

EXHIBIT A

State Bar’s Proposed Changes to Rules 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74, and 77 of the Arizona Rules of Civil Procedure (proposed additions are shown by underscoring and deletions are shown by “~~strike-through~~”)

Rule 16. ~~Pre-Trial Conferences; Scheduling;~~ and Management of Cases

Rule 16(a). ~~Pretrial conferences;~~ Objectives of Case Management

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

In accordance with Rule 1, the court shall manage a civil action with the following objectives:

- ~~1.~~ (1) expediting the a just disposition of the action;
- ~~2.~~ (2) establishing early and continuing control so that the case will not be protracted because of lack of management;
- ~~3.~~ (3) discouraging wasteful, expensive and duplicative pretrial activities; and
- ~~4.~~ (4) improving the quality of the trial case resolution through more thorough and timely preparation;
- (5) facilitating the appropriate use of alternative dispute resolution;
- (6) conserving parties’ resources;
- (7) managing the court’s calendar to eliminate unnecessary trial settings and continuances; and
- (8) adhering to applicable standards for timely resolution of civil actions.

Rule 16(b). Joint Report and Proposed Scheduling Order

- (1) This section (b) applies to all civil actions except:
 - A. Medical malpractice cases;
 - B. Cases subject to compulsory arbitration under Rule 72(b);

C. Cases designated complex under Rule 8(i)(6); and

D. Cases seeking the following relief:

- i. Change of name;
- ii. Forcible entry and detainer;
- iii. Enforcement, domestication, transcript, or renewal of a judgment;
- iv. An order pertaining to a subpoena sought pursuant to Rule 45.1(e);
- v. Restoration of civil rights;
- vi. Injunction against harassment or workplace harassment;
- vii. Delayed birth certificate;
- viii. Amendment of birth certificate or marriage license;
- ix. Civil forfeiture;
- x. Distribution of excess proceeds;
- xi. Review of a decision of an agency or a court of limited jurisdiction; and
- xii. Declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2.

(2) No later than 60 days after any defendant has filed an answer to the complaint or 180 days after commencement of the action, whichever occurs first, the parties shall confer regarding the subjects set forth in Rule 16(d). No later than 14 days after the parties confer, they shall file a Joint Report and a Proposed Scheduling Order with the court stating, to the extent practicable, their positions on the subjects set forth in Rule 16(d) and proposing a Scheduling Order that specifies by calendar date, month, and year deadlines for the following:

(A) service of initial disclosures under Rule 26.1 if they have not already been served;

(B) identification of areas of expert testimony;

(C) identification of and disclosure of expert witnesses and their opinions in accordance with Rule 26.1(a)(6);

(D) propounding of written discovery;

- (E) disclosure of non-expert witnesses;
- (F) completion of depositions;
- (G) completion of all discovery other than depositions;
- (H) final supplementation of Rule 26.1 disclosures;
- (I) holding a Rule 16.1 settlement conference or private mediation; and
- (J) filing of dispositive motions.

Unless otherwise ordered by the court for good cause shown, the parties' Proposed Scheduling Order shall state the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the commencement of the action. The Joint Report shall certify that the parties conferred regarding the subjects set forth in Rule 16(d). The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and participating in the conference, for attempting in good faith to agree on a Proposed Scheduling Order, and for filing the Joint Report and the Proposed Scheduling Order with the court.

(3) The Joint Report and the Proposed Scheduling Order shall be filed using the forms approved by the Supreme Court and set forth in Rule 84, Forms 11-13.

(A) Expedited: The parties shall use Forms 11(a) and (b) (Expedited Case) when all of the following factors apply:

- (i) Every party except defaulted parties has filed an answer;
- (ii) There are no third party claims;
- (iii) The parties intend to have no more than one expert per side; and
- (iv) Each party intends to call no more than four lay witnesses at trial.

(B) Standard: The parties shall use Forms 12(a) and (b) (Standard Case) if the case is not eligible for management as an Expedited Case or Complex Case.

(C) Complex: The parties shall use Forms 13(a) and (b) (Complex Case) if the factors enumerated in Rule 8(i)(2) apply, regardless of whether the case has been designated as complex by the court.

Upon request of any party, the court may designate any case as expedited, standard, or complex. The court shall endeavor to conduct trial in expedited cases within twelve months after the commencement of the action.

Rule 16(c). Scheduling Orders

The court shall issue a Scheduling Order as soon as practicable after receiving the parties' Joint Report and their Proposed Scheduling Order under Rule 16(b) or after holding a Scheduling Conference. The Scheduling Order shall establish calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted pursuant to Rule 16(b). The Scheduling Order shall also set either (1) a trial date or (2) a date for a Trial-Setting Conference under Rule 16(f) at which a trial date may be set. Absent leave of court, no trial shall be set unless the parties certify that they engaged in a settlement conference or private mediation or that they will do so by a date certain established by the court. The Scheduling Order may address other appropriate matters. The dates established in a Scheduling Order that govern court filings or hearings may be modified only for good cause and with the court's consent. Once a trial date is set, it may be modified only pursuant to Rule 38.1.

Comment to 2014 Amendment

A primary goal of civil case management is the creation of public confidence in a predictable court calendar. Courts should avoid overlapping trial settings that necessitate continuances when the court is unable to hold a trial on the date scheduled. Continuances of scheduled trial dates impose unnecessary costs and inconvenience when counsel, parties and witnesses are required to engage in redundant preparation. Although early trial settings may be appropriate, a court should employ a case management system that ensures it will be in a position to conduct each trial on the date it has been set.

~~Rule 16(b)~~Rule 16(d). Scheduling and Subjects to Be Discussed at ~~Comprehensive Pretrial~~ Conferences in Non-Medical Malpractice Cases

Except in medical malpractice cases, upon written request of any party the court shall, or upon its own motion the court may, ~~schedule~~ set a ~~comprehensive pretrial Scheduling Ceonference~~. At any ~~comprehensive pretrial Scheduling Ceonference~~ under this ~~R~~rule 16(d), the court may:

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

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

(2) Discuss which form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3).

~~(B) Among other orders~~ (3) Determine whether the court may enter under this rule, the court may should enter orders addressing one or more of the following:

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

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

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

~~(24) Determine a schedule for the disclosure of expert witnesses. Such disclosure shall be within 90 days after the conference except upon good cause shown, and the method of such disclosure, including whether signed reports from the experts should be required.~~

~~(3)~~ (5) Determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D).

~~(4)~~ (6) Determine a date for the disclosure of non-expert witnesses and the order of their disclosure; ~~provided, however, that the date for disclosure of all~~

witnesses, expert and non-expert, shall be at least 45 days before the completion of discovery.

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

(7) Determine a deadline for the filing of dispositive motions.

(8) Resolve any discovery disputes.

~~(6)(9) Eliminate non-meritorious claims or defenses.~~

~~(7)(10) Permit the amendment of the pleadings.~~

~~(8)(11) Assist in identifying those issues of fact which are still at issue.~~

~~(9)(12) Obtain stipulations as to the foundation or admissibility of evidence.~~

~~(10)(13) Determine the desirability of special procedures for management of the case.~~

~~(11)(14) Consider alternative dispute resolution and determine a deadline for the parties to participate in a settlement conference or private mediation.~~

~~(12)(15) Determine whether any time limits or procedures set forth in the discovery rules or set forth in these rules or Local Rules of Practice should be modified or suspended.~~

~~(13)(16) Determine whether Rule 26.1 has been appropriately complied with by the parties.~~

~~(14) Determine a date for a settlement conference if such a conference is requested by a party or deemed advisable by the court.~~

~~(17)~~ Determine a date for filing the Joint Pretrial Statement required by subpart section (d) of these Rules.

~~(16) — Determine a trial date.~~

~~(18)~~ Discuss the imposition of time limits on trial proceedings or portions thereof, the use of juror notebooks, the giving of brief pre-voir dire opening statements and preliminary jury instructions, and the effective management of documents and exhibits.

~~(18) Make such other orders as the court deems appropriate.~~

(19) Determine how verbatim record of future proceedings in the case will be made.

(20) Discuss such other matters and make such other orders as the court deems appropriate.

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

In medical malpractice cases, within five days of receiving answers or motions from all defendants who have been served, plaintiff shall notify the court to whom the case has been assigned so that a comprehensive pretrial conference can be set. Within 60 days of receiving the notice, the court shall conduct a comprehensive pretrial conference. At that conference, the court and the parties shall:

(1) Determine the discovery to be undertaken and a schedule therefor. The schedule shall include the depositions to be taken, any medical examination which defendant desires to be made of plaintiff and what additional documents, electronically stored information, and other materials are to be exchanged. Only those depositions specifically authorized in the comprehensive pretrial conference shall be allowed except upon stipulation of the parties or upon motion and a showing of good cause. The court, upon request of any defendant, shall require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(A)(2) of these Rules or records ordered to be produced by the court. If records are obtained pursuant to such authorization, the party

obtaining the records shall furnish complete copies to all other parties at the sole expense of the party obtaining the records.

(2) Determine a schedule for the disclosure of standard of care and causation expert witnesses. Except upon good cause shown, such disclosure shall be simultaneous and within 30 to 90 days after the conference, depending upon the number and complexity of the issues. No motion for summary judgment based upon the lack of expert testimony will be filed prior to the expiration of the date set for the simultaneous disclosure of expert witnesses except upon a showing of good cause.

(3) Determine the order of and dates for the disclosure of all other expert and non-expert witnesses, provided that the date for disclosure of all witnesses, expert and non-expert, shall be at least 45 days before the close of discovery. Any witnesses not appropriately disclosed shall be precluded from testifying at trial unless there is a showing of extraordinary circumstances.

(4) Limit the number of experts as provided in Rule 26(b)(4)(D) of these Rules.

(5) Determine whether additional non-uniform interrogatories and/or requests for admission or production are necessary and, if so, limit the number.

(6) ~~Resolve any discovery disputes. which have been presented to the court by way of motion within 10 days before the conference. The moving party shall set forth the question or answer to which objection is made and the basis for the objection. The responding party may file a response within 3 days of the conference. No replies shall be filed unless ordered by the court. The court shall assess an appropriate sanction, including any order under Rule 37(b)(2) of these Rules, against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist discovery.~~

(7) Discuss alternative dispute resolution, including mediation, and binding and non-binding arbitration.

(8) Assure compliance with A.R.S. § 12-570.

(9) Set a date for a mandatory settlement conference.

(10) Set a date for filing the joint pretrial statement required by subpart (d) of this Rule.

(11) Set a trial date.

~~(12) Make such other orders as the court deems appropriate.~~

~~(13)~~ (12) Determine how verbatim record of future proceedings in the case will be made.

(13) Discuss such other matters and make such other orders as the court deems appropriate.

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

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

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

~~(A) Stipulations of material fact and law;~~

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

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

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

~~(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced~~

~~must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be admitted into evidence, such stipulations being subject to court approval;~~

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

~~(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;~~

~~(H) Technical equipment needed or interpreters requested;~~

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

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

~~(K) A brief description of settlement efforts.~~

~~(3) At the time of the filing of the joint pretrial statement, the parties shall file (A) an agreed upon set of jury instructions, verdict forms, and voir dire questions and (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon (C) a statement by each party on how a verbatim record of the trial will be made.~~

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

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

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

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

Rule 16(c). Pretrial Orders

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

Rule 16(f). Trial-Setting Conference

(1) If the Court has not already set a trial date in a Scheduling Order or otherwise, the court shall hold a Trial-Setting Conference, as set by the Scheduling Order, for the purpose of setting a trial date. The conference shall be attended in person or telephonically (as permitted by the court) by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(2) In addition to setting a trial date, the court may discuss at the Trial-Setting Conference:

(A) The status of discovery and any dispositive motions that have been or will be filed.

(B) A date for holding a Trial Management Conference under Rule 16(g).

(C) The imposition of time limits on trial proceedings or portions thereof.

(D) The use of juror questionnaires.

(E) The use of juror notebooks.

(F) The giving of brief pre-voir dire opening statements and preliminary jury instructions.

(G) The effective management of documents and exhibits.

(H) Such other matters as the court deems appropriate.

(3) If for any reason a trial date is not set at the Trial-Setting Conference, the court shall schedule another Trial-Setting Conference as soon as practicable for the setting of a trial date.

Rule 16(g). Joint Pretrial Statement: Preparation; ~~Final Pretrial Trial Management~~ Conference

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

(2) The ~~J~~joint ~~P~~pretrial ~~S~~statement shall be prepared by the parties as a single document and contain the following:

(A) Stipulations of material fact and law;

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

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

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

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

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

(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

(H) Technical equipment needed or interpreters requested;

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

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

(K) A brief description of settlement efforts.

(3) At the time of the filing of the Joint Pretrial Statement, the parties shall file (A) an agreed-upon set of jury instructions, verdict forms, and voir dire questions, (B) any additional jury instructions, verdict forms, and voir dire

questions requested, but not agreed upon, and (C) a statement by each party on how a verbatim record of the trial will be made.

(4) A party intending to submit a jury notebook to the jurors shall serve a copy of the notebook on the other parties five days before the ~~final pretrial~~ Trial Management Conference, or, if no conference is scheduled, five days before the trial.

(5) Any trial memoranda shall be filed five days before the ~~final pretrial~~ Trial Management Conference, or, if no conference is scheduled, five days before the trial.

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

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

Rule 16(h). Pretrial Orders

After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a ~~final pretrial~~ Trial Management Conference under Rule 16(gf) shall be modified only to prevent manifest injustice.

Rule 16(f)(i). Sanctions

If a party or attorney fails to obey a scheduling or pretrial order or fails to meet the discovery, disclosure and other deadlines set forth therein, or if no appearance is made on behalf of a party at a ~~S~~scheduling or pretrial Trial Management Conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a ~~S~~scheduling or pretrial Trial Management Conference or in the preparation of the ~~J~~oint Report and Proposed Scheduling Order or Joint ~~P~~retrial Sstatement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, any of the orders provided in Rule 37(b)(2)(B), (C), or (D). The fact that a trial date has not been set does not preclude sanctions under this Rule, including the exclusion from evidence of untimely disclosed information. In lieu of or in addition to any other sanction, the judge shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred ~~because~~as the result of any noncompliance with this ~~rule~~Rule, including attorneys' fees, or payment of an assessment to the clerk of the court, or both, unless the judge finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

Rule 16(g)(j). Alternative Dispute Resolution

~~(4)~~—Upon motion of any party, or upon its own initiative after consultation with the parties, the court may direct the parties in any action to submit the dispute which is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

Rule 16(h)(k). Time Limitations

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

Rule 16.1 Settlement Conferences: Objectives

(a) **Mandatory Settlement Conferences.** ~~Except as to~~ in appeals from a lower court—appeals, medical malpractice cases, and cases subject to compulsory arbitration under A.R.S. § 12-133, in any action in which a motion to set and certificate of readiness is filed, the court Rule 72(b), at the request of any party,

~~the court shall, except for good cause shown, may~~ direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate either in person or, with leave of court, by telephone, in a conference or conferences before trial for the purpose of facilitating settlement. Unless otherwise ordered by the court, all requests for settlement conferences shall be made not later than 60 days prior to trial. The court may also schedule a settlement conference upon its own motion.

In medical malpractice cases, the court shall conduct a mandatory settlement conference no earlier than four (4) months after the ~~conduct of the comprehensive pretrial~~ Rule 16(e) conference and no later than thirty (30) days before trial.

Rule 26. General provisions governing discovery

....

Rule 26(b). Discovery Scope and Limits

....

(5) *Non-party at Fault*. Any party who alleges, pursuant to A.R.S. § 12-2506(B) ~~(as amended)~~, that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action shall provide the identity, location, and the facts supporting the claimed liability of such ~~nonparty at the time of compliance with the requirements of Rule 38.1(b)(2) of these Rules, or non-party~~ non-party within one hundred fifty (150) days after the filing of that party's answer, ~~whichever is earlier~~. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any ~~nonparty non-party~~ non-party whose identity is not disclosed in accordance with the requirements of this ~~subpart 5 subsection~~ subsection except upon written agreement of the parties or upon motion establishing good cause, reasonable diligence, and lack of unfair prejudice to other parties.

Rule 37. Failure to make disclosure or discovery; Sanctions

....

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

....

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

- (i) that the information would be allowed under the standards of subsection (c)(1) ~~notwithstanding the short time remaining before trial~~; and
- (ii) that the information was disclosed as soon as practicable after its discovery.

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

Rule 38(a). Right preserved

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

Rule 38(b). Demand

Any person may demand a trial by jury of any issue triable of right by jury. The demand may be made by any party by filing and serving upon the other party a demand therefor in writing at any time after the commencement of the action, but not later than the date ~~of setting on which the case for court sets a trial date~~ or ten days after ~~a motion to set the case for trial is served~~ the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed, whichever first occurs. The demand for trial by jury ~~may be endorsed on or be combined with the motion to set, but~~ shall not be endorsed on or be combined with any other motion or pleading filed with the court.

Rule 38(c). Demand; specification of issues

In the demand, a party may specify the issues which the party wishes ~~so to have~~ to have tried, ~~by a jury;~~ otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party may, within ten days after service of the demand or such lesser time as the court may order, ~~may~~ serve a demand for trial by jury of any other or all ~~the~~ issues of fact in the action triable by jury.

Rule 38(d). Waiver

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

A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

Rule 38.1. Setting of Civil Cases for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar

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

~~The undersigned attorney hereby certifies:~~

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

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

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

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

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

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

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

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

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

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

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

Signature of Attorney

~~If the Motion to Set and Certificate of Readiness is filed by a defending party in a court which does not require the certification set forth in (a)(3)(i) or (ii) of this Rule, then the Certificate of Readiness shall also identify any nonparty who is alleged, pursuant to A.R.S. § 12-2506(B) (as amended), to be wholly or~~

~~partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action.~~

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

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

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

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

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

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

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

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

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

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

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

~~(g) **Setting for Trial.** Cases on the Active Calendar **Rule 38.1(a). Setting for Trial**~~

Civil actions shall be set for trial ~~as soon as possible~~ pursuant to Rule 16 or Rule 77. Preference shall be given to short causes and cases ~~which that~~ by reason of statute, rule or court order are entitled to priority. ~~Counsel~~ The parties shall be given at least thirty days notice of the trial date.

Rule 38.1(hb). Postponements

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

Rule 38.1(i)(c). Application for Postponement; Grounds; Effect of Admission of Truth of Affidavit by Adverse Party

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

Rule 38.1(jd). Deposition of Witness or Party; Consent

The party obtaining a postponement shall, if required by the adverse party, consent that the testimony of any witness or adverse party in attendance be taken by deposition, ~~without notice.~~ The testimony so taken may be read ~~on~~ at the trial by either party as if the witnesses were present.

Rule 38.1(ke). Scheduling conflicts between courts

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

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

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

- (B) the length, urgency, or relative importance of the matters;
- (C) a case which involves out-of-town witnesses, parties or counsel;
- (D) the age of the cases;
- (E) the matter which was set first;
- (F) any priority granted by rule or statute; and
- (G) any other pertinent factor.

(3) *Inter-division Conflicts.* Conflicts in scheduling between divisions of the same court may be governed by local rule or general order.

Rule 38.1(f). Dismissal Calendar

The clerk of the court or court administration shall place on the Dismissal Calendar every civil action in which a Joint Report and a Proposed Scheduling Order under Rule 16 or Rule 16.3 or an arbitrator's notice of decision under Rule 76 have not been filed with the court within 270 days after the commencement thereof, or in medical malpractice cases where the court has not set a Comprehensive Pretrial Conference within 270 days after the commencement thereof. A case remaining on the Dismissal Calendar for 60 days shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such 60-day period:

(1) a Joint Report and a Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed with the court;

(2) in medical malpractice cases, the court sets a Comprehensive Pretrial Conference;

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

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

Rule 38.1(g) Notification

The clerk of the court or court administrator, whoever is designated by the presiding judge, shall promptly notify counsel in writing when a case is placed on the Dismissal Calendar, and no further notice shall be required prior to dismissal.

Rule 72. Compulsory Arbitration; Arbitration by Reference; Alternative Dispute Resolution; Determination of Suitability for Arbitration

....

(d) Alternative Dispute Resolution.

(1) Compulsory arbitration under A.R.S. § 12-133 and these rules is not binding. Any party may appeal and all appeals are *de novo* on the law and facts. Therefore, before a hearing in accordance with Rule 75 of these rules is held, counsel for the parties, or the parties if not represented by counsel, shall confer regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including but not limited to private mediation or binding arbitration with a mediator or arbitrator agreed to by the parties.

(2) The court shall waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method selected by the parties. The stipulation shall identify the specific alternative dispute resolution method selected. The court may waive the arbitration requirement for other good cause upon stipulation of all parties. If the alternative dispute resolution method selected under this Rule fails, the case shall be set for trial in accordance with ~~Rule 38.1~~ 16 of these Rules and shall not be subject to the rules governing compulsory arbitration.

Rule 73. Appointment of Arbitrators

(a) **Lawyer or Non-Lawyer Arbitrators.** The parties, by written stipulation and by written consent of the proposed arbitrator filed with the ~~clerk~~Clerk of the ~~Superior Court~~ court with conformed copies to the ~~Superior Court Administrator~~ court administrator, may agree that the case be assigned to a single lawyer or

non-lawyer arbitrator named in the stipulation. All other cases subject to arbitration shall be heard by an arbitrator selected as provided below.

(b) List of Arbitrators. Except as the parties may stipulate under the provisions of ~~subdivision~~ section (a) of this ~~Rule~~, the arbitrator shall be appointed by the ~~Court Administrator or Superior Court Clerk~~ clerk of the court or court administrator from a list of persons, as provided by local rule, which shall include the following:

(1) all residents of the county in which the court is located who, for at least four years, have been active members of the State Bar of Arizona.

(2) other active and inactive members of the State Bar of Arizona residing anywhere in Arizona, and members of any other federal court or state bar, who have agreed to serve as arbitrators in the county where the ~~action~~-court is pending located.

(c) Appointment of Arbitrators; Timing of ~~Assignment~~ Appointment; Notice of Appointment; Right to Peremptory Strike

(1) *Appointment of arbitrator from list.* The ~~Superior Court Administrator or Superior Court Clerk~~ clerk of the court or court administrator, under the supervision of the ~~Presiding Judge~~ presiding judge or that judge's designee, shall prepare a list of arbitrators who may be designated as to the by their area of concentration, specialty or expertise. ~~By means of a method of selecting names at random from the list of arbitrators, the Superior Court Administrator or Superior Court Clerk shall~~ The clerk of the court or court administrator shall randomly select and then assign to each case one name arbitrator from the list of arbitrators.

~~(2) Timing of assignment. Assignment to arbitration shall take place as soon as is feasible after the answer and controverting certificate are filed and in any event no later than 120 days thereafter.~~

(2) Timing of appointment. Appointment of an arbitrator to a case shall occur no later than 120 days after an answer is filed.

(3) *Notice of appointment of arbitrator.* The ~~Superior Court Administrator or Superior Court Clerk~~ clerk of the court or court administrator shall promptly ~~notify the parties of the name~~ mail written notice of the arbitrator ~~by mailing~~

~~written notice selected~~ to the parties and the arbitrator. The written notice ~~from the Superior Court Administrator or Superior Court Clerk~~ shall advise the parties that the time periods specified in Rule 38.1(f) of these Rules for placing a case on the ~~inactive calendar in Rule 38.1(d) of these rules~~ Dismissal Calendar shall apply.

(4) *Right to peremptory strike.* Within ten days after the mailing of ~~such~~ the notice of appointment of arbitrator, or within ten days after the appearance of a party if the arbitrator was appointed before that party appeared, either side may peremptorily strike the assigned arbitrator and request that a new arbitrator be appointed. Each side shall have the right to only one peremptory strike in any one case. A motion for recusal or motion to strike for cause shall toll the time to exercise a peremptory strike.

(d) Disqualifications and Excuses.

(1) Upon written motion and a finding of good cause therefore, the ~~Presiding Judge~~ presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.

(2) An arbitrator, after ~~selection~~ appointment, may be disqualified from serving in a particular assigned case upon motion of either party to the judge assigned to the case, for an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.

(3) An arbitrator may be excused by the presiding judge or that judge's designee from serving in a particular assigned case upon a showing by the arbitrator that such individual has completed contested hearings and ruled as an arbitrator pursuant to these Rules in two or more cases assigned during the current calendar year ~~or~~ and shall be excused on a detailed showing that such individual has an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.

(4) After an arbitrator has been disqualified or excused from a particular case under ~~these rules~~ this section (d), a new arbitrator shall be appointed in accordance with the procedure set forth in ~~subdivision~~ section (c) of this Rule.

Rule 74. Powers of Arbitrator; Scheduling of Arbitration Hearing; Permitted Rulings by Arbitrator; Time for Filing Summary Judgment Motion; Receipt of Court File; Settlement of Cases; Offer of Judgment

....

(c) Rulings by Arbitrator.

(1) *Authorized rulings.* After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, except:

(A) motions to continue on the ~~inactive calendar~~ Dismissal Calendar or otherwise extend time allowed under Rule 38.1 of these ~~rules~~ Rules;

(B) motions to consolidate cases under Rule 42 of these ~~rules~~ Rules;

(C) motions to dismiss;

(D) motions to withdraw as attorney of record under Rule 5.1 of these ~~rules~~ Rules; or

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party; ~~or.~~

(F) ~~—motions for sanctions under Rule 68 of these rules.~~

Rule 77. Right of Appeal

(a) **Notice of Appeal.** Any party who appears and participates in the arbitration proceedings may appeal from the award or other final disposition by filing a notice of appeal with the ~~Clerk~~ clerk of the ~~Superior Court~~ court within 20 days after the ~~filing of the award is filed~~ or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first. The notice of appeal shall be entitled “Appeal from Arbitration and Motion to Set for Trial” and shall request that the case be set for trial in the Superior Court and state whether a jury trial is requested and the estimated length of trial. ~~The Appeal from Arbitration and Motion to Set for Trial shall serve in place of a Motion to Set and Certificate of Readiness under Rule 38.1(a) of these rules.~~

- (b) **Deposit on Appeal.** At the time of filing the notice of appeal, and as a condition of filing, the appellant shall deposit with the ~~Clerk~~clerk of the ~~Superior Court~~court a sum equal to one hearing day's compensation of the arbitrator, but not exceeding ten percent of the amount in controversy. If the court finds that the appellant is unable to make such deposit by reason of lack of funds, the court shall allow the filing of the appeal without deposit.