

Samuel A. Thumma
 Chair, Task Force on Court Management of Digital Evidence
 Chief Judge, Arizona Court of Appeals
 Division One
 State Courts Building
 1501 West Washington
 Phoenix, Arizona 85007
 Telephone: (602) 452-6700

**IN THE SUPREME COURT
 STATE OF ARIZONA**

In the Matter of)
) Arizona Supreme Court No. R-18-____
 PETITION TO AMEND ARIZONA)
 RULES OF EVIDENCE 1001, 1002,)
 1004, 1006, 1007, 1008; ARIZONA)
 RULES OF CRIMINAL PROCEDURE)
 15.1, 15.2, 15.3; ARIZONA RULES OF)
 PROCEDURE FOR THE JUVENILE)
 COURT 16, 44, 73; and ARIZONA)
 RULE OF PROCEDURE FOR)
 EVICTION ACTIONS 10)
 _____)

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Task Force on Court Management of Digital Evidence (“Task Force”) petitions the Court to amend Arizona Rules of Evidence 1001, 1002, 1004, 1006, 1007, 1008; Arizona Rules of Criminal Procedure 15.1, 15.2, 15.3; Arizona Rules of Procedure for Juvenile Courts 16, 44, 73; and Arizona Rule of Procedure for Eviction Actions 10, as reflected in the attachments hereto, effective January 1, 2019.

I. INTRODUCTION AND BACKGROUND.

Established on December 6, 2016, by Arizona Supreme Court Administrative Order 2016-129, the Task Force was asked to review five policy questions regarding court management of digital evidence and to make recommendations on each. The policy questions were:

1. Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
2. Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
3. Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
4. Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
5. Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

The administrative order also directs the Task Force to file any corresponding rule change petition not later than January 10, 2018, and further directs that the Task Force will remain in place until July 31, 2018.

The administrative order cites to the Joint Technology Committee Resource Bulletin: Managing Digital Evidence in the Courts (*Bulletin*) as providing “a good framework for discussion and relevant policy development.” That *Bulletin* is a February 2016 publication of the Joint Technology Committee established by the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts. The Task Force used the *Bulletin* as a key reference in its work.

Throughout 2017, the Task Force met to consider these issues. As directed by the administrative order, the Task Force submitted its report and recommendations to the Arizona Judicial Council (AJC) by October 1, 2017. The Report and Recommendations of the Arizona Task Force on Court Management of Digital Evidence (*Report*), along with other Task Force information, can be found at the Task Force’s webpage: <http://www.azcourts.gov/cscommittees/Digital-Evidence-Task-Force>.

As more fully described in the *Report*, a key component of the Task Force’s work “was to analyze the implications of allowing exhibits to cross the threshold from party to the court in digital form and then be used, going forward, in digital form,” which the Task Force called a “truly digital evidence concept.” [*Report* at 11] The Arizona judicial system does not currently use this truly digital evidence concept, and the Task Force “found no court in the United States that currently uses

this concept.” [Report at 13] As a result, many Task Force recommendations address considerations that will be relevant when Arizona decides to adopt a truly digital evidence concept. [Report at 6-8] As noted by the Task Force, a future adoption of the truly digital evidence concept in Arizona will require significant changes in technology and corresponding changes to procedural rules regarding how digital evidence is received, used, maintained, and managed by the court and accessed by others. [Id.] Among other things, future adoption of the truly digital evidence concept in Arizona will require significant changes to relevant sections of the Arizona Code of Judicial Administration and to Arizona Supreme Court Rule 123. [Id.] Those changes, however, are for future consideration at a time when Arizona adopts a truly digital evidence concept and are not addressed in this petition.

Recognizing this truly digital evidence concept currently is not used in Arizona, the Task Force also looked at Arizona’s current procedural rule sets to determine whether they accounted for pre-trial disclosure of such information. The Task Force determined that the Arizona Rules of Civil Procedure were the only rule set at the time of its deliberations that expressly addressed disclosure of this type of information. As a result, the *Report* did not suggest changes to the Arizona Rules of Civil Procedure but did suggest several possible rule changes to other procedural rule sets. [Report at 7 & Appendices G-L]

The rule changes sought in this petition are the product of significant study, deliberation, drafting, and revision by the Task Force, both leading up to the *Report* and in further consideration after the *Report* was issued. On October 11, 2017, the AJC considered and approved the *Report*, which included a recommendation for the filing of a rule change petition. During that consideration, the AJC provided feedback to the Task Force that was taken into account in crafting the rule changes sought in this petition. As a result, some suggestions in this petition differ from those in the *Report*, three of which merit specific mention:

- *First*, this petition suggests adding to the Arizona Rules of Evidence the following definition for the term “video”: “Video is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.” This definition is revised somewhat from the definition in the *Report* to provide additional clarity and confirm that the focus is moving images, regardless of whether accompanied by sound.
- *Second*, this petition suggests adding in various procedural rule sets the phrase “electronically stored information” instead of the phrase “digital evidence” suggested in the *Report*. Among other things, the phrase “electronically stored information” has been used in the Arizona Rules of Civil Procedure for a decade and also is used in the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure, and the Arizona Supreme Court’s Rules of Professional Conduct governing lawyers. Although a different phrase likely will be necessary to describe such information held by the court after the adoption of the truly digital evidence concept in Arizona, for now, the Task Force decided to suggest using the more familiar phrase “electronically stored information.”

- *Third*, the petition does not seek changes to the definition of “evidence” contained in the Arizona Rules of Protective Order Procedure. Focusing on the truly digital evidence concept, the *Report* [at 31, 66] had suggested a change in the definition of “admissible evidence” to include electronically stored information. Again, although such a rule change likely will be necessary after the adoption of the truly digital evidence concept in Arizona, the Task Force concluded that no such change is needed at this time.¹

Before addressing the specific changes requested and the reasoning for those requests, it is important to note that the current rules overall appear to be working when it comes to disclosure and production of electronically stored information for use at a hearing or trial. As such, the procedural rule sets do not need wholesale substantive revisions to address the increasing use of such information, although a few areas where revisions are necessary are discussed below. For these reasons, the Task Force recommends the rule changes requested here as set forth in Appendices A through D (clean versions presented first, followed by redline versions).

II. SUMMARY OF PROPOSED AMENDMENTS TO ARIZONA RULES OF EVIDENCE 1001, 1002, 1004, 1006, 1007, AND 1008.

The proposed amendments to the Arizona Rules of Evidence are intended to modernize five rules addressing the content of writings, recordings, and photographs (Article X of that rule set). The Task Force recognizes that, although the current

¹ For similar reasons, this petition does not seek a change to the definition of “evidence” used in Arizona Rule of Probate Procedure 2(E).

rules appear to be working, the language and concepts in Rules 1001, 1002, 1004, 1006, 1007, and 1008 do need modernization. For example, Rule 1001(b) limits the definition of the term “recording” to “letters, words, numbers, or their equivalent recorded in any manner.” The phrase “or their equivalent” is used to allow the rule to encompass digital media like a digital video involving non-verbal action. To expressly and directly address video images, however, the Task Force recommends expressly defining “video” in Rule 1001 and including that defined term in Rules 1002, 1004, 1006, 1007, and 1008.

The Task Force contemplated various definitions of the term “video.” The Task Force also considered the variety of formats that involve images that are other than still images as contemplated by the term “photograph,” and recognized formats will change in the future. The definition of “video” that was unanimously supported and that is included in the proposed amended rules reflected in Appendices A-1 and A-2 is: “Video is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.” The other changes suggested to the Arizona Rules of Evidence specifically include or build upon this definition of “video.” *See* Appendices A-1 and A-2.

III. SUMMARY OF PROPOSED AMENDMENTS TO OTHER PROCEDURAL RULE SETS.

As relevant to the Task Force’s work, the various Arizona procedural rule sets use two different approaches, turning on the disclosure required for intended exhibits.

The first approach is contained in the Arizona Rules of Criminal Procedure (and rule sets that adopt a similar approach), which describe documents and things, but not electronically stored information, for disclosure obligations. *See* Ariz. R. Crim. P. 15.1(b)(5) (2018) (requiring the State, in supplemental disclosure, to provide “a list of all documents, photographs, and other tangible objects the State intends to use at trial or that were obtained from, or purportedly belong to, the defendant”); 15.1(i)(3)(A)(iii) (2018) (similar); 15.1(i)(4)(D) (2018) (similar); 15.2(c)(3) (2018) (similar for defense disclosure); 15.2(h)(1)(iv) (2018) (similar); 15.3(c)(1)(D) (2018) (requiring motion for taking deposition to “designate any nonprivileged documents, photographs, or other tangible objects that the person must produce at the deposition”).

The second approach is contained the Arizona Rules of Civil Procedure (and rule sets that adopt a similar approach), which use the electronically stored information concept for disclosure and discovery, regardless of whether the information disclosed is to be used at trial. *See, e.g.,* Ariz. R. Civ. P. 16(d)(1), (3)(A) (2018) (scheduling conference may address electronically stored information); Ariz.

R. Civ. P. 26(b)(2)(B) (2018) (governing disclosure and production of “electronically stored information” during discovery of civil case); Ariz. R. Civ. P. 26.1(a)(8), (9) (2018) (disclosure of electronically stored information, including for use at trial); Ariz. R. Civ. P. 26.1(h) (2018) (privilege claims for, and inadvertent production of, electronically stored information); Ariz. R. Civ. P. 33(d) (2018) (option to produce electronically stored information in answer to interrogatory); Ariz. R. Civ. P. 34 (2018) (production of electronically stored information); Ariz. R. Civ. P. 37(g) (2018) (sanctions for failure to preserve electronically stored information); Ariz. R. Civ. P. 45(c)(2) (2018) (subpoenas seeking electronically stored information).

The Task Force recognizes that the “electronically stored information” concept was added to the Arizona Rules of Civil Procedure effective January 1, 2008. That phrase encompasses the digital evidence concept the Task Force originally contemplated recommending. More recently, the Arizona Rules of Evidence, the Arizona Rules of Family Law Procedure, and the Arizona Supreme Court’s Rules of Professional Conduct governing lawyers have included the phrase. Given this use and experience, the Task Force ultimately concluded that using the phrase electronically stored information, where appropriate, in the other procedural rule sets would update the rules to account for the disclosure and discovery of information that was not a document, photograph, or other tangible object.

The discussion that follows highlights the recommended changes to fully incorporate the electronically stored information concept in procedural rule sets, starting with the Arizona Rules of Criminal Procedure (and rule sets that adopt a similar approach).

a. Summary of the Proposed Amendments to the Arizona Rules of Criminal Procedure.

The Task Force closely reviewed the Arizona Rules of Criminal Procedure to determine if any changes were needed to address the handling of electronically stored evidence.² As relevant here, the Task Force noted that the rules currently do not contain language that specifically requires disclosure of electronically stored information. To make plain that disclosure of electronically stored information is both authorized and required, the Task Force recommends that Rules 15.1, 15.2, and 15.3 be amended to include language expressly addressing disclosure of electronically stored information. The result is to add “electronically stored information” to the various references in these rules to disclosure of “a list of documents, photographs, and other tangible objects.” *See* Appendices B-1 and B-2.

²In addition, on August 31, 2017, the Arizona Supreme Court referred Rule Change Petition R-17-0027 (seeking to amend Arizona Rules of Criminal Procedure 15.1 and 15.4) to the Task Force for consideration. On November 22, 2017, the Task Force filed a comment on that petition. On December 11, 2017, the Arizona Supreme Court denied Petition R-17-0027.

b. Summary of Proposed Amendments To Rule Sets Similar to the Arizona Rules of Criminal Procedure.

i. The Arizona Rules of Procedure for Juvenile Court.

The Arizona Rules of Procedure for Juvenile Court track, in relevant part, the Arizona Rules of Criminal Procedure. Accordingly, for reasons similar to those in III(a) above, the Task Force recommends amendments to the Arizona Rules of Procedure for Juvenile Court 16, 44, and 73 to make plain that disclosure of “electronically stored information” is required, as suggested in the proposed amendments to the Arizona Rules of Criminal Procedure. *See* Appendices C-1 and C-2.

ii. The Arizona Rules of Procedure for Eviction Actions.

The Arizona Rules on Eviction Actions, in relevant part, use an approach similar to the Arizona Rules of Criminal Procedure. Accordingly, for reasons similar to those in III(a) above, the Task Force recommends an amendment to Arizona Rule of Eviction Action 10 to make plain that disclosure of “electronically stored information” is required, as suggested in the proposed amendments to the Arizona Rules of Criminal Procedure. *See* Appendices D-1 and D-2.

c. The Arizona Rules of Civil Procedure.

The Arizona Rules of Civil Procedure underwent a comprehensive restyling effective January 1, 2017, and during the work of the Task Force, additional changes to that rule set were adopted effective January 1, 2018, and July 1, 2018. Both before

and after those changes, that rule set expressly directs disclosure, discovery and use of electronically stored information. Accordingly, the Task Force makes no suggested changes to the Arizona Rules of Civil Procedure.

d. The Arizona Rules of Family Law Procedure.

The Arizona Rules of Family Law Procedure, as applicable here, use an approach similar to the Arizona Rules of Civil Procedure. The Arizona Rules of Family Law Procedure are based on the Arizona Rules of Civil Procedure, but “as [the civil rules] existed before the 2016 amendments,” which became effective January 1, 2017. Ariz. R. Fam. L.P. 2(A). The Arizona Rules of Civil Procedure, however, address electronically stored information in much more detail than do the Arizona Rules of Family Law Procedure.

The *Report* [at 30, 62] recommends changes to Arizona Rule of Family Law Procedure 49 to include a subsection on electronically stored information, akin to obligations contained in the Arizona Rules of Civil Procedure. The *Report* [at 30] also noted that, pursuant to Administrative Order No. 2016-131, the Arizona Supreme Court established a task force to “review the Arizona Rules of Family Law Procedure to identify possible changes to conform to modern usage and to clarify and simplify language . . . with the goal of submitting a rule petition . . . with respect to any proposed rule changes.” The family law rules task force has until March 31, 2018, to file such a rule change petition. The Task Force understands that, at present,

the family law rules task force intends to request amendments to Rule 49 addressing electronically stored information. Accordingly, the Task Force is not at this time requesting any amendments to the Arizona Rules of Family Law Procedure, deferring any suggestion or comment on such changes until after consideration of the rule change petition to be filed by the family law rules task force.

CONCLUSION

Petitioner respectfully request that the Court consider this petition and proposed rule changes at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment, and that the Court adopt the proposed rules as they currently appear, or as modified in light of comments received, with an effective date of January 1, 2019.

DATED this 10th day of January, 2018.

_____/s/_____

Samuel A. Thumma
Chair, Task Force on Court Management of
Digital Evidence

ATTACHMENTS³

Appendix A-1: Arizona Rules of Evidence (clean)

Rule 1001. Definitions That Apply to This Article

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.
- (e) An “original” of a writing, recording, or video means the writing, ~~or~~ recording, or video itself or any counterpart intended to have the same effect by the person who executed, issued, or created it. For electronically stored information, “original” means any printout--or other output perceived by sight--if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, photograph, or video is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;

³ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, photographs, or video that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines--in accordance with Rule 104(b)--any issue about whether:

(a) an asserted writing, recording, photograph, or video ever existed;

(b) another one produced at the trial or hearing is the original; or

(c) other evidence of content accurately reflects the content.

Appendix A-2: Arizona Rules of Evidence (mark-up)

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.

(b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A “photograph” means a photographic image or its equivalent stored in any form.

(d) A “video” is an electronic visual medium for the recording, copying, playback, broadcasting, or displaying of moving images, which may or may not contain an audio recording.

~~(d)~~(e) An “original” of a writing, ~~or~~ recording, or video means the writing, ~~or~~ recording, or video itself or any counterpart intended to have the same effect by the person who executed, ~~or~~ issued, or created it. For electronically stored information, “original” means any printout--or other output readable perceived by sight--if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.

~~(e)~~(f) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, ~~or~~ photograph, or video is required in order to prove its content unless these rules or an applicable statute provides otherwise.

Rule 1004. Admissibility of Other Evidence of Contents

An original is not required and other evidence of the content of a writing, recording, ~~or~~ photograph, or video is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(d) the writing, recording, ~~or~~ photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, ~~or~~ photographs, or video that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, ~~or~~ photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines--in accordance with Rule 104(b)--any issue about whether:

- (a) an asserted writing, recording, ~~or~~ photograph, or video ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

Appendix B-1: Arizona Rules of Criminal Procedure (clean)

Rule 15.1. The State's Disclosures

(a) [no change]

(b) Supplemental Disclosure. Except as provided by Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

(1) – (4) [no change]

(5) a list of all documents, photographs, other tangible objects, and electronically stored information the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) – (11) [no change]

(c) - (h) [no change]

(i) Additional Disclosures in a Capital Case.

(1) - (2) [no change]

(3) Initial Disclosures.

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures

only if the State shows good cause or the parties stipulate to the deadline extension.

(4) *Rebuttal and Penalty Phase Disclosures.* No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

(A) the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness;

(B) the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness;

(C) the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and

(D) a list of all documents, photographs, other tangible objects, or electronically stored information the State intends to use during the aggravation and penalty hearings.

(j) [no change].

Rule 15.2. The Defendant's Disclosures

(a) – (b) [no change]

(c) **Content of Disclosure.** At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) – (2) [no change]

(3) a list of all documents, photographs, other tangible objects, and electronically stored information the defendant intends to use a trial.

(d) - (g) [no change]

(h) Additional Disclosures in a Capital Case.

(1) *Initial Disclosures.*

(A) *Generally.* No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

(i) a list of all mitigating circumstances the defendant intends to prove;

- (ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;
- (iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and
- (iv) a list of all documents, photographs, other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) Time Extensions. The court may extend the deadline for the defendant's initial disclosures under (h)(i) or allow the defendant to amend those disclosures only if the defendant shows good cause or the parties stipulate to the deadline extension.

(2) Late Disclosures. [no change]

Rule 15.3. Depositions

(a) – (b) [no change]

(c) Motion for Taking Deposition; Notice; Service.

(1) Requirements. A motion to take a deposition must:

- (A)** state the name and address of the person to be deposed;
- (B)** show that a deposition may be ordered under (a) or (b);
- (C)** specify the time and place for taking the deposition; and
- (D)** designate any nonprivileged documents, photographs, other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) – (3) [no change]

(d) – (f) [no change]

Appendix B-2: Arizona Rules of Criminal Procedure (mark-up)

Rule 15.1. The State's Disclosures

(a) [no change]

(b) Supplemental Disclosure. Except as provided by Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

(1) – (4) [no change]

(5) a list of all documents, photographs, ~~and~~ other tangible objects, and electronically stored information the State intends to use at trial or that were obtained from or purportedly belong to the defendant;

(6) – (11) [no change]

(c) – (h) [no change]

(i) Additional Disclosures in a Capital Case.

(1) - (2) [no change]

(3) Initial Disclosures.

(A) Generally. No later than 30 days after filing a notice of intent to seek the death penalty, the State must disclose the following to the defendant:

(i) the name and address of each person the State intends to call as a witness at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the witness;

(ii) the name and address of each expert the State intends to call at the aggravation hearing to support each alleged aggravating circumstance, and any written or recorded statement of the expert or other disclosure as required in (b)(4);

(iii) a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the State intends to use to support each identified aggravating circumstance at the aggravation hearing; and

(iv) all material or information that might mitigate or negate the finding of an aggravating circumstance or mitigate the defendant's culpability.

(B) Time Extensions. The court may extend the deadline for the State's initial disclosures under (i)(3) or allow the State to amend those disclosures only if the State shows good cause or the parties stipulate to the deadline extension.

(4) Rebuttal and Penalty Phase Disclosures. No later than 60 days after receiving the defendant's disclosure under Rule 15.2(h)(1), the State must disclose the following to the defendant:

- (A)** the name and address of each person the State intends to call as a rebuttal witness on each identified aggravating circumstance, and any written or recorded statement of the witness;
- (B)** the name and address of each person the State intends to call as a witness at the penalty hearing, and any written or recorded statement of the witness;
- (C)** the name and address of each expert the State intends to call at the penalty hearing, and any report the expert has prepared or other disclosure as required in (b)(4); and
- (D)** a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the State intends to use during the aggravation and penalty hearings.

(j) [no change].

Rule 15.2. The Defendant's Disclosures

(a) – (b) [no change]

(c) Content of Disclosure. At the same time the defendant files a notice of defenses under (b), the defendant must provide the following information:

(1) – (2) [no change]

(3) a list of all documents, photographs, ~~and~~ other tangible objects, and electronically stored information the defendant intends to use a trial.

(d) - (g) [no change]

(h) Additional Disclosures in a Capital Case.

(1) Initial Disclosures.

(A) Generally. No later than 180 days after receiving the State's initial disclosure under Rule 15.1(i)(3), the defendant must disclose the following to the State:

- (i)** a list of all mitigating circumstances the defendant intends to prove;

- (ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;
- (iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and
- (iv) a list of all documents, photographs, ~~or~~ other tangible objects, or electronically stored information the defendant intends to use during the aggravation and penalty hearings.

(B) *Time Extensions*. The court may extend the deadline for the defendant's initial disclosures under (h)(i) or allow the defendant to amend those disclosures only if the defendant shows good cause or the parties stipulate to the deadline extension.

(2) *Late Disclosures*. [no change]

Rule 15.3. Depositions

(a) – (b) [no change]

(c) Motion for Taking Deposition; Notice; Service.

(1) *Requirements*. A motion to take a deposition must:

- (A) state the name and address of the person to be deposed;
- (B) show that a deposition may be ordered under (a) or (b);
- (C) specify the time and place for taking the deposition; and
- (D) designate any nonprivileged documents, photographs, ~~or~~ other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) – (3) [no change]

(d) – (f) [no change]

Appendix C-1: Arizona Rules of Procedure for the Juvenile Court (clean)

Rule 16. Discovery

A. [no change]

B. Disclosure by the State.

1. Time Limits. Within ten (10) days of the advisory hearing, the prosecutor shall make available to the juvenile for examination and reproduction the following material and information within the prosecutor's possession or control:

- a. The names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements;
- b. All statements of the juvenile and of any other juvenile for whom there is a companion adjudication hearing scheduled for the same time;
- c. The names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;
- d. A list of all papers, documents, photographs, tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon further written request shall make available to the juvenile for examination, testing and reproduction any specified items contained in the list. The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
- e. All material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

2. - 3. [no change]

C. Disclosure by Juvenile.

1. - 2. [no change]

3. Disclosures by Juvenile. Simultaneously with the filing of the notice of defenses/witnesses as required by this rule, the juvenile shall make available to the prosecutor for examination and reproduction:

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;

- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and
 - c. A list of all papers, documents, photographs, other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing.
- 4. - 6.** [no change]

D. – F. [no change]

Rule 44. Disclosure and Discovery

A. Scope of Disclosure. All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying.

Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. Records of prior criminal convictions;
10. Medical and psychological records and reports;
11. Results of medical or other diagnostic tests; and
12. Any other information relevant to the proceedings.

B. - G. [no change]

Rule 73. Disclosure and Discovery

A. Scope of Disclosure. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;

5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. Records of prior criminal convictions;
10. Medical and psychological records and reports;
11. Results of medical or other diagnostic tests; and
12. Any other information relevant to the proceedings.

B. – D. [no change]

Appendix C-2: Arizona Rules of Procedure for the Juvenile Court (mark-up)

Rule 16. Discovery

A. [no change]

B. Disclosure by the State.

1. Time Limits. Within ten (10) days of the advisory hearing, the prosecutor shall make available to the juvenile for examination and reproduction the following material and information within the prosecutor's possession or control:

- a. The names and addresses of all persons whom the prosecutor will call as witnesses at the adjudication hearing together with their relevant written or recorded statements;
- b. All statements of the juvenile and of any other juvenile for whom there is a companion adjudication hearing scheduled for the same time;
- c. The names and addresses of experts who have personally examined the juvenile or any evidence in the particular case, together with the results of physical examinations and scientific tests, experiments or comparisons, including all written reports or statements made by an expert in connection with the particular case;
- d. A list of all papers, documents, photographs, ~~or~~ tangible objects, or electronically stored information which the prosecutor will use at the adjudication hearing, and upon further written request shall make available to the juvenile for examination, testing and reproduction any specified items contained in the list. The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section; and
- e. All material or information which tends to mitigate or negate the juvenile's alleged delinquent conduct.

2. - 3. [no change]

C. Disclosure by Juvenile.

1. - 2. [no change]

3. Disclosures by Juvenile. Simultaneously with the filing of the notice of defenses/witnesses as required by this rule, the juvenile shall make available to the prosecutor for examination and reproduction:

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;

- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or comparisons, including all written reports and statements made by the expert in connection with the particular case; and
- c. A list of all papers, documents, photographs, ~~and~~ other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing.

4. - 6. [no change]

D. – F. [no change]

Rule 44. Disclosure and Discovery

A. Scope of Disclosure. All information which is not privileged shall be disclosed. Disclosure shall be made in the least burdensome and most cost effective manner which shall include the inspection of materials, with or without copying.

Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
- ~~9. 8.~~ Records of prior criminal convictions;
- ~~10. 9.~~ Medical and psychological records and reports;
- ~~11. 10.~~ Results of medical or other diagnostic tests; and
- ~~12. 11.~~ Any other information relevant to the proceedings.

B. - G. [no change]

Rule 73. Disclosure and Discovery

A. Scope of Disclosure. Disclosure shall include, but is not limited to the following:

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;

5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;
9. ~~8.~~ Records of prior criminal convictions;
10. ~~9.~~ Medical and psychological records and reports;
11. ~~10.~~ Results of medical or other diagnostic tests; and
12. ~~11.~~ Any other information relevant to the proceedings.

B. – D. [no change]

Appendix D-1: Arizona Rules of Procedure for Eviction Actions (clean)

Rule 10. Disclosure

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents (including any electronically stored information) the party intends to introduce as an exhibit at trial.

b. – d. [no change]

Appendix D-2: Arizona Rules of Procedure for Eviction Actions (mark-up)

Rule 10. Disclosure

a. Upon request, a party shall provide to the other party: 1) a copy of any lease agreement; 2) a list of witnesses and exhibits; 3) if nonpayment of rent is an issue, an accounting of charges and payments for the preceding six months; and 4) copies of any documents (including any electronically stored information) the party intends to introduce as an exhibit at trial.

b. – d. [no change]