to double or multiple liability, that person may file an action (as a plaintiff, cross-claimant or counterclaimant) against the people who have the claims (as defendants, cross-defendants or counterdefendants), **and the court will determine each party's rights and liabilities.** This type of action is called an interpleader and its procedures are set forth in and controlled by Rule 22 of the Arizona Rules of Civil Procedure.

### **Rule 23. Class actions (Omitted)**

#### **Rule 23.1. Derivative actions by shareholders (Omitted)**

#### **Rule 23.2. Actions related to unincorporated associations (Omitted)**

### **Rule 24. Intervention (Omitted)**

### **Rule 25. Substitution of parties during lawsuit**

#### **Rule 25(a). Death of a party during lawsuit**

(1) If a party dies and the claim by or against them is not extinguished by the party's death, the court may order substitution of the proper parties. A motion for substitution may be filed by any party or by the successors or representatives of the party that has died and shall be served on the parties as provided in [Rule 5](#) and upon the successors or representatives of the party that has died as provided in Rules 4, 4.1 or 4.2, as applicable. Unless a motion for substitution is filed not later than 90 days after a notice of the fact of the death is filed and served as provided in this subsection for the service of the motion, the lawsuit shall be

dismissed as to the party that has died.

(2) If some but less than all plaintiffs or defendants die during a lawsuit in which a right involved may only continue to be asserted or defended by the parties that have not died, a notice of the fact of the death(s) shall be filed with the court and served upon all parties as provided for in subsection (a)(1) of this Rule and the lawsuit will continue as to the parties that have not died.

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If a lawsuit involves an interest that is transferred during the lawsuit, the lawsuit may be continued by or against the original party, unless the court upon motion to substitute directs the person to whom the interest is transferred to be substituted in the lawsuit or joined with the original party. Service of the motion to substitute shall be made as provided in subsection (a) of this Rule.

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When a public officer is a party to a lawsuit in an official capacity and during the lawsuit dies, resigns, or otherwise stops holding office, the lawsuit does not end and the person who replaces the officer in office is automatically substituted as a party. The procedures for this type of substitution are set forth in and controlled by Rule 25(e) of the Arizona Rules of Civil Procedure.

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- a. Starting a lawsuit.*

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- b. Content of the complaint.*
- c. Case number and filing date.*

**Rule 13: Issuance of the summons by the court clerk; content of the summons; replacement summons.**

- a. Issuance of the summons.*
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- c. Replacement summons.*

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- a. Personal service.*
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**Rule 15: Time to respond 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.*
- b. Time to respond after service of a cross-claim or counterclaim.*
- c. Calculations of time.*
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**Rule 16: Time calculations.**

- a. Basic rule.*
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- 2. A motion to dismiss the complaint.*
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- 4. A motion to strike the complaint.*
- 5. Proceedings after a motion under this rule.*

*b. Waiver of defenses.*

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**Rule 18: Counterclaims and cross-claims.**

*a. Required counterclaim.*

*b. Permitted counterclaim.*

*c. Failure to file counterclaim.*

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*e. Reply to counterclaim; answer to cross-claim.*

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*a. Reason for a third-party complaint.*

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**Rule 20: Amended and supplemental pleadings.**

*a. Amendments to pleadings.*

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*e. Relation back of amendments.*

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**Rule 21: Providing documents to other parties.**

*a. General rule.*

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*c. Methods of providing a document to the other parties.*

*d. Party represented by an attorney.*

*e. Noting the method of service.*

*f. Service of motion or pleading after entry of judgment.*

*g. Documents that are not filed with the court.*

**Part I: General provisions.**

**Rule 1: Application and interpretation.**

*a. Application.* These rules apply to civil lawsuits in limited jurisdiction courts in Arizona, but these rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or protective orders or injunctions against harassment.

*b. Interpretation.* These rules shall be interpreted so that civil lawsuits are resolved speedily, inexpensively, and justly. In limited jurisdiction courts, these rules replace the Arizona Rules of Civil Procedure. However, the Arizona Rules of Civil Procedure may serve as guides for interpreting these rules, and specific provisions of the Arizona Rules of Civil Procedure are adopted by reference in these rules. Also, upon motion of a party or upon the court's motion, an appropriate rule contained in the Arizona Rules of Civil Procedure may be invoked and utilized if the procedural rule is not contained in or precluded by these rules.

***Committee comment.*** The primary source of these rules is the Arizona Rules of Civil Procedure. These rules should therefore be interpreted and applied consistently with any corollary rules contained in the Arizona Rules of Civil Procedure. A cross-reference table is provided with these rules to assist in fulfilling this objective.

Notwithstanding, these rules are intended to benefit limited jurisdiction courts as well as self-represented and attorney-represented litigants in limited jurisdiction courts, including the benefits of resolving cases in limited jurisdiction courts with relative speed and economy, and with a full measure of justice. Those intended benefits should also be used for guidance when interpreting these rules.

**Part II: Duties.**

**Rule 2: Duties of parties.**

*a. Parties.* References in these rules to a party include one party as well as many parties. When these rules refer to a party, it includes the party's attorney if the party has an attorney.

*b. Duties of parties.* Parties who represent themselves, and attorneys who represent parties, have the following duties:

(1) *Knowledge of the rules.* Parties who represent themselves in a civil case in a limited jurisdiction court are presumed to have knowledge of these rules.

(2) *Address and telephone number.* Parties are required to advise the court in writing of any change in their mailing address or telephone number.

(3) *Settlement.* The parties are required to advise the court if a case that is set for trial has settled before the trial date.

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*c. Duties of attorneys.* An attorney who appears in a lawsuit in a limited jurisdiction court, or who requests permission to withdraw or to substitute counsel, shall meet the requirements of Rule 5.1 of the Arizona Rules of Civil Procedure concerning appearances, withdrawal, and substitution.

**Part III: Pleadings**

**Rule 3. Definition of “pleading”.**

*“Pleading” defined.* As used in these rules, the word “*pleading*” includes only the following documents:

1. A complaint;
2. An answer to the complaint;
3. A counterclaim;
4. A reply 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.

**Rule 4: General rules of pleading.**

*a. Real party in interest.* The plaintiff must be the proper person or organization to file the lawsuit. See Rule 7 for specific situations concerning the real party in interest.

*b. Defendant’s name.* A complaint shall state the proper name of each defendant. If the name of a defendant is unknown, that defendant may be identified in a pleading by a fictitious name, and the pleading may be amended when that defendant’s true name becomes known. This provision also applies to a defendant in a third-party complaint.

*c. Claim for relief.* A claim for relief in a complaint, a counterclaim, a cross-claim, or a third-party complaint is a short and clear statement of facts that shows why the party making the claim is entitled to relief from the court. A claim must include the amount of money or other specific relief that is requested by a party.

*d. Interpretation of pleadings.* All pleadings shall be interpreted by the court as to do substantial justice.

**Rule 5: Caption and format of pleadings and other documents.**

*a. Caption.* Every pleading filed with the court shall include a caption containing the names of the parties, the name of the court where the pleading is being filed, and the name of the pleading. Every pleading filed with the court after the complaint shall also include a case number.

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*b. Format.* A party may file pleadings with the court on paper, or a party may file them electronically if the court has electronic filing available. These rules shall apply to both electronic and paper filings. Electronic filings shall be in a format allowed by the court. Paper filings shall 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; forms provided by the court need not meet these requirements.

*c. Format of documents other than pleadings.* Any document that is filed with the court that is not a pleading must include the caption required by paragraph (a) of this rule, and must be in a format that is required by paragraph (b) of this rule.

*d. Format used by the court.* The court may issue documents such as notices, minutes, or orders in either paper or electronic formats.

**Rule 6: Signatures on pleadings and other documents filed with the court.**

*a. Signature.* Every pleading or other document filed with the court, except for exhibits, shall be signed by the party's attorney of record or, if the party has no attorney, it shall be signed by the party. A document that is filed electronically may be signed with an electronic signature by indicating s/ and a typed name. The date of the signature shall be added next to the signature. If any pleading or document that is filed is not properly signed, it may be stricken from the record on a party's motion or on the court's own motion, unless it is signed promptly after the lack of a signature is called to the attention of the attorney or party who filed it.

*b. Certification.* A signature of the attorney or party on any document confirms that the signer has read the document; that, to the signer's best knowledge, the document is truthful; and that the document is filed in good faith and that it is not filed 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 a monetary or other penalty on the signer.

*c. Certification for a pleading.* Every pleading as defined in Rule 3 shall contain the following certification 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.

**IV. Parties.**

**Rule 7. Naming the real party in interest.**

*a. General rule.* The plaintiff (or plaintiffs) must be the person or entity whose rights are at issue in the case. Every lawsuit shall be filed in the name of real party in interest.

*b. Executors, administrators, guardians, trustees.* A lawsuit may be brought by an executor, administrator, guardian, or trustee for the benefit of the person who they protect if they are properly named or appointed under Arizona law to perform this duty.

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*c. Bailees.* A person to whom property is given under contract, also known as a bailee, may file a lawsuit on behalf of the owner of the property.

*d. Plaintiff authorized by statute.* A lawsuit may be filed by a party authorized by a statute to sue in another person's name.

*e. Other situations.* Lawsuits by or against a personal representative, city, town, county, surety, assignor, endorser, infant, or incompetent person shall be governed by Rule 17 of the Arizona Rules of Civil Procedure.

*f. Partnerships.* A partnership may sue and be sued in the name that it has assumed or by which it is known.

*g. Mistake in the real party in interest.* A reasonable time after an objection is made shall be allowed to correct a mistake in naming the real party in interest.

→ ***Comment for workgroup #2:*** Consider including in the rule on motions the provision that a judgment may be set aside upon the motion of an interested person for fraud or collusion on the part of the personal representative (see Rule 17(b) of the Ariz. R. Civ. P.)

**Rule 8. Adding (“joining”) claims and remedies.**

*a. Adding claims.* A party may state in a single lawsuit as many claims as that party has against an opposing party, even if the claims are not related. If a party pursues more than one claim, the success of one claim need not be dependent upon the outcome of another claim. 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. Requesting remedies.* A party may request any remedy that the law provides for the party.

**Rule 9: Adding (“joining”) parties; necessary parties.**

*a. Who may join as plaintiffs.* Multiple parties may join in one lawsuit as plaintiffs if they seek relief concerning the same transaction(s) or event(s), and if the lawsuit involves an issue that applies to all plaintiffs.

*b. Who may be joined as defendants.* Multiple parties may be sued in one lawsuit as defendants if any right to relief is sought against them that involves the same transaction(s) or event(s), and if the lawsuit will involve an issue that applies to all defendants.

*c. Judgment given on specific claims.* Judgment may be given for one or more of the plaintiffs according to their specific individual rights to relief, and against one or more defendants according to their specific individual liabilities. A plaintiff need not be interested in obtaining all the relief demanded by the other plaintiffs, and a defendant need not be interested in defending against all of the relief requested.

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*d. Separate trials concerning claims or parties.* Any claim may be severed and proceeded with separately. The court may also make orders, including orders for separate trials, which will prevent a party from being embarrassed, delayed, prejudiced, or put to unreasonable expense because they have been joined in a lawsuit.

*e. Joining wrong parties or failure to join parties.* Joining the wrong party in a lawsuit is not grounds for dismissal of the lawsuit. Parties may be dropped or added by order of the court on the motion of any party or on the court's own initiative at any stage of the lawsuit and on such terms as the court finds to be just.

*f. Necessary parties.* If a person who is not a party to the lawsuit is "necessary" to a just hearing of the lawsuit under the criteria in 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", meaning that the lawsuit should not proceed with only the current parties. If a party who is found to be "indispensable" cannot be added to the lawsuit, the lawsuit shall be dismissed.

**Rule 10: Intervention and interpleader.**

*a. Intervention.* If a person has an interest in the subject matter of a lawsuit between other people 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 defendant. Joining a lawsuit in this way is called "intervention", and its procedures are controlled by Rule 24 of the Arizona Rules of Civil Procedure.

*b. Interpleader.* When a person might be exposed to double or multiple liability because of the number of claims 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", and its procedures are controlled by Rule 22 of the Arizona Rules of Civil Procedure.

**Rule 11: Substitution of parties during a lawsuit.**

*a. Death of a party during a lawsuit.*

*1. Rights not extinguished by death.* If a party dies and the claim by or against them may continue despite the death (that is, the claim is not extinguished), the court may order that a proper party be substituted for the decedent. A notice of the fact of the party's death must be filed and served on the other parties as provided in Rule 21. A motion for substitution may then be filed by any party, or by the successors or representatives of the party that has died. The motion shall be served on the current parties to the lawsuit as

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provided in Rule 21, and it shall be served upon the successors or representatives of the party that has died, if they did not file the motion, as provided in Rule 14. A motion for substitution must be filed not later than 90 days after a notice of the fact of the death has been filed with the court. If a motion for substitution is not filed within this period of time, the lawsuit shall be dismissed as to the party that has died.

*2. Rights extinguished by death.* If one or more but less than all of the plaintiffs or defendants die during a lawsuit, and the right involved in the lawsuit may only continue to be asserted or defended by parties that have not died, a notice of the fact of the death(s) shall be filed with the court and served upon all parties as provided in Rule 21, and the lawsuit will then continue only as to the parties that have not died.

*b. Death of a defendant after a personal injury lawsuit has started.* A lawsuit to recover damages for personal injuries shall not end because of the death of a defendant, and the personal representative of a defendant that dies during a lawsuit for personal injuries may be substituted as the defendant. After substitution, the lawsuit shall proceed to judgment as if the defendant had remained alive.

*c. Incompetency during lawsuit.* If a person becomes incompetent during a lawsuit, the court upon receiving a motion to substitute may allow the lawsuit to be continued by or against the person's representative. The motion shall be served on that person's representative as provided in Rule 14.

*d. Transfer of interest during lawsuit.* If a lawsuit involves an interest that is transferred during the lawsuit, the lawsuit may continue with or against the original party, unless a motion is filed and the court directs that the person to whom the interest is transferred be substituted in the lawsuit or joined with the original party. The motion to substitute shall be served on any new party as provided by Rule 14.

*e. Public officers.* When a public officer is a party to a lawsuit in an official capacity and during the lawsuit dies, resigns, or otherwise stops holding office, the lawsuit does not end and the person who replaces the officer in office is automatically substituted as a party. The procedures for this type of substitution are provided in Rule 25(e) of the Arizona Rules of Civil Procedure.

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

**Rule 12. Filing a complaint with the court clerk; content of the complaint; case number and filing date.**

*a. Starting a lawsuit.* A lawsuit is started by filing a complaint with the court clerk.

*b. Content of the complaint.* The complaint shall include:

1. The proper name of every plaintiff and every defendant.

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2. A statement that the court has jurisdiction and a statement explaining why venue is proper in the precinct where the lawsuit is filed.

3. A short and clear statement by the plaintiff about the factual basis of the lawsuit, and that shows that the plaintiff is legally entitled to recover.

4. A demand for money or other relief.

*c. Case number and filing date.* The clerk of the court shall provide a case number on each complaint that is filed with the court. The clerk shall also stamp on the complaint the day and hour that it was filed.

→ ***Comment for RCiP.LJC:*** Consider a requirement of an “information sheet” that is served with the complaint, as discussed at the March 2, 2011 RCiP.LJC meeting.

**Rule 13: Issuance of the summons by the court clerk; content of the summons; replacement summons.**

*a. Issuance of the summons.* At the same time that a complaint is filed with the court, the clerk shall issue a summons and shall promptly return the summons to the plaintiff for service on each defendant. The clerk shall issue one summons for each defendant. The summons shall be substantially the same as Form 1 attached to these rules. The plaintiff shall arrange for a copy of the summons and complaint to be served on each defendant as provided by Rule 11.

*b. Content of the summons.* The summons shall command each defendant to file with the court a written response to the complaint within the time period stated in the summons. The summons shall notify each defendant that if a response to the complaint is not filed within the required time period, the plaintiff may ask the court to enter a judgment against the defendant who is in default, as provided in Rule \_\_\_\_.

*c. Replacement summons.* If needed and upon request, the court may issue a replacement summons.

**Rule 14: Service of the summons and complaint.**

*a. Personal service.* The summons and complaint shall be personally served on each defendant by the court’s constable or by a registered private process server. The constable or process server shall prepare an affidavit as proof that a defendant was served, and the proof of service shall be filed with the court.

*b. Service on an out-of-state defendant.* An out-of-state defendant may be personally served by someone who is authorized to serve process under the laws of the state where service is made on the defendant. If the defendant lives outside Arizona, service may in the alternative be made by certified mail, with a return receipt showing restricted delivery to the defendant. The return

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receipt with defendant's signature shall be filed with the court. 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.

*c. Acceptance of service.* A defendant may sign a written acceptance of service that is witnessed by a notary public, and the acceptance of service shall then be returned to the plaintiff and filed with the court. Service is complete when the acceptance is filed with the court.

*d. Service on a minor.* Service upon a minor under the age of sixteen years shall be made by serving a parent of the minor, and if none, by serving the minor's guardian or conservator, or by serving any adult person having the care and control of the minor, or with whom the minor resides.

*e. Service on corporations, partnerships, limited liability companies, and associations.* Service upon a corporation, a partnership, a limited liability company, or an association shall be made by serving a partner, an officer, or a managing or general agent, or by serving any other agent authorized by law to receive service.

*f. Service upon the State.* Service upon the State of Arizona shall be made by serving the state's attorney general.

*g. Service upon a county or municipality.* Service upon a county or municipality shall be made by serving its chief executive officer, secretary, clerk, or recording officer.

*h. Service on others within Arizona.* Service of a summons and complaint in the State of Arizona on persons or organizations not otherwise provided in this rule, including but not limited to incompetent persons or unknown heirs, shall be made as provided in Rule 4.1 of the Rules of Civil Procedure.

*i. Service on others outside Arizona.* Service of a summons and complaint outside the State of Arizona on persons or organizations not otherwise provided in this rule, including but not limited to incompetent persons, unknown heirs, and persons or businesses in a foreign country, shall be made as provided in Rule 4.2 of the Rules of Civil Procedure.

*j. Alternative or substituted service.* Alternative or substituted service may be made as provided by Rule 4.1 of the Rules of Civil Procedure.

*k. Service by publication.* Service by publication shall be made as provided by Rules 4.1 and 4.2 of the Rules of Civil Procedure.

*l. Service under the Nonresident Motorists Act.* Service under the Nonresident Motorists Act may be made as provided in Rule 4.2(e) of the Rules of Civil Procedure.

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*m. Jurisdiction.* A court of this state 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.

*n. Dismissal because of lack of service.* The court on its own motion and after at least (twenty) days notice to plaintiff may dismiss the 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.

**Part V: Responding to a lawsuit.**

**Rule 15: Time to respond 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 party who is served with a summons and complaint, or with a summons and a third-party complaint, **within** the State of Arizona shall file a responsive document with the court within **twenty days** of the date of service. A party who is served with a summons and complaint, or a summons and a third-party complaint, **outside** the State of Arizona shall file a responsive document with the court within **thirty days** of the date of service. Responsive documents are set out in Rule 17.

*b. Time to respond after service of a cross-claim or counterclaim.* A party who is served with a cross-claim shall file an answer to the cross-claim within **twenty days** of service. A party who is served with a counterclaim shall file a reply to the counterclaim with **twenty days** of service.

*c. Calculations of time.* Calculations of time are made as provided in Rule 16.

*d. Copy of response.* In every situation described in this rule, a party who files a response with the court must also provide a copy of that response to the other parties, as provided in Rule 21.

**Rule 16: Time calculations.**

*a. Basic rule.*

(i) 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.

(ii) 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 for mailing or e-mailing, 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.

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

*b. Additional time for mailing or e-mailing.* Whenever a party has the right or is required to do something within a specified period after service of a notice or other paper upon the party, and the notice or paper is served by a method authorized by Rule 21(c)(4) [first class postal mail] or Rule 21(c)(5) [e-mail], five calendar days are added after the prescribed period would otherwise expire under Rule 11(a). {This rule has no application to the distribution of notice of entry of judgment required by Rule ~~58(e)~~.}

**Rule 17: Filing a response to the complaint.**

*a. Defendant's response.* Defendant's response to the complaint shall be of one of the following four documents:

1. *An answer to the complaint.* An answer shall include short and clear sentences that admit or deny the allegations of plaintiff's complaint, and that state any factual or legal defenses to the complaint.

2. *A motion to dismiss the complaint.* The following motions to dismiss may be made under this rule before an answer is filed:

- (i) A motion to dismiss for lack of jurisdiction;
- (ii) A motion to dismiss for improper venue;
- (iii) A motion to dismiss for improper service of the summons and complaint;
- (iv) A motion to dismiss for failure to state a claim upon which relief can be granted.

3. *A motion for a more definite statement.* This motion must allege that the complaint is too vague or too ambiguous for the defendant to adequately respond. A motion for a more definite statement must point out the defects that make the complaint vague or ambiguous, and the details that are sought.

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 under this rule.*

- (i) If a motion to dismiss is granted, and if no permission to amend the complaint is either requested by the plaintiff or granted by the court, the court shall enter judgment as provided in Rule \_\_\_ of these rules. If a motion to dismiss is denied, the defendant shall file an answer to the complaint within twenty days after the court has denied the motion.

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(ii) 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 complaint. If the court denies either of these motions, the defendant shall file an answer to the complaint within twenty days after the motion is denied.

*b. Waiver of defenses.* A defense that might have been presented by a motion under paragraph (a) of this rule is waived if it is not made before the party files an answer.

*c. Affirmative defenses.* An affirmative defense is a defense based on a legal justification. An affirmative defense may not be made by a motion under this rule, but it must instead be made in the party's pleading. Affirmative defenses include: 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, waiver, and any other matter which is an affirmative defense.

*d. Misnamed defenses and counterclaims.* If a party misnames their defense a counterclaim, or if a party misnames their counterclaim a defense, the court in the interest of justice may treat it as if it were properly named.

*e. Application to other pleadings.* The provisions of this rule also apply to a response to a cross-claim, a reply to a counterclaim, and an answer to a third party complaint.

→ ***Comment for workgroup #2:*** A motion for judgment on the pleadings under Rule 12(c) of the Ariz. R. Civ. P. is not included in this rule, but it might be included in the provisions of a subsequent rule concerning motions.

**Rule 18: 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 claim arises out of same transaction or event that is stated in the plaintiff's claim. A defendant must file the counterclaim at the time of the filing of the answer or other responsive pleading under Rule 17.

*b. Permitted counterclaim.* A defendant may file a counterclaim for any claim against a plaintiff not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

*c. Failure to file counterclaim.* If a defendant fails to file a counterclaim with an answer or responsive pleading because of oversight, inadvertence or excusable neglect, the defendant may file a request with the court that would still allow the defendant to file 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

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transaction or event that is stated in the complaint. The cross-claim must be stated by a defendant at the time the defendant files an answer or other response to the complaint.

*e. Reply to counterclaim; answer to cross-claim.* A reply to a counterclaim, and an answer to a cross-claim, is permitted, but no party shall be in default for failing to file a reply to a counterclaim or an answer to a cross-claim unless (the party filing the counterclaim or cross-claim demands in their pleading) {and/or} (the court orders) that a reply or answer be filed. If a reply to a counterclaim or an answer to a cross-claim is required, it shall be filed within twenty days after service of the counterclaim or cross-claim.

*f. Filing and service of documents under this rule.* Pleadings under this rule shall be filed with the court clerk and promptly served on the other parties pursuant to Rule 21.

*g. Claim exceeding the jurisdiction of the court.* If a claim filed pursuant to this rule exceeds the jurisdiction of the court, the lawsuit shall be transferred as provided by law.

**Rule 19: Third-party complaint.**

*a. Reason for a third-party complaint.* If a defendant alleges that another person who is not named as a party in the case is wholly or partially responsible for the damages stated in the complaint, the defendant may file a third-party complaint against that person. The content of a third-party complaint shall follow the provisions of these rules concerning complaints.

*b. Service of a third-party complaint.* The defendant shall request the clerk to issue a summons on the third party complaint as provided in Rule 13. A third-party summons and complaint shall be served upon the third-party defendant in the same manner as an initial summons and complaint, as provided in Rule 14. A response to a third-party complaint shall be filed by a third-party defendant as provided in Rule 17.

**Rule 20: Amended and supplemental pleadings.**

*a. Amendments to pleadings.* A party may amend their pleading one time before a responsive pleading is served. Thereafter, and upon 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.

*b. Supplemental pleadings.* Upon motion, the court may also 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 the court may set the time for the opposing party to file a response.

*c. Postponements under this rule.* Continuances to meet new matters raised in amended or supplemental pleadings shall be granted by the court if necessary to avoid surprise or prejudice to the opposing party.

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*d. Amendments to conform to the evidence.* When issues not stated in the pleadings are raised at trial by express or implied consent of the parties, 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 is prejudiced by going forward, the court may grant a continuance to enable the objecting party to respond to the evidence, or the court may decline to admit the evidence.

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

*f. Rulings.* The court may rule on motions brought under this rule with or without a hearing.

**Rule 21: Providing documents to other parties.**

*a. General rule.* A true and correct copy of every original document that is filed with the court shall be promptly provided to every party in the case by a method that is provided in paragraph (c) of this rule.

*b. Application.* This rule applies to every document that is filed with the court after service of the summons and complaint or third party complaint. This rule applies to an answer or to a motion that is filed in response to a complaint. This rule also applies to cross-claims, counterclaims, and responses to third party complaints.

*c. Methods of providing a document to the other parties.* A document is provided to a party under this rule:

- (1) By handing it to a person, if an individual is a party to the lawsuit;
- (2) By leaving the document at the party's office with a clerk or other person in charge, or if no one is in charge, by leaving the document in an obvious and eye-catching place in or at the party's office;
- (3) If the party has no office, by leaving the document at the party's residence with 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;
- (5) By delivering the document by any method, including electronically, if the party who is receiving the document consents in writing to that method of service, or if the court orders service in that method.

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

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*e. Noting the method of service.* The method in paragraph (c) that the filer used for service, or that the filer will use for service once the document has been filed with the court, shall be specifically noted on the last page of the original document that is filed with the court. “Specifically noted” means that the document shall state the person or party who was provided with the document, the date it was provided, and the method used for providing a copy. For first class mailing, the date the document was provided is the date that it was deposited in the mail with first class postage.

*f. Service of motion or pleading after entry of judgment.* Service of a motion or other pleading that requests that a judgment be modified, vacated, or enforced must be served on the party as if serving a summons and complaint, and as required by Rule 14.

*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 these documents are not filed with the court:

1. Subpoenas
2. Discovery papers, including notices of depositions, interrogatories and interrogatory answers, and requests for production, admissions, and medical examinations
3. Disclosure statements

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