

# Pathway to Practice:

A Guide for Those Preparing for the Legal Paraprofessional Limited Jurisdiction Civil Law Exam





# Certification & Licensing

The Certification and Licensing Division develops and administers certification and licensing programs for the Arizona Supreme Court.

The Legal Paraprofessional Limited Jurisdiction Civil Law Exam has 100 multiple choice questions based on applicable laws, codes, statutes, and rules. The primary focus of this document is to provide an overview of resources relevant to the practice area.

This study guide is updated bi-annually to ensure the content remains current and relevant. However, laws and regulations may change between updates. It is essential to consult official Arizona Revised Statutes, Court Rules, and other referenced materials while studying to verify the most up-to-date information. Users are encouraged to cross-check these references to ensure accuracy and compliance with any recent changes.

# CONTENTS

<b>Arizona Code of Judicial Administration § 7-210.....</b>	<b>4</b>
<b>Arizona Rules of Procedure in Civil Traffic and Civil Boating Violation Cases.....</b>	<b>19</b>
<b>Arizona Rules of Professional Conduct.....</b>	<b>33</b>
<b>Arizona Revised Statutes.....</b>	<b>69</b>
<b>Arizona Justice Court Rules of Civil Procedure.....</b>	<b>125</b>
<b>Arizona Rules of Procedure for Eviction Actions.....</b>	<b>172</b>
<b>Arizona Rules of Small Claims Procedure.....</b>	<b>189</b>
<b>Arizona Rules of Evidence.....</b>	<b>197</b>
<b>Sample Questions.....</b>	<b>224</b>

# Arizona Code of Judicial Administration

§ 7-210



**ARIZONA CODE OF JUDICIAL ADMINISTRATION**  
**Part 7: Administrative Office of the Courts**  
**Chapter 2: Certification and Licensing Programs**  
**Section 7-210: Legal Paraprofessional**

**A. Definitions.** In addition to the definitions in ACJA § 7-201(A), the following definitions apply to this section:

“Advocacy” means course content or practical experience that demonstrates and develops skills that are associated with conducting court hearings and trials, administrative hearings, mediation and arbitration, and settlement and plea negotiation.

“Board” means the Board of Nonlawyer Legal Service Providers.

“Certification” means achievement of subject area competency within an endorsement.

“Civil procedures course” means at least 3 credits from a course dedicated to civil procedure and the remaining required credits can be obtained through a course or courses that cover an area of civil law, such as administrative law, if the course includes procedural law content.

“Endorsement” means an area of practice in which a legal paraprofessional may be licensed.

“Experiential learning” means learning through a format such as an internship, externship or clinical experience during which students develop knowledge, skills, and values from direct experiences outside a traditional academic setting.

“Legal Paraprofessional” means an individual licensed pursuant to this section to provide legal services without the supervision of an attorney in the areas of law and within the scope of practice defined herein.

“Legal specialization course” means a course that covers substantive law or legal procedures and that was developed specifically for, and that teaches practical skills needed by, paralegals or legal paraprofessionals. For clarity, courses in general “business law” designed for undergraduate or graduate business curriculums and law-related courses that focus solely on theory do not qualify as a legal specialization course.

“Substantive, law-related experience” means the provision of legal services as a law clerk, paralegal, or paralegal student including, but not limited to, drafting pleadings, legal documents, or correspondence; completing forms; preparing reports or charts; legal research; and interviewing clients or witnesses in areas of practice in which the applicant seeks to be licensed. Substantive law-related experience does not include routine clerical or administrative duties or preparation of legal documents for an entity or member of the public engaged in self-representation.

**B. Applicability.** This section applies to individuals who provide legal services within the exception to the prohibition of the unauthorized practice of law set forth in Rule 31.3(e)(4),

Rules of the Supreme Court, and this section. To provide legal services under this exception, individuals must hold a valid legal paraprofessional license, perform legal services only within the scope of the practice area(s) in which they are licensed, and comply with the other requirements for licensees in this section. No individual may claim to be a legal paraprofessional unless they hold an active license as a legal paraprofessional. This section is read in conjunction with ACJA § 7-201: General Requirements, and Rules 31 through 80, Rules of the Supreme Court, governing the practice of law. In the event of any conflict between the Rules of the Supreme Court, ACJA § 7-201, and this section, the Rules of the Supreme Court govern, followed by this section.

**C. Purpose.** The supreme court has inherent regulatory power over all lawyers or nonlawyers providing legal services to the public. Accordingly, this section provides for the effective administration of the legal paraprofessional licensing program.

**D. Roles and Responsibilities.**

1. Supreme Court. The supreme court establishes and administers a legal paraprofessional fund consisting of monies received for license fees, costs, and civil penalties. The supreme court is authorized to expend monies from the fund for the implementation, administration, and enforcement of the legal paraprofessional program.
2. Division Staff. The responsibilities of the Division’s director, deputy director, and staff are as stated in ACJA § 7-201(D).
3. Board of Nonlawyer Legal Service Providers. The Board of Nonlawyer Legal Service Providers is established.
  - a. The board consists of eleven members appointed by the chief justice in the following categories:
    - (1) Two certified legal document preparers;
    - (2) Two legal paraprofessionals;
    - (3) One judge or court administrator;
    - (4) One clerk of the superior court or designee;
    - (5) One attorney;
    - (6) Two public members; and
    - (7) Two additional members.
  - b. The board must issue licenses to qualified applicants as provided in (E)(2) and (3).
  - c. On or before April 30 of each year, the board must file a report with the supreme court describing the status of the legal paraprofessional program. The report must include, but is not limited to, the following:
    - (1) The number of applications granted and declined during the previous calendar year;
    - (2) The number of licensed legal paraprofessionals as of December 31 of the previous calendar year;

- (3) The number and nature of charges filed against legal paraprofessionals during the previous calendar year;
  - (4) The number and nature of complaints initiated by the state bar during the previous calendar year;
  - (5) Discipline imposed during the previous calendar year, the nature of the conduct resulting in discipline, and the discipline imposed; and
  - (6) Recommendations concerning modifications or improvements to the legal paraprofessional program.
4. The State Bar of Arizona. The state bar must provide the board with the following information:
- a. On a calendar quarter basis:
    - (1) The number and nature of charges filed against legal paraprofessionals during the previous calendar quarter;
    - (2) The number and nature of complaints initiated by the state bar against legal paraprofessionals during the previous calendar quarter;
    - (3) Discipline imposed on legal paraprofessionals during the previous calendar quarter and the nature of the conduct leading to the discipline, and the discipline imposed; and
    - (4) The current list of licensed legal paraprofessionals that the state bar must submit to the clerk of the supreme court.
  - b. On or before January 31 of each year:
    - (1) The number of licensed legal paraprofessionals as of December 31 of the previous year; and
    - (2) Recommendations concerning modifications or improvements to the legal paraprofessional program.
  - c. Such other information as the board may request to prepare its report to the supreme court under (D)(3)(c).

**E. Licensure.** In addition to the provisions of ACJA § 7-201(E), the following requirements apply:

- 1. License Required. A person must not represent that the person is a legal paraprofessional, or is authorized to provide legal services, without holding a valid license issued in compliance with this section in one or more of the following practice areas:
  - a. Family law.
  - b. Civil.
  - c. Criminal law.

- d. Administrative law.
  - e. Juvenile law.
2. Examination.
- a. Timing of Examination. Before applying for licensure, a prospective applicant must achieve a passing score on the legal paraprofessional examination.
  - b. Administration of Examination. The procedures for examinations, which includes reexaminations, are as stated in ACJA § 7-201(E), legal paraprofessional examinations must be administered using a board-approved format and delivery method.
  - c. Contents of Examination. The legal paraprofessional examination, prepared with the assistance of subject matter experts, must test:
    - (1) Legal terminology, substantive law, client communication, data gathering, document preparation, the ethical code for legal paraprofessionals, and professional and administrative responsibilities pertaining to the provision of legal services; and
    - (2) Substantive knowledge of the law in each subsection (F)(2) practice area in which the applicant seeks to be licensed.
3. Forms. When notifying a prospective applicant that they have achieved a passing score on the examination and satisfied the examination requirement, the division will provide the forms the prospective applicant must complete and submit to the division to apply for licensure.
4. Fingerprinting. An applicant must comply with the fingerprinting requirements of ACJA § 7-201(E)(1)(d).
5. Qualifications. The board must grant a license to an applicant who demonstrates possession of the following qualifications in addition to the education or experience requirements in (E)(6):
- a. Is a citizen or legal resident of the United States;
  - b. Is at least twenty-one years of age;
  - c. Has not been denied admission to the practice of law in Arizona or any other jurisdiction;
  - d. Has not been disbarred or suspended from the practice of law in Arizona or any other jurisdiction unless the applicant requests an exception that is approved by the supreme court;
  - e. Is of good moral character;

- f. Complies with the laws, court rules, and orders adopted by the supreme court governing legal paraprofessionals in this state;
  - g. Has achieved a passing score on the legal paraprofessional examination, including a substantive law examination in each (F)(2) practice area in which the applicant seeks to be licensed;
  - h. The character and fitness for licensure including, but not limited to, a past and present record of honesty, trustworthiness, diligence, reliability, respect for law and legal institutions, respect for the ethical codes governing attorneys, and whether the applicant has:
    - (1) Been convicted of a misdemeanor involving a serious crime as defined in Rule 36(b)(2)(A), Rules of the Supreme Court, or of any felony;
    - (2) Engaged in unlawful conduct not resulting in conviction of a crime;
    - (3) Committed any act involving misconduct, dishonesty, a false statement or omission, fraud, deceit, or material misrepresentation;
    - (4) Engaged in abuse of legal process;
    - (5) Engaged in neglect of financial responsibilities;
    - (6) Neglected or disregarded ethical or professional obligations;
    - (7) Violated any order of a court, judicial officer, administrative tribunal, or professional regulatory entity;
    - (8) Engaged in conduct evidencing mental or emotional instability impairing the ability of the applicant to perform the duties and functions of a legal paraprofessional;
    - (9) Engaged in conduct evidencing substance abuse impairing the ability of the applicant to perform the duties and functions of a legal paraprofessional; and
    - (10) A history of any disciplinary complaints or disciplinary action by an attorney disciplinary agency or other professional disciplinary agency of any jurisdiction.
6. Education or Experience Requirement. The applicant must also have one of the following:
- a. An associate-level degree in paralegal studies or an associate-level, bachelor's, or advanced degree in any subject plus a certificate in paralegal studies approved by the American Bar Association or offered by an institution that is accredited by an institutional accrediting agency recognized by the U.S. Department of Education or the Council for Higher Education Accreditation (CHEA) and that requires successful completion of a minimum of 24 semester units, or the clock hour equivalent, in legal specialization courses including a minimum of:
    - (1) For family law: 3 credit hours in family law, 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
    - (2) For civil law: 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
    - (3) For criminal law: 3 credit hours in criminal law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.

- (4) For administrative law: 3 credit hours in administrative law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (5) For juvenile law: 3 credit hours in dependency law or completion of the Attorney General's Office internal employee dependency training program for potential Legal Paraprofessionals employed by the Attorney General's office, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (6) For all practice areas:
    - (a) A minimum of 3 credit hours in professional responsibility;
    - (b) A minimum of 120 hours or 3 credit hours of experiential learning, supervised by a licensed attorney or legal paraprofessional, that includes content on advocacy; and
    - (c) One (1) year of substantive law-related experience under the supervision of a lawyer or legal paraprofessional in the area of practice in which licensure is sought.
- b. A bachelor's degree in law from an accredited college or university and approved by the Arizona Judicial Council, including a minimum of:
- (1) For family law: 3 credit hours in family law, 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (2) For civil law: 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (3) For criminal law: 3 credit hours in criminal law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (4) For administrative law: 3 credit hours in administrative law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (5) For juvenile law: 3 credit hours in dependency law or completion of the Attorney General's Office internal employee dependency training program for potential legal paraprofessionals employed by the Attorney General's office, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (6) For all practice areas, a minimum of 3 credit hours in professional responsibility and a minimum of 120 hours or 3 credit hours of experiential learning, supervised by a licensed attorney or legal paraprofessional, that includes content on advocacy.
- c. Attended a certification program, for credit or non-credit, for legal paraprofessionals approved by the Arizona Judicial Council; offered through an educational institution that is at least regionally accredited; and, while attending the certification program, the applicant must have completed:
- (1) The credit hours, or equivalent clock hours, in courses required under (E)(6)(a) for the practice area in which licensure is sought; and
  - (2) The supervised hours of substantive law-related experience and experiential learning required under (E)(6)(a).
- d. A Master of Legal Studies (MLS) degree from an American Bar Association accredited law school including completion of at least:

- (1) For family law: 3 credit hours in family law, 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (2) For civil law: 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (3) For criminal law: 3 credit hours in criminal law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (4) For administrative law: 3 credit hours in administrative law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (5) For juvenile law: 3 credit hours in dependency law or completion of the Attorney General's Office internal employee dependency training program for potential legal paraprofessionals employed by the Attorney General's office, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (6) For all practice areas, a minimum of 3 credit hours in professional responsibility and a minimum of 120 hours or 3 credit hours of experiential learning, supervised by a licensed attorney or legal paraprofessional, that includes content on advocacy.
- e. A Juris Doctor (JD) degree from a law school accredited by the American Bar Association, or the foreign equivalent of a JD from a degree granting institution and a Master of Laws (LLM) degree from a law school accredited by the American Bar Association, that in either case included:
- (1) For family law: 3 credit hours in family law, 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (2) For civil law: 6 credit hours in civil procedure, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (3) For criminal law: 3 credit hours in criminal law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (4) For administrative law: 3 credit hours in administrative law, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (5) For juvenile law: 3 credit hours in dependency law or completion of the Attorney General's Office internal employee dependency training program for potential legal paraprofessionals employed by the Attorney General's office, 3 credit hours in evidence, and 3 credit hours of legal research and writing.
  - (6) For all practice areas, a minimum of 3 credit hours in professional responsibility.
- f. In lieu of the educational requirements in (E)(6)(a) through (e), has completed 7 years of full-time, substantive, law-related experience within the 10 years preceding application in each practice area in which the applicant seeks licensure.
7. Substantive Law-Related Experience. Establishing substantive law-related experience requires written certification by a supervising attorney or legal paraprofessional. The certification must include:
- a. The name and Bar number of all supervising lawyers or legal paraprofessionals;

- b. A statement that the work experience meets the requirement for substantive law-related experience, as defined in (A), in the practice area in which the applicant seeks licensure; and
  - c. The dates of the applicant's employment by or service with all supervising lawyers or legal paraprofessionals.
8. Professionalism Course. A newly-licensed legal paraprofessional must complete the state bar-approved course on professionalism within one year before or after initial licensure. A newly-licensed legal paraprofessional who fails to complete this requirement may be summarily suspended by the Board of Governors of the State Bar of Arizona on the request of the state bar counsel under Rule 62, Rules of the Supreme Court, provided that a notice by certified, return receipt mail of non-compliance has been mailed to the legal paraprofessional's last address of record at least 30 days before suspension.

#### **F. Conduct of Licensees.**

1. Authorized Services. A licensed legal paraprofessional may provide legal services in the areas of practice for which they are licensed as follows:
- a. Legal Services. A licensed legal paraprofessional is authorized to provide the following legal services without the supervision of an attorney:
    - (1) Prepare and sign legal documents;
    - (2) Provide specific advice, opinions, or recommendations about possible legal rights, remedies, defenses, options, or strategies;
    - (3) Draft and file documents, including initiating and responding to actions, related motions, discovery, interim and final orders, and modification of orders, and arrange for service of legal documents;
    - (4) Appear before a court or tribunal on behalf of a party, including mediation, arbitration, and settlement conferences where not prohibited by the rules and procedures of the forum; and
    - (5) Negotiate legal rights or responsibilities for a specific person or entity.
  - b. Scope of Practice. A legal paraprofessional's authorization to provide legal services in a practice area is as follows:
    - (1) Family Law. Legal paraprofessionals licensed in family law may render authorized services in:
      - (a) Domestic relations, except that they may not provide services in the following areas unless the legal paraprofessional has met additional qualifications as established by the supreme court for:
        - (i) Preparation of a Qualified Domestic Relations Order (QDRO) and supplemental orders dividing retirement assets.
        - (ii) Division or conveyance of formal business entities or commercial property.
        - (iii) An appeal to the court of appeals or supreme court.

- (b) Adoption, to assist clients in all aspects of the adoption process, if the legal paraprofessional has met additional qualifications as established by the supreme court.
  - (2) Civil. Legal paraprofessionals licensed to practice in civil law may provide authorized services in any civil matter that is or could be in a municipal or justice court of this state other than matters in which a licensed attorney is not permitted to appear.
  - (3) Criminal Law. Legal paraprofessionals licensed in criminal law may render authorized services:
    - (a) At any initial appearance or, when the defendant is not represented by counsel in subsequent criminal proceedings, for the limited purpose of advocating for release of a defendant from pretrial detention.
    - (b) For criminal misdemeanor matters in a municipal or justice court of this state that is not subject to a penalty of incarceration upon conviction, whether by law or by agreement of the prosecuting authority and trial court.
  - (4) Administrative Law. Legal paraprofessionals licensed in administrative law may engage in providing authorized services before any Arizona administrative agency that does not preclude practice by legal paraprofessionals. Legal paraprofessionals licensed in administrative law are not authorized to:
    - (a) Represent any party in an appeal of an administrative agency's decision to a superior court, the court of appeals, or the supreme court except for filing an application or notice of appeal.
    - (b) Represent any lawyer or legal paraprofessional before the supreme court, presiding disciplinary judge, or any board, committee, or hearing panel.
  - (5) Juvenile Law. Legal paraprofessionals licensed in juvenile law may render authorized services in:
    - (a) Juvenile dependency proceedings for any party, except that they may not:
      - (i) Conduct a contested dependency adjudication;
      - (ii) Conduct a contested termination adjudication proceeding; or
      - (iii) Represent any party in a matter in which the child named in the petition is subject to the Indian Child Welfare Act (ICWA) as defined in Rule 102, Arizona Rules of Procedure for the Juvenile Court.
    - (b) Adoption, to assist clients in all aspects of the adoption process, if the legal paraprofessional has met additional qualifications as established by the supreme court.
2. Code of Conduct. Each legal paraprofessional must abide by the code of conduct in subsection (J).
  3. Identification. Legal paraprofessionals must include their name, the title "Arizona Legal Paraprofessional" or the abbreviation "LP," and their legal paraprofessional license number on all documents they prepare, unless expressly prohibited by a non-judicial agency or entity. Legal paraprofessionals must also provide their name, title, and license number to any person upon request.
  4. Notification of Discipline. A licensed legal paraprofessional whose license to practice law

is revoked, suspended or disbarred in any jurisdiction must provide notice of and information about the revocation, suspension or disbarment to the board and the state bar within 30 days of service of the notice of the revocation, suspension or disbarment.

5. Notification of Denial of Admission. A licensed legal paraprofessional who is denied admission to the practice of law in any jurisdiction must provide notice of and information about the denial to the board and the state bar within 30 days of service of the notice of the denial.

**G. Complaints, Investigation, Disciplinary Proceedings, and Continuing Legal Education.**

The Supreme Court Rules governing complaints, investigations, discipline, sanctions, reinstatement, continuing legal education, and public access to state bar records are applicable to legal paraprofessionals, with the following modifications:

1. Rule 44 is not applicable to legal paraprofessionals.
2. Rule 60(a)(1) is applicable to legal paraprofessionals, except that the term “revocation” replaces the term “disbarment.”
3. Reinstatement proceedings under Rules 64 and 65, Rules of Supreme Court, are applicable to legal paraprofessionals, except the term “revoked” or “revocation” replaces the term “disbarred” or “disbarment.”

**H. Policies and Procedures for Board Members.** The policies and procedures applicable to board member are as provided in ACJA § 7-201(I).

**I. Continuing Legal Education Policy.**

1. Purpose. Ongoing continuing legal education (“CLE”) is one method to ensure legal paraprofessionals maintain competence in the field after licensure. Continuing education also provides opportunities for legal paraprofessionals to keep abreast of changes in the profession and the Arizona judicial system.
2. Applicability. All legal paraprofessionals must comply with the continuing education requirements of Rule 45, Arizona Rules of Supreme Court. Continuing education must relate to the practice area in which the legal paraprofessional is licensed to practice.

**J. Code of Conduct.** All legal paraprofessionals in the State of Arizona must abide by the following code of conduct establishing the rules of professional conduct and minimum standards for performance by legal paraprofessionals.

1. Ethics. A legal paraprofessional is bound by Rule 42, Rules of the Supreme Court, Arizona Rules of Professional Conduct, as follows:
  - a. “Legal paraprofessional” or “legal paraprofessionals” is substituted for “lawyer” or “lawyers.”

- b. References to “applicant” or “applicant for admission to the state bar” are read as “applicant for a legal paraprofessional license.”
  - c. References to “admission to practice” or “admitted to practice” are read as “licensed as a legal paraprofessional.”
  - d. ER 5.5(a) and (b) apply to legal paraprofessionals. ER 5.5(c) through (h) are not applicable to legal paraprofessionals.
2. Professionalism. A legal paraprofessional must abide by Rule 41, Rules of the Supreme Court, with the exception of the Oath of Admission to the Bar.
  3. Trust Accounts. A legal paraprofessional must abide by Rule 43, Rules of the Supreme Court.
  4. Insurance Disclosures. A legal paraprofessional must abide by Rule 32(c)(13), Rules of the Supreme Court.
  5. Performance in Accordance with Law. A legal paraprofessional must:
    - a. Perform all duties and discharge all obligations in accordance with applicable laws, rules, or court orders.
    - b. Not represent that the legal paraprofessional is authorized to provide legal services that are not authorized by this section or are not within the scope of practice in the areas for which they are licensed.
    - c. Not use the designations “lawyer,” “attorney at law,” “counselor at law,” “Esq.,” or other equivalent words, the use of which is reasonably likely to induce others to believe the legal paraprofessional is authorized to engage in the practice of law beyond that allowed by a license issued under this section. Any communications by a licensed legal paraprofessional in connection with providing services must clearly identify the licensee as a licensed legal paraprofessional.
    - d. Not provide any kind of advice, opinion or recommendation about possible legal rights, remedies, defenses, options, or strategies unless the legal paraprofessional is licensed in the practice area and doing so is within the scope of the practice area.
    - e. Inform the client in writing that a legal paraprofessional is not a lawyer and cannot provide any kind of advice, opinion or recommendation to a client about possible legal rights, remedies, defenses, options, or strategies, or authorized legal services that are not within the scope of a practice area in which they are licensed.
    - f. Comply with the Arizona Rules of Procedure governing the scope of the legal paraprofessional’s authorized practice area, but, where “lawyer,” “attorney,” or other equivalent words are used, substitute “legal paraprofessional” for any procedural rule

governing conduct within the legal paraprofessional's scope of practice in (F)(1).

**K. Fee Schedule.**

1. Application Fees.
  - a. Application Fee; Initial Licensure \$300.00
  - b. Fingerprint Application Processing - rate set by Arizona law and is subject to change.
2. Examination Fees.
  - a. Core Skills Test \$100.00
  - b. Core Skills Test Reexaminations \$100.00  
(For any applicant who does not pass the examination on the first attempt. The \$100 fee applies to each reexamination.)
  - c. Core Skills Test Reregistration for Examination \$100.00  
(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
  - d. Subject Matter Test \$150.00
  - e. Subject Matter Test Reexamination \$150.00  
(For any applicant who does not pass the examination on the first attempt. The \$150 fee applies to each reexamination.)
  - f. Subject Matter Test Reregistration for Examination \$150.00  
(For any applicant who registers for an examination date and fails to appear at the designated site on the scheduled date and time.)
3. Miscellaneous Fees.
  - a. Application. Printed Application for Admission or Character Report (materials available online for free) \$ 20.00
  - b. NSF Fee \$ 40.00
  - c. Document Deficiency Fee: assessed if required supporting documents are not filed with application. \$100.00
  - d. Public Record Request per Page Copy \$ .50
  - e. Certificate of Correctness of Copy of Record \$ 18.00

f. Additional License Fee \$150.00  
(For each additional practice in which licensure is sought more than one year after the initial application)

4. Annual Dues for Arizona State Bar Affiliate Members. Each person licensed as a legal paraprofessional is subject to the membership fees and requirements of Rule 32(c), Rules of the Supreme Court.

*Adopted by Administrative Order No. 2020-174, effective January 1, 2021. Amended by Administrative Order No, 2021-177, dated December 8, 2021, effective January 1, 2022. Amended by Administrative Order 2023-61, effective March 29, 2023. Amended by Administrative Order No. 2023-225, effective December 29, 2023.*



**Let's check your knowledge!**



<https://quizlet.com/966618587/acja-7-210-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Rules of Procedure in Civil Traffic and Civil Boating Violation Cases



# Rules of Court Procedure for Civil Traffic, Boating, Marijuana, and Parking and Standing Violations

## Rule 1. Scope of these Rules

These rules apply in all court cases involving the adjudication and appeal of civil traffic, civil boating, civil marijuana, and parking and standing violations, except those violations consolidated pursuant to Rule 14 of these rules.

## Rule 2. Definitions; Computing Time; Attorneys

**(a)** “Case” means a civil traffic, civil boating, civil marijuana, or parking or standing case, unless otherwise specified.

**(b)** “Civil traffic violation” means any violation designated as such under the provisions of A.R.S. § 28-121 or expressly designated as such by a city or town traffic ordinance, or by any other statute, charter, ordinance, rule, or regulation relating to the operation or use of a motor vehicle or other motorized or human powered device, or to the operation of any other vehicle, or to the use of streets and highways by pedestrians, which is punishable by a civil sanction.

**(c)** “Civil boating violation” means any violation of Articles 1 through 11, Chapter 3, Title 5, Arizona Revised Statutes, or any other statute, charter, ordinance, rule, or regulation relating to the operation or use of motorized watercraft, motorboats, or sailboards, or operating any other watercraft, that is punishable by a civil sanction.

**(d)** “Civil marijuana violation” means any violation designated as such under A.R.S. § 36-2853, or any other statute, charter, ordinance, rule, or regulation relating to marijuana or marijuana paraphernalia, that is punishable by a civil penalty.

**(e)** “Court” means a justice court or a city or town court. Unless the context otherwise requires, “trial court” also means the justice or municipal court.

**(f)** “Complaint” means a civil traffic, civil boating, civil marijuana, or parking or standing complaint, unless otherwise specified.

**(g)** “Judge” means a justice of the peace, judge, or magistrate.

**(h)** “Hearing officer” for the purposes of these rules means a judicial officer appointed pursuant to law.

**(i)** “Parking or standing violation” means any violation of Article 13, Chapter 3, Title 28, Arizona Revised Statutes, or any other statute, ordinance, rule, or regulation, arising solely from the parking, stopping, or standing of a vehicle.

**(j)** “Party” means the State or the defendant. A law enforcement officer, police aide, traffic investigator, or parking enforcement volunteer is not a party.

**(k)** The “uniform traffic ticket and complaint” as referenced in Articles 3 and 4, Chapter 5, Title 28, Arizona Revised Statutes, is identified in these rules by the name “Arizona Traffic Ticket and Complaint.”

**(l)** “Violation” means a civil traffic, civil boating, civil marijuana, or parking or standing violation, unless otherwise specified.

**(m) Computing time.** In computing time limits, when the last day of any period of time used in these rules falls on a Saturday, Sunday, or day when the court is closed, the “last day” is the next day the court is open. The day of the act or event from which the designated time period begins is not to be included. Except as stated by these rules or by order of the court in a particular case, filing deadlines are not enlarged when sent by mail.

**(n) Attorneys.** Unless the context otherwise requires, the requirements of these rules may be performed by an attorney who has filed a proper notice of appearance.

### Rule 3. Commencing a Violation in Court

**(a) Commencing a Civil Traffic or Civil Boating Case.** A civil traffic or civil boating case is commenced by filing with the court an Arizona Traffic Ticket and Complaint in accordance with Article 4, Chapter 5, Title 28, Arizona Revised Statutes or by filing a long form complaint pursuant to Rule 2.3 of the Arizona Rules of Criminal Procedure.

**(b) Commencing a Civil Marijuana Case.** The State may commence a civil marijuana case pursuant to A.R.S. § 36-2853 by filing with the court an Arizona Traffic Ticket and Complaint or by filing a long form complaint under Rule 2.3 of the Arizona Rules of Criminal Procedure.

**(c) Commencing a Parking or Standing Case.** A parking or standing case is commenced by filing with the court an Arizona Traffic Ticket and Complaint, or a notice of violation for a local ordinance, charter, or regulation in accordance with Article 4, Chapter 5, Title 28, Arizona Revised Statutes. Vehicle parking and standing offenses do not require that the initial notification or a subsequent summons and complaint be personally served. If it becomes necessary to issue a summons and complaint because there is not a satisfactory response to the initial notice of a parking or standing violation, a summons and complaint may be sent by regular mail to the address provided to the Department of Transportation, Motor Vehicle Division by the individual made responsible for the alleged violation. Service of a summons and complaint is complete on mailing.

### Rule 4. Arizona Traffic Ticket and Complaint

**(a)** The Arizona Traffic Ticket and Complaint must be in a form approved by the Supreme Court. A Court Report copy is required if no other method is used to forward dispositions to the Department of Transportation, Motor Vehicle Division. Additional copies are optional.

**(b)** Any substantial variation from the form of the Arizona Traffic Ticket and Complaint must first be approved by the Supreme Court.

**(c)** Every court, law-enforcement agency, or public body responsible for issuing the Arizona Traffic Ticket and Complaint must promptly forward one form copy, and any subsequent changes therein, to the Supreme Court.

**(d)** Any court that maintains disposition information on computer may arrange with the Department of Transportation, Motor Vehicle Division or the Department of Public Safety, whichever is applicable, for the electronic forwarding of disposition information without a certification by the judge.

### Rule 5. Local Rules

Upon the written approval of the Supreme Court, any court may supplement these rules by local rules, which must be made available for distribution or examination at such court.

### Rule 6. Hearing Officer Qualifications and Duties

**(a)** A hearing officer must be at least 21 years old, must be of good moral character, and must have completed a course of instruction approved by the Supreme Court.

**(b)** A hearing officer may hear, dispose, and make such orders as necessary and proper to dispose of cases.

### Rule 7. Non-availability of Right to Notice of Change of Judge

The rules of procedure regarding change of judge as a matter of right do not apply, except in cases consolidated with criminal matters pursuant to Rule 14.

### Rule 8. Sufficiency of the Complaint

A complaint is legally sufficient if it contains either a written description or the statutory or local ordinance, charter, rule, or regulation designation of the alleged violation.

### Rule 9. Amending the Complaint

**(a)** A court may amend a complaint at any time before judgment if no additional or different violation is charged and if no substantial right of the defendant is prejudiced.

**(b)** A court may amend a complaint to conform to the evidence adduced at a hearing if no additional or different violation is charged and if no substantial right of the defendant is prejudiced.

**(c)** All amendments to a complaint relate back to the date the complaint was issued.

**(d)** Where there is a conflict between the written description and the statutory or local ordinance, charter, rule, or regulation designation of a violation, the descriptive text takes precedence unless doing so would prejudice a defendant's substantial right or such action would result in a criminal charge. If a judicial officer is unable to determine what violation is charged, the charge must be dismissed without prejudice and the issuing agency notified.

### Rule 10. Entry of Plea; Failure to Appear

**(a)** The defendant may admit responsibility by appearing in person, or by submitting a form or a statement signed by the defendant admitting the allegations of the complaint.

The defendant must, at the same time, tender the civil sanction or penalty listed in the court's deposit schedule for the violation(s).

**(b)** The defendant may deny responsibility by appearing in person or by notifying the court in writing. For civil traffic violations, the defendant may, at the same time, tender the civil sanction or penalty listed in the court's deposit schedule. Upon receipt of said notice, the court must set the matter for hearing and notify the defendant, citing officer, and any counsel of the date, time, and place for the hearing.

**(c)** A defendant's failure to admit or deny responsibility under Rules 10(a) or 10(b), or to personally appear at the date and time specified in the Arizona Traffic Ticket and Complaint, or at the date and time specified in a summons, or to appear at any subsequently scheduled court proceeding, or a defendant's failure to file a written statement prior to a documentary hearing under Rule 10.2, will result in a default pursuant to Rules 21 and 22.

### Rule 10.1. Appearance by Audiovisual and Telephonic Means

**(a) General Standards.** A court may allow parties, their attorneys, and witnesses to appear by audiovisual interactive means that follow these general standards:

(1) all parties, attorneys, and witnesses must be able to be seen and heard at the same time and the audio portion must be captured accurately on the record;

(2) a facsimile, email, or other suitable means must be available to allow the court to transmit copies of exhibits during the hearing, and, if necessary, a "Notice of Right to Appeal" to the defendant;

(3) the court may require any person requesting to appear under this rule to be responsible for the cost of same, and such cost cannot be awarded as a recoverable cost by a prevailing party;

(4) the court must provide instructions to the participants as to how the remote appearance will be initiated;

(5) a party allowing a subpoenaed witness to appear by remote means must pay the cost of same, and no witness fee can be required or allowed for such an appearance; and

(6) an appearance under this rule may be referred to as a "Rule 10.1 Appearance."

**(b) Appearance Request; Deposit.** Unless a different time limit is allowed by the court, a party, attorney, or witness may appear under this rule by filing a "Notice of Rule 10.1 Appearance" at least 14 calendar days prior to the hearing. The notice must set forth the requestor's name, mailing address, and daytime phone number. As to a defendant who wishes to appear under this rule, the court may condition the appearance upon the posting of a deposit in an amount not to exceed the total possible sanction or penalty amount of all violations at issue based on the court's deposit schedule.

**(c) Rule 10.1 Appearance Procedures.** Upon receipt of a Notice of Rule 10.1 Appearance, the court must provide instructions as to the date and time of the proceeding and designate how the appearance will be initiated. The court may also set forth instructions as to pre-hearing deadlines to file exhibits and limitations on exhibit sizes and numbers. The hearing itself must proceed as otherwise set forth in these rules. In the event the defendant is found responsible at the conclusion of the hearing, a Notice of Right to Appeal may be sent to the defendant by fax or electronic means, and the 14 calendar day appeal period commences from that transmission date.

#### **(d) Telephonic Appearance by Defendant; Deposit; Waiver of Identity**

**Defense.** Notwithstanding the foregoing, a court may, upon written request at least 14 calendar days before the hearing date, permit a defendant to appear telephonically. The request must include the defendant's telephone number, mailing address, and a copy of a valid drivers license or identification card acceptable to the court. The court may condition a telephonic appearance on the posting of a deposit in an amount not to exceed the total possible sanction or penalty amount of all violations at issue based on the court's deposit schedule. Unless otherwise permitted by the court, a defendant appearing telephonically will be deemed to have waived any defense based on failure of the State to establish an in-court identification of the defendant as the cited violator. Identity is sufficiently established if, at the hearing, the State offers proof of the name of the driver as listed on a driver license, state or government identification card, or other acceptable means of identification matching the violator to the defendant.

#### **Rule 10.2. Request for a Documentary Hearing**

**(a)** At the time of denial of responsibility, or such other time as the court determines appropriate in the interest of justice, the defendant may file a written request for a documentary hearing.

**(b)** For the court to grant a request for a documentary hearing, the defendant must show why personally attending a hearing would cause a substantial hardship. A substantial hardship is more than mere inconvenience and must be based on extraordinary circumstances. Along with the request, the defendant may tender the civil sanction or penalty listed in the court's deposit schedule for the violation(s) at issue in the hearing.

**(c)** If the court grants the request for a documentary hearing, the court must set the matter for hearing and notify the defendant, the citing officer, and any counsel in the case of the date, time, and place for the hearing.

**(d)** Prior to a scheduled documentary hearing, the defendant must file a statement or statements made under penalty of perjury, along with any other evidence the defendant requests that the court consider. Other evidence may include such things as diagrams, photographs, or physical evidence. The court may allow the State's witnesses to testify through written statements or in person on the date, time, and place scheduled for the hearing. The State must file, prior to the hearing, any statements, made under penalty of perjury, along with any other evidence the State requests that the court consider.

**(e)** Failure to personally appear, or file a statement or statements prior to the hearing, will result in default pursuant to Rules 21 and 22.

**(f)** If a defendant requests a documentary hearing, the defendant waives the following rights: to personally appear to present evidence; to review evidence before the hearing (Rule 13(b)); to compel production of any citing officer notes (Rule 13(c)); to testimony under oath (Rule 16(a)); to cross examine the State's witnesses (Rule 16(c)); to present rebuttal evidence (Rule 19(d)); to present a closing argument (Rule 19(e)); and to immediate delivery of written notice of appeal following judgment and imposition of civil sanction or penalty (Rule 25(a)).

**(g)** If a documentary hearing is held, the 14-day period for filing a notice of appeal pursuant to Rule 28(a) is extended by 7 calendar days. The record of a documentary

hearing for purposes of Rule 29(b)(vii) must also include the statements and other evidence, as well as the recording or transcript, if any, of the hearing.

### Rule 11. Notice of Right to Counsel and Waiver

**(a)** If a defendant denies the allegations contained in the complaint and requests a hearing, the court must promptly provide the defendant written notice of a hearing date. The notice of hearing date must also state that the right to be represented by counsel at the hearing is waived unless the court and the State are notified in writing at least 10 calendar days prior to the hearing date.

**(b)** Absent extraordinary circumstances, failure of a defendant to timely notify the court and the State constitutes a waiver of the right to counsel at the hearing.

### Rule 12. Representation by the State

The State need not be represented by counsel at the hearing of a complaint or the appeal of a final order or judgment. Absent extraordinary circumstances, the State's right to be represented by counsel at the hearing is waived unless, at least 10 calendar days prior to the hearing date or within 10 calendar days of receipt of notice that the defendant will be represented by counsel, whichever is later, the State notifies the court and the defendant of its election to be represented by counsel.

### Rule 13. Discovery; Officer's Notes

**(a)** No pre-hearing discovery will be permitted absent extraordinary circumstances.

**(b)** Immediately prior to the hearing, both parties must produce for inspection any pre-prepared exhibits and written or recorded statements of any witness. Failure to comply with this rule may result, in the court's discretion, in the sanction of granting a recess or continuance to permit such inspection or denying admission of the evidence not so exchanged.

**(c)** During the hearing, upon request of the defendant, the citing officer must produce any notes made by the officer in reference to the complaint. This rule does not create a duty on the officer to maintain or preserve notes.

### Rule 14. Consolidation; Applicable Rules

**(a)** Civil and criminal cases based on the same conduct or otherwise related in their commission may be consolidated at any point in the proceedings on motion of a party or on the court's own motion.

**(b)** At the trial of any consolidated case, the rules governing the criminal case apply, except that the civil case must be tried to the court, and the standard of proof in the civil case is a preponderance of the evidence.

### Rule 15. Continuances

**(a)** The court may, upon motion of a party or witness, or on its own motion, continue the hearing for a period not exceeding 60 days, if it appears that the interests of justice so require.

**(b)** Absent extraordinary circumstances, no hearing can be continued by the court without notice to both parties.

**(c)** The court must notify the parties and witnesses in writing of the new hearing date.

### Rule 16. Oath and Questioning of Witnesses

**(a)** All testimony must be given under oath or affirmation.

**(b)** The court may, on its own motion, call and examine witnesses, including the defendant, in cases other than those consolidated pursuant to Rule 14 of these rules.

**(c)** No person may be examined or cross-examined at a hearing except by the court, an attorney for a party, or the defendant.

### Rule 17. Rules of Evidence and Burden of Proof

**(a)** The Arizona Rules of Evidence do not apply. Evidence may be admitted subject to a determination that the evidence has some probative value to a fact at issue. Nothing in this rule is to be construed as abrogating any statutory provision relating to privileged communications.

**(b)** The State's burden of proof is a preponderance of the evidence.

### Rule 18. Witnesses

All witnesses for the State's case in chief are required to testify prior to the defendant's case. However, a witness not called to testify in the State's case in chief may be called in rebuttal to testify to an issue raised by the defense.

### Rule 19. Order of Proceedings

The order of proceedings must be as follows:

**(a)** Direct, cross, and re-direct examination of the State's witnesses.

**(b)** Direct, cross, and re-direct examination of defense witnesses.

**(c)** Direct, cross, and re-direct examination of the State's rebuttal witnesses, if any.

**(d)** Direct, cross, and re-direct examination of defense surrebuttal witnesses, if any.

**(e)** Argument of the parties or their counsel, if permitted by the court.

**(f)** Ruling by the court.

### Rule 20. Record; Summary Transfer

**(a)** A record of the proceedings must be made by a method approved by the Supreme Court.

**(b)** Where it appears that the record of the hearing is insufficient, the trial court must summarily transfer the entire file to the superior court for a trial de novo. In a case under this rule, no appellate memorandum is required. Upon receipt of the file, the superior court must notify the parties with instructions as to further proceedings.

## Rule 21. Default by State at Hearing

If no witness for the State, excluding the defendant, appears at the time set for hearing, the court must dismiss the complaint and return any deposit, unless the court, for good cause shown, continues the hearing to another date.

## Rule 22. Default by Defendant at Hearing

**(a)** Except where Rule 21 is applicable, if the defendant fails to appear as required, the allegations of the complaint are deemed admitted, and the court must enter a judgment for the State, impose a civil sanction or penalty, and report such judgment to the Department of Transportation, Motor Vehicle Division, except that civil boating, civil marijuana, and parking or standing violation judgments are not to be reported.

**(b)** If it appears that the defendant is in active military service, no default judgment may be entered.

## Rule 23. Setting Aside Default Judgment

Upon written motion, for good cause or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear.

## Rule 24. Finding of Responsible or Not Responsible

**(a)** If the defendant is found responsible, the court must enter judgment for the State and impose a civil sanction or penalty.

**(b)** If the defendant is found not responsible, the court must enter judgment for the defendant and return any deposit.

### Rule 24.1. Mitigation or Waiver

The court may mitigate or waive a monetary obligation imposed pursuant to Title 28, Chapters 3, 5, 7, and 9 in accordance with law.

## Rule 25. Notice of Right to Appeal After Hearing; Waiver of Right to Appeal

**(a)** Immediately following judgment and imposition of a civil sanction or penalty after a hearing, the court must deliver to the defendant a written notice of right to appeal. Such notice must state that a right to appeal exists, the time limit, the manner of filing the notice of appeal, and where the defendant may find the rules governing the appeal process.

**(b)** A defendant who admits responsibility waives the right to appeal.

## Rule 26. Right to Appeal; Bond on Appeal

**(a)** Any party may appeal to the superior court from a final order or final judgment as provided by statute and these rules.

**(b)** The posting of a bond cannot be a condition of the right to appeal, but enforcement of the judgment will not be stayed unless an appeal bond is provided in accordance with these rules.

**(c)** The posting of an appeal bond stays enforcement of the judgment. Unless the bond amount is reduced or waived by the trial court, the amount of the bond must be the total amount of the sanction or penalty assessed in the final judgment. The bond must be paid in cash or such other manner as directed by the trial court. When the defendant has paid the entire applicable sanction or penalty prior to the filing of a notice of appeal, such payment constitutes the bond on appeal.

### Rule 27. Notice of Appeal; Current Address for Further Proceedings

**(a)** An appeal is commenced by filing a written notice of appeal with the trial court. The notice of appeal must identify the final order or final judgment appealed from.

**(b)** When the defendant is the appellant, the notice of appeal must set forth the defendant's current mailing address and phone number. Unless the court is notified in writing of a change of address, the current address must be valid for the sending of other notices to the defendant in subsequent proceedings.

**(c)** When a party appeals, the trial court must send a copy of the notice of appeal to the appellee.

### Rule 28. Time for Filing; Payment of Record or Transcript Fee to Trial Court

**(a)** The notice of appeal must be filed within 14 calendar days after the entry of the final order or final judgment appealed from.

**(b)** Within the 14 calendar day deadline to file the notice of appeal, the appellant must also pay the applicable record fee to the trial court in cash or other manner allowed by the trial court. The trial court may also assess a separate fee to prepare additional requested copies of recorded proceedings.

### Rule 29. Record on Appeal; Contents of Record

**(a)** Appeals must be on the record. The condition of the record is subject to review by the superior court. If the superior court adjudges the record insufficient or not in proper condition to adjudicate the issues, a trial de novo in the superior court must be granted.

**(b)** The record must consist of only the following: (i) the notice of appeal; (ii) the docket or listing of case events; (iii) the complaint; (iv) the disposition; (v) documentation or record of payment of any sanction, penalty, deposit, or bond; (vi) any motions or responses; (vii) the record of the hearing(s); (viii) any exhibits offered in evidence at the hearing (admitted or not); and (ix) the appellate memoranda required or allowed by Rule 33. A party may attach as an exhibit to the appellate memorandum any other certified documents contained in the case file deemed relevant to the appeal.

**(c)** The trial court may transmit certified duplicate originals of any document in the record.

**(d)** If it appears to the trial court that the record is insufficient for an appeal on the record, the trial court may, on its own motion or on motion of a party, reset the matter for a new trial within 45 days from such determination. In such event, any appeal rights begin to run from the entry of a judgment or order following the new trial. In cases where it appears that the record is insufficient, the preference will be for a new trial at the trial court level. Notwithstanding the foregoing, cases summarily transferred to the superior court for a trial de novo or determined by the superior court to have an insufficient record may be remanded to the original trial court for a new trial or hearing in lieu of a trial de novo in the superior court. Unlike the parties in a trial de novo held in the superior court, the parties in a case remanded pursuant to this rule for a new trial in the original trial court have the rights of appeal as provided by statute or rule for all litigants following a trial or the entry of an appealable judgment or order.

### Rule 30. Trial De Novo and Duty of Trial Court to Transfer Funds

After a trial de novo, the superior court may:

- (a)** Adjudge the defendant responsible and impose a civil sanction or penalty as it deems proper; or
- (b)** Adjudge the defendant not responsible and order the trial court to return any sanction, penalty, deposit, or bond previously tendered by appellant.
- (c)** If, after a trial de novo, the superior court adjudges the defendant responsible and imposes a civil sanction or penalty, it must notify the trial court. The trial court must, within 30 calendar days, transmit to the superior court any sanction, penalty, deposit, or bond in the case.

### Rule 31. Consolidated Cases

When an appeal is taken in both civil and criminal cases consolidated for trial, the rules of procedure governing criminal appeals apply.

### Rule 32. Perfection of Appeal; Dismissal by Trial Court

**(a)** Perfection of the appeal must include:

- (1) the timely filing of a notice of appeal and payment of any record or transcript fee with the trial court;
- (2) the timely filing of an appellant's memorandum with the trial court;
- (3) the timely payment of any superior court filing fee.

**(b)** In the event an appeal is not fully perfected, the appeal will be deemed abandoned and dismissed by order of the trial court with notice to the appellant.

**(c)** In the event an appeal is dismissed, the judgment of the trial court may be enforced as if no appeal had been taken. The trial court may take appropriate action, including the application of any payment, deposit, or bond to the sanction or penalty, notice to the Department of Transportation, Motor Vehicle Division or the Department of Public Safety, or notice to the appellant to reappear upon at least 14 calendar days written notice for further proceedings, except that in civil boating, civil marijuana, and parking or standing violation cases, notice is not to be sent to the Department of Transportation, Motor Vehicle Division or the Department of Public Safety.

### Rule 33. Appellate Memoranda; Dismissal for Non-filing

- (a)** The appellant must file an original and one copy of the appellant's memorandum in the trial court within 60 calendar days of the deadline to file the notice of appeal. The trial court must mail or deliver the copy of the memorandum to the appellee. For good cause, the trial court may enlarge the time to file the memorandum.
- (b)** If the appellant fails to file an appellate memorandum, the appeal is deemed abandoned and must be dismissed by the trial court with notice to the appellant. Where the defendant is the appellant, the trial court may proceed as set forth in Rule 32(c).
- (c)** An original and one copy of the appellee's memorandum must be filed within 30 calendar days of transmittal of the appellant's memorandum. The trial court must mail or deliver the copy of the memorandum to the appellant. For good cause, the trial court may enlarge the time to file the appellee's memorandum. If the appellee does not file a memorandum, the appeal must be submitted on the appellant's memorandum and the record. The non-filing of an appellee's memorandum is not a confession of error.
- (d)** Appellate memoranda must be typed or printed on white, opaque, letter-size paper, double-spaced, and must not exceed 15 pages, excluding exhibits. Memoranda must set forth a factual and legal basis for appropriate judicial relief. Memoranda must include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.
- (e)** No further memoranda can be filed unless ordered by the superior court.
- (f)** Motions for more time must be presented to the trial court and must be ruled upon by a judge other than the judge that heard the matter being appealed.

### Rule 34. Notification to Superior Court; Docketing the Appeal; Payment of the Appeal Fee; Transmission of the Record; Dismissal for Nonpayment

- (a)** After the time to file any appellee memorandum has expired and the appeal is otherwise perfected, the trial court must send the notice of appeal to the superior court within 30 calendar days. Upon receipt, the superior court must file the notice of appeal and notify the appellant regarding payment of any appeal fee.
- (b)** The appeal fee must be paid within 30 calendar days of the notification to the appellant. This notification must advise the appellant that failure to pay the appeal fee will result in dismissal and remand for proceedings set forth in Rule 32(c).
- (c)** Upon payment of the appeal fee, the superior court must notify the trial court. The record must be transmitted to the superior court within 30 calendar days of notification.
- (d)** If the appeal fee is not timely paid, the superior court must dismiss the appeal, notify the appellant and trial court, and remand the case for further proceedings pursuant to Rule 32(c).

### Rule 35. Oral Argument

Appeals are to be without oral argument, unless requested by the superior court or allowed by the superior court upon motion of either party.

### **Rule 36. Disposition by the Superior Court**

After determination of an appeal, the superior court may:

- (a)** Affirm the action of the trial court and remand for further proceedings; or
- (b)** Affirm in part and reverse in part and remand for further proceedings; or
- (c)** Reverse the action of the trial court and remand, if necessary, for further proceedings, including a new hearing; or
- (d)** If the record is deemed insufficient, order a trial de novo in the superior court.

### **Rule 37. Forms**

The following forms are approved for use in cases covered by these rules:

- 1.** Defendant's Notice of Right to Appeal
- 2.** Defendant's Notice of Appeal
- 3.** Motion to Waive or Reduce Bond and Order
- 4.** Notice of Summary Transfer to Superior Court for Trial De Novo
- 5.** Notice to Appellant Re: Payment of Superior Court Appeal Fee
- 6.** Request for Transmittal of Record to Superior Court
- 7.** Defendant's Request for a Documentary Hearing
- 8.** Defendant's Statement for a Documentary Hearing
- 9.** Officer's Statement for a Documentary Hearing
- 10.** Witness's Statement for a Documentary Hearing
- 11.** Arizona Traffic Ticket and Complaint (original, violator, law enforcement, and court copies)



**Let's check your knowledge!**



<https://quizlet.com/991664151/rules-of-court-procedure-for-civil-traffic-boating-marijuana-and-parking-and-standing-violations-flash-cards/?i=66y8kp&x=1jgt>

# Arizona Rules of Professional Conduct



# Arizona Rules of the Supreme Court

## Rule 42

### Arizona Rules of Professional Conduct

#### PREAMBLE

##### ER

1.0. Terminology

#### CLIENT-LAWYER RELATIONSHIP

1.1. Competence.

1.2. Scope of Representation and Allocation of Authority between Client and Lawyer.

1.3. Diligence.

1.4. Communication.

1.5. Fees.

1.6. Confidentiality.

1.7. Conflict of Interest: Current Clients.

1.8. Conflict of Interest: Current Clients: Specific Rules.

1.9. Duties to Former Clients.

1.10. Imputation of Conflicts of Interest: General Rule.

1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees.

1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral.

1.13. Organization as Client.

1.14. Client with Diminished Capacity.

1.15. Safekeeping Property.

1.16. Declining or Terminating Representation.

1.17. Sale of Law Practice or Firm.

1.18. Duties to Prospective Clients.

#### COUNSELOR

2.1. Advisor.

2.2. [Reserved.]

2.3. Evaluation for Use by Third Persons.

2.4. Lawyer Serving as Third-Party Neutral.

#### ADVOCATE

3.1. Meritorious Claims and Contentions.

3.2. Expediting Litigation.

3.3. Candor Toward the Tribunal.

3.4. Fairness to Opposing Party and Counsel.

3.5. Impartiality and Decorum of the Tribunal.

3.6. Trial Publicity.

3.7. Lawyer as Witness.

3.8. Special Responsibilities of a Prosecutor.

3.9. Advocate in Nonadjudicative Proceedings.

3.10. Credible and Material Exculpatory Information about a Convicted Person.

## **TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS**

- 4.1. Truthfulness in Statements to Others.
- 4.2. Communication with Person Represented by Counsel.
- 4.3. Dealing with Unrepresented Person.
- 4.4. Respect for Rights of Others.

## **LAW FIRMS AND ASSOCIATIONS**

- 5.1. Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors.
- 5.2. Responsibilities of a Subordinate Lawyer.
- 5.3. Responsibilities Regarding Nonlawyers.
- 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law.
- 5.6. Restrictions on Right to Practice.

## **PUBLIC SERVICE**

- 6.1. Voluntary Pro Bono Publico Service.
- 6.2. Accepting Appointments.
- 6.3. Membership in Legal Services Organization.
- 6.4. Law Reform Activities Affecting Client Interests.
- 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs.

## **INFORMATION ABOUT LEGAL SERVICES**

- 7.1. Communications Concerning a Lawyer's Services.
- 7.2. [Reserved].
- 7.3. Solicitation of Clients.
- 7.4. [Reserved].
- 7.5. [Reserved].

## **MAINTAINING THE INTEGRITY OF THE PROFESSION**

- 8.1. Bar Admission and Disciplinary Matters.
- 8.2. Judicial and Legal Officials.
- 8.3. Reporting Professional Misconduct.
- 8.4. Misconduct.
- 8.5. Jurisdiction.

## Preamble

### A Lawyer's Responsibilities

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice. Whether or not engaging in the practice of law, lawyers should conduct themselves honorably.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., ERs 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See ER 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain

the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be an advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation to protect and pursue a client's legitimate interests, within the bounds of the law, while acting honorably and maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

### **Scope**

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in

that they define a lawyer's professional role. Many of the Comments use the term “should.” Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. The context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under ER 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See ER 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also may have authority to represent the “public interest” in circumstances where a private lawyer would not be authorized to do so. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are

not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comments accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

## ER 1.0. Terminology

**(a)** “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

**(b)** “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

**(c)** “Firm” or “law firm” denotes a lawyer or lawyers in any affiliation, or any entity that provides legal services for which it employs lawyers. Whether two or more lawyers constitute a firm can depend on the specific facts.

**(d)** “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

**(e)** “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

**(f)** “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

**(g)** “Reasonable” or “reasonably” when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

**(h)** “Reasonable belief” or “reasonably believes” when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

**(i)** “Reasonably should know” when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

**(j)** “Screened” denotes the isolation of a lawyer or nonlawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer or nonlawyer is obligated to protect under these Rules or other law.

(1) Reasonably adequate procedures include:

- (i) written notice to all affected firm personnel that a screen is in place and the screened lawyer or nonlawyer must avoid any communication with other firm personnel about the screened matter;
- (ii) adoption of mechanisms to deny access by the screened lawyer or nonlawyer to firm files or other information, including information in electronic form, relating to the screened matter;
- (iii) acknowledgment by the screened lawyer or nonlawyer of the obligation not to communicate with any other firm personnel with respect to the matter and to avoid any contact with any firm files or other information, including information in electronic form, relating to the matter;
- (iv) periodic reminders of the screen to all affected firm personnel; and
- (v) additional screening measures that are appropriate for the particular matter will depend on the circumstances.

(2) Screening measures must be implemented as soon as practical after a lawyer, nonlawyer, or firm knows or reasonably should know that there is a need for screening.

**(k)** “Substantial” when used in reference to degree or extent denotes a material matter of clear and weighty importance.

**(l)** “Tribunal” denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a legal judgment directly affecting a party's interests in a particular matter.

**(m)** “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**(n)** “Business transaction,” when used in reference to conflicts of interests:

(1) includes but is not limited to:

- (i) the sale of goods or services related to the practice of law to existing clients of a firm's legal practice;
- (ii) a lawyer referring a client to nonlegal services performed by others within a firm or a separate entity in which the lawyer or the lawyer's firm has a financial interest; or
- (iii) transactions between a lawyer or a firm and a client in which a lawyer or firm accepts nonmonetary property or an interest in the client's business as payment of all or part of a fee.

(2) does not include:

- (i) ordinary fee arrangements between client and lawyer; or
- (ii) standard commercial transactions between a lawyer and a client for products or services that the client generally markets to others and over which the lawyer has no advantage with the client.

**(o)** “Personal interests,” when used in reference to conflicts of interests, include but are not limited to:

- (1) the probity of a lawyer's own conduct, or the conduct of a nonlawyer in the firm, in a transaction;
- (2) referring clients to a nonlawyer within a firm to provide nonlegal services; or
- (3) referring clients to an enterprise in which a firm lawyer or nonlawyer has an undisclosed or disclosed financial interest.

**(p)** “Authorized to practice law in this jurisdiction” denotes a firm that employs lawyers or nonlawyers who provide legal services as authorized by Rule 31.1(a).

**(q)** “Nonlawyer” denotes a person not licensed as a lawyer in this jurisdiction or who is licensed in another jurisdiction but is not authorized by Supreme Court Rule 31.1(a) to practice Arizona law.

### ER 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### ER 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

**(a)** Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

**(b)** A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

**(c)** A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

**(d)** A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

### ER 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

### ER 1.4. Communication

**(a)** A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable requests for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b)** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c)** In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements.
- (d)** All lawyers/legal paraprofessionals in private practice shall inform the client in writing, prior to or at the commencement of the representation, if they do not have professional liability insurance. If notice has not been provided at or before the commencement of the representation, the lawyer/legal paraprofessional shall inform the client in writing within thirty (30) days of the date the lawyer/legal paraprofessional knows that the lawyer/legal paraprofessional no longer has professional liability insurance during the representation.

## ER 1.5. Fees

- (a)** A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) the degree of risk assumed by the lawyer.
- (b)** The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to:
- (1) court-appointed lawyers who are paid by a court or other governmental entity, and
  - (2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.
- (c)** A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted

from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

**(d)** A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case; or

(3) a fee denominated as “earned upon receipt,” “nonrefundable” or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

**(e)** Two or more firms jointly working on a matter may divide a fee paid by a client if:

(1) the firms disclose to the client in writing how the fee will be divided and how the firms will divide responsibility for the matter among themselves;

(2) the client consents to the division of fees in a writing signed by the client;

(3) the total fee is reasonable; and

(4) the division of responsibility among firms is reasonable in light of the client's need that the entire representation be completely and diligently completed.

## ER 1.6. Confidentiality

**(a)** A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted or required by paragraphs (b), (c) or (d). or ER 3.3(a)(3).

**(b)** A lawyer shall reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in death or substantial bodily harm.

**(c)** A lawyer may reveal the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime.

**(d)** A lawyer may reveal such information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(2) to mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based

upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(5) to comply with other law or a final order of a court or tribunal of competent jurisdiction directing the lawyer to disclose such information.

(6) to prevent reasonably certain death or substantial bodily harm.

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(e) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

### ER 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

(c) A lawyer may not represent a party in asserting a claim against another party represented by a firm if the same person or entity holds an ownership interest, directly or indirectly, of 10 percent or more, or has managerial authority comparable to that of a partner, in the lawyer's firm and the other firm.

### ER 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

**(b)** A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

**(c)** A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

**(d)** Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**(e)** A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

**(f)** A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by ER 1.6.

**(g)** A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

**(h)** A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement;

(2) make an agreement prospectively limiting the client's right to report the lawyer to appropriate professional authorities; or

(3) settle such allegations, claims, or potential claims with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

**(i)** A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

**(j)** A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

**(k)** While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

**(l)** A lawyer related to another lawyer as parent, child, sibling, spouse or cohabitant shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

**(m)** A lawyer wishing to engage in a business transaction with a client must comply with both ER 1.7 and 1.8(a) if:

- (1) the client expects the lawyer to represent the client in the transaction; or
- (2) the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction.

### ER 1.9. Duties to Former Clients

**(a)** A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

**(b)** A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by ERs 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed consent, confirmed in writing.

**(c)** A lawyer who has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or
- (2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

### ER 1.10. Imputation of Conflicts of Interest: General Rule

**(a)** While lawyers and nonlawyers are associated in a firm, none of them shall knowingly represent a client on legal or nonlegal matters when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer or nonlawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers and nonlawyers in the firm.

**(b)** When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm. unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by ERs 1.6 and 1.9(c) that is material to the matter. If the only such information is contained in documents or electronically stored information maintained by the firm, and the firm adopts screening procedures that are reasonably adequate to prevent access to such documents or electronically stored information by the remaining lawyers, those remaining lawyers will not be considered to have protected information within the meaning of this Rule.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in ER 1.7.

(d) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under ER 1.9 unless:

(1) the personally disqualified lawyer did not have primary responsibility for the matter that causes the disqualification under Rule 1.9;

(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(3) written notice is promptly given to any affected former client to enable it to ascertain compliance with the provisions of this Rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the former client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the former client about the screening procedure; and

(4) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by ER 1.11.

(f) If a nonlawyer is personally disqualified pursuant to paragraph (a), the nonlawyer may be screened and the nonlawyer's personal disqualification is not imputed to the rest of the firm unless the nonlawyer is an owner, shareholder, partner, officer, or director of the firm.

(g) If a lawyer is personally disqualified from representing a client due to events or conduct in which the person engaged before the person became licensed as a lawyer, the lawyer may be screened, and the lawyer's personal disqualification is not imputed to the rest of the firm unless the lawyer is an owner, shareholder, partner, officer or director of the firm.

### ER 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the agency's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the agency about the screening procedure; and (3) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

**(b)** Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom.

**(c)** Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not:

(1) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

(2) negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

**(d)** As used in this Rule, the term “matter” includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

**(e)** As used in this Rule, the term “confidential government information” means information which has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

## ER 1.12. Former Judge, Arbitrator, Mediator or Other Third-Party Neutral

**(a)** Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent confirmed in writing.

**(b)** A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating

personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

**(c)** If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the parties' and tribunal's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the parties or the tribunal about the screening procedure; and

(3) the personally disqualified lawyer and the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

**(d)** An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

### ER 1.13. Organization as Client

**(a)** A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

**(b)** If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

**(c)** Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization,

then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

**(d)** Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of ER 1.7. If the organization's consent to the dual representation is required by ER 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

#### ER 1.14. Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by ER 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under ER 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

#### ER 1.15. Safekeeping of Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or

(2) to pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.

(3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

**(c)** A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

**(d)** Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

**(e)** When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property;

(2) a court order resolves the competing claims; or

(3) distribution is allowed under section (f) below.

**(f)** Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer's notice.

(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

**(g)** A lawyer who serves as a third-party neutral or as an expert witness may hold funds related to that service that have been paid in advance as provided for in this rule.

## ER 1.16. Declining or Terminating Representation

- (a)** Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
  - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
  - (3) the lawyer is discharged.
- (b)** Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
  - (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
  - (3) the client has used the lawyer's services to perpetrate a crime or fraud;
  - (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
  - (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
  - (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
  - (7) other good cause for withdrawal exists.
- (c)** A lawyer shall comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client. The lawyer may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights.

## ER 1.17. Sale of Law Practice or Firm

- (a)** A firm may sell or purchase a law practice, or a practice area of a firm, including good will, if the seller gives written notice to each of the seller's clients regarding:
- (1) the proposed sale, including the identity of the purchaser;
  - (2) the client's right to retain other counsel or to take possession of the file; and
  - (3) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within ninety (90) days of receipt of the notice.
- (b)** If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller

may disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of a file.

**(c)** A sale may not be financed by increases in fees charged to the clients of the practice. Existing arrangements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

**(d)** Before providing a purchaser access to detailed information relating to the representation, including client files, the seller must provide the written notice to a client as described above.

**(e)** Lawyers participating in the sale of a law practice or a practice area must exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently, avoid disqualifying conflicts, and secure the client's informed consent for those conflicts that can be agreed to and the obligation to protect information relating to the representation.

**(f)** If approval of the substitution of the purchasing lawyer for a selling firm is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the matter can be included in the sale.

**(g)** This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

## ER 1.18. Duties to Prospective Client

**(a)** A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

**(b)** Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as would be permitted by ER 1.6 or by ER 1.9 with respect to information of a former client.

**(c)** A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

**(d)** Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) written notice is promptly given to the prospective client, including a description of the particular screening procedures adopted; when they were adopted; a statement by the personally disqualified lawyer and the new firm that the prospective client's material confidential information has not been disclosed or used in violation of the Rules; and an agreement by the new firm to respond promptly to any written inquiries or objections by the prospective client about the screening procedure; and

(3) the personally disqualified lawyer and the partners of the new firm reasonably believe that the steps taken to accomplish the screening of material confidential information will be effective in preventing such information from being disclosed to the new firm and its client.

## ER 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

## ER 2.3. Evaluation for Use by Third Persons

- (a)** A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.
- (b)** When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c)** Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by ER 1.6.

## ER 2.4. Lawyer Serving as Third-Party Neutral

- (a)** A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.
- (b)** A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.
- (c)** A lawyer serving as a third-party neutral may choose to hold advance fees related to service as a third-party neutral in the lawyer's client trust account in compliance with ER 1.15 and Rule 43.

## ER 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

## ER 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

## ER 3.3. Candor Toward the Tribunal

**(a)** A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

**(b)** A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

**(c)** The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by ER 1.6.

**(d)** In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

## ER 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

**(a)** unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

**(b)** falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

**(c)** knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

**(d)** in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

**(e)** in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the

credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;  
or

**(f)** request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

- (1) the person is a relative or an employee or other agent of a client; and
- (2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

### ER 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

- (a)** seek to influence a judge, juror, prospective juror or other official of a tribunal by means prohibited by law;
- (b)** communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c)** communicate with a juror or prospective juror after discharge of the jury if:
  - (1) the communication is prohibited by law or court order;
  - (2) the juror has made known to the lawyer a desire not to communicate; or
  - (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d)** engage in conduct likely to disrupt a tribunal.

### ER 3.6. Trial Publicity

**(a)** A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

**(b)** Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
  - (i) the identity, residence, occupation and family status of the accused;
  - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
  - (iii) the fact, time and place of arrest; and
  - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

### ER 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by ER 1.7 or ER 1.9.

### ER 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

- (1) the information sought is not protected from disclosure by any applicable privilege;
- (2) the evidence sought is essential to the successful completion of any ongoing investigation or prosecution; and
- (3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from

making an extrajudicial statement that the prosecutor would be prohibited from making under ER 3.6 or this Rule.

**(g)** When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction, and  
(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority, make reasonable efforts to inquire into the matter or to refer the matter to the appropriate law enforcement or prosecutorial agency for its investigation into the matter.

**(h)** When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall take appropriate steps, including giving notice to the victim, to set aside the conviction.

**(i)** A prosecutor who concludes in good faith that information is not subject to subsections (g) or (h) of this Rule does not violate those subsections even if this conclusion is later determined to have been erroneous.

### ER 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of ERs 3.3(a) through (c), 3.4(a) through (c), and 3.5.

### ER 3.10. Credible and Material Exculpatory Information about a Convicted Person

**(a)** When a lawyer knows of credible and material evidence that creates a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the lawyer shall promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction.

**(b)** This Rule does not require disclosure of information otherwise protected by Rule 1.6 or other law.

**(c)** A lawyer who in good faith concludes that information is not subject to this Rule does not violate this Rule even if that conclusion is later determined to have been erroneous.

**(d)** This Rule does not require disclosure if the lawyer knows that appropriate governmental authorities or the convicted defendant already possess the information.

### ER 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by ER 1.6.

#### ER 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

#### ER 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

#### ER 4.4. Respect for Rights of Others

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document or electronically stored information and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.

#### ER 5.1. Responsibilities of Lawyers Who Have Ownership Interests or are Managers or Supervisors

- (a) A lawyer who has an ownership interest in a firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a firm, shall make reasonable efforts to ensure that the firm has in effect internal policies and procedures giving reasonable assurance that all lawyers and nonlawyers in the firm conform to these Rules of Professional Conduct.

(1) Internal policies and procedures include, but are not limited to, those designed to detect and resolve conflicts of interest, maintaining confidentiality, identifying dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

(2) Other measures may be required depending on the firm's structure and the nature of its practice.

**(b)** A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person who is being supervised and the amount of work supervised. Whether a lawyer has supervisory authority may vary given the circumstances.

**(c)** A lawyer shall be personally responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has an ownership interest in or has comparable managerial authority in the firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(i) Appropriate remedial action by an owner or managing lawyer depends on the immediacy of that lawyer's involvement and the seriousness of the misconduct.

(ii) A supervisor must intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred.

## ER 5.2. Responsibilities of a Subordinate Lawyer

**(a)** A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

**(b)** A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

## ER 5.3. Responsibilities Regarding Nonlawyers

**(a)** A lawyer in a firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of nonlawyers engaged in activities assisting lawyers in providing legal services and those who have access to attorney-client information, is compatible with the professional obligations of the lawyer. Reasonable measures include, but are not limited to, adopting and enforcing policies and procedures designed:

(1) to prevent nonlawyers in a firm from directing, controlling, or materially limiting the lawyer's independent professional judgment on behalf of clients or materially influencing which clients a lawyer does or does not represent; and

(2) to ensure that nonlawyers assisting in the delivery of legal services or working under the supervision of a lawyer comport themselves in accordance with the lawyer's ethical obligations,

including, but not limited to, avoiding conflicts of interest and maintaining the confidentiality of all lawyer client information protected by ER 1.6.

**(b)** A lawyer having supervisory authority over a nonlawyer within or outside a firm shall make reasonable efforts to ensure that the nonlawyer's conduct when engaged in activities assisting lawyers in providing legal services is compatible with the professional obligations of the lawyer.

(1) Reasonable efforts include providing to nonlawyers appropriate instruction and supervision concerning the ethical aspects of their employment or retention, particularly regarding the obligation not to disclose information relating to the representation of the client.

(2) Measures employed in supervising nonlawyers should take into account that they may not have legal training and are not subject to professional discipline.

(3) When retaining or directing a nonlawyer outside the firm to assist the lawyer's delivery of legal services, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer.

**(c)** A lawyer shall be responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer has managerial authority in the firm and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**(d)** When a firm includes nonlawyers who have an economic interest or managerial authority in the firm, any lawyer practicing therein shall ensure that a lawyer has been identified as responsible for establishing policies and procedures within the firm to assure nonlawyer compliance with these rules.

## ER 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

**(a)** A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

**(b)** Except as authorized by these Rules or other law, a lawyer who is not admitted to practice in Arizona shall not:

(1) engage in the regular practice of Arizona law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice Arizona law.

**(c)** A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in Arizona that involve Arizona law and which:

(1) are undertaken in association with a lawyer who is admitted to practice in Arizona and who actively participates in the matter.

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in Arizona or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

- (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in Arizona or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission; or
- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.
- (d)** A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, may provide legal services in Arizona that exclusively involve federal law, the law of another jurisdiction, or tribal law.
- (e)** A lawyer admitted in another United States jurisdiction, or a lawyer admitted in a jurisdiction outside the United States, not disbarred or suspended from practice in any jurisdiction, and registered pursuant to Rule 38(a) of these rules, may provide legal services in Arizona that are provided to the lawyer's employer or its organizational affiliates and are not services for which *pro hac vice* admission is required.
- (f)** Any attorney who engages in the authorized multijurisdictional practice of law in Arizona under this rule must advise the lawyer's client that the lawyer is not admitted to practice in Arizona, and must obtain the client's informed consent to such representation.
- (g)** Attorneys not admitted to practice in Arizona, who are admitted to practice law in any other jurisdiction in the United States and who appear in any court of record or before any administrative hearing officer in Arizona, must also comply with Rules of the Supreme Court of Arizona governing *pro hac vice* admission. *See* Rule 39(a).
- (h)** Any attorney who engages in the multijurisdictional practice of law in Arizona, whether authorized in accordance with these Rules or not, shall be subject to the Rules of Professional Conduct and the Rules of the Supreme Court regarding attorney discipline in Arizona.

## ER 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

- (a)** a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or
- (b)** an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

## ER 6.1. Voluntary Pro Bono Publico Service

**(a)** A lawyer should voluntarily render public interest legal service. A lawyer may discharge this responsibility by rendering a minimum of fifty hours of service per calendar year by one or a combination of the following activities:

- (1) Providing professional services at no fee or at a substantially reduced fee to the poor or near poor or to organizations that have as a principal purpose promoting the interests of the poor or near poor, or to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
  - (2) Providing services at no fee or at a substantially reduced fee in connection with law-related education sponsored by the Arizona Foundation for Legal Services & Education or activities for improving the law, the legal system or the legal profession; or
  - (3) Providing professional or other law-related services at no fee or at a substantially reduced fee to charitable groups or organizations.
  - (4) When pro bono publico service is done at a substantially reduced fee, the fee shall be agreed to in writing at the inception of the representation and refer to this Rule.
- (b)** A lawyer who works less than full-time may discharge this responsibility by adjusting downward the fifty hour standard by an appropriate percentage. A lawyer who renders substantially more than fifty hours of service in one year may carry over excessive hours to subsequent years in satisfaction of the standard.
- (c)** A law firm or other group of lawyers may satisfy their responsibility under this Rule, if they desire, collectively. For example, the designation of one or more lawyers to work on pro bono publico matters may be attributed to other lawyers within the firm or group who support the representation. Other forms of collective activity, if approved by the State Bar, may also satisfy the responsibility.
- (d)** The efforts of individual lawyers are not enough to meet the needs of the poor. The profession and government have instituted programs to provide direct delivery of legal services to the poor. The direct support of such programs is an alternative expression of support to provide law in the public interest, and a lawyer is encouraged to provide financial support for organizations that provide legal services to persons of limited means or to the Arizona Foundation for Legal Services & Education for the direct delivery of legal services to the poor.

## ER 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a)** representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b)** representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c)** the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

## ER 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons

having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

- (a)** if participating in the decision would be incompatible with the lawyer's obligations to a client under ER 1.7; or
- (b)** where the decision could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer.

#### ER 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

#### ER 6.5. Nonprofit and Court-Annexed Limited Legal Service Programs

- (a)** A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:
  - (1) is subject to ERs 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and
  - (2) is subject to ER 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by ERs 1.7 or 1.9(a) with respect to the matter.
- (b)** Except as provided in paragraph (a)(2), ER 1.10 is inapplicable to a representation governed by this Rule.
- (c)** ER 1.5 does not apply to a representation governed by this rule and for which the lawyer does not charge a fee.

#### ER 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.

- (a)** A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
- (b)** A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless the lawyer complies with Arizona Supreme Court Rule 44 requirements.
- (c)** Any communication made pursuant to this Rule shall include the name and contact information for at least one lawyer or law firm responsible for its content.

#### ER 7.3. Solicitation of Clients

**(a)** “Solicitation” or “solicit” denotes a communication initiated by or on behalf of a lawyer or firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services in a particular matter and that offers to provide, or reasonably can be understood as offering to provide, legal services for that matter.

**(b)** A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or firm's pecuniary gain, unless the contact is with a:

(1) lawyer;

(2) person who has a family, close personal, or prior business or professional relationship with the lawyer or firm; or

(3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

**(c)** A lawyer shall not solicit professional employment or knowingly permit solicitation on the lawyer's behalf even when not otherwise prohibited by paragraph (b), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

**(d)** This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal.

**(e)** Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

## ER 8.1. Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

**(a)** knowingly make a false statement of material fact; or

**(b)** fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by ER 1.6.

## ER 8.2. Judicial and Legal Officials

**(a)** A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

**(b)** A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

### ER 8.3. Reporting Professional Misconduct

- (a)** A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority, except as otherwise provided in these Rules or by law.
- (b)** A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority, except as otherwise provided in these Rules or by law.
- (c)** A lawyer who knows that a legal paraprofessional or certified Alternative Business Structure entity has committed a violation of the applicable codes of conduct that raises a substantial question as to the person or entity's compliance with the codes shall inform the appropriate authority.
- (d)** This Rule does not require disclosure of information otherwise protected by ER 1.6.
- (e)** This Rule does not require disclosure of information about another lawyer or a judge as a result of participation in an approved lawyer assistance program. A lawyer shall not disclose that information except as permitted by rules applicable to the program or by law.

### ER 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b)** commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d)** engage in conduct that is prejudicial to the administration of justice;
- (e)** state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f)** knowingly assist a judge or judicial officer in conduct that is a violation of applicable Code of Judicial Conduct or other law.
- (g)** file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).

### ER 8.5. Jurisdiction

**(a) Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

**(b) Choice of Law.** In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.



**Let's check your knowledge!**



<https://quizlet.com/990901495/arizona-rules-of-protective-order-procedure-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Revised Statutes



## **12-502: Effect of minority or insanity**

If a person entitled to bring an action other than those set forth in article 2 of this chapter is at the time the cause of action accrues either under eighteen years of age or of unsound mind, the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.

## **12-543: Oral debt; stated or open account; relief on ground of fraud or mistake; three year limitation**

There shall be commenced and prosecuted within three years after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.
2. Upon stated or open accounts other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents, but no item of a stated or open account shall be barred so long as any item thereof has been incurred within three years immediately prior to the bringing of an action thereon.
3. For relief on the ground of fraud or mistake, which cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

## **12-548: Contract in writing for debt; six year limitation; choice of law**

A. An action for debt shall be commenced and prosecuted within six years after the cause of action accrues, and not afterward, if the indebtedness is evidenced by or founded on either of the following:

1. A contract in writing that is executed in this state.
2. A credit card as defined in section 13-2101, paragraph 3, subdivision (a).

B. If there is a conflict between another jurisdiction and this state relating to the statute of limitations for a debt action as described in subsection A of this section, this section applies.

## **12-1179: Appeal to superior court; notice; bond**

A. Either party may appeal from a justice court to the superior court in the county in which the judgment is given by giving notice as in other civil actions within five calendar days after rendition of the judgment pursuant to this section. The appeal shall be filed in accordance with this section, and the time to appeal shall not be extended or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion.

B. A party seeking to appeal a judgment shall file with the notice of appeal a bond for costs on appeal. The justice of the peace shall set the bond in an amount sufficient to cover the costs on

appeal. The bond shall be payable to the clerk of the justice court. If a party is unable to file a bond for costs on appeal, the party shall file with the justice court a notice of appeal along with an affidavit stating that the party is unable to give bond for costs on appeal and the reasons therefor. Within five court days after the filing of the affidavit, any other party may file, in the justice court, objections to the affidavit. The justice of the peace shall hold a hearing on the affidavit and objections within five court days thereafter. If the justice court sustains the objections, the appellant shall file, within five court days thereafter, a bond for costs on appeal as provided for in this section or in such lesser amount as ordered by the justice court.

C. A party seeking to appeal a judgment may stay the execution of either the judgment for possession or any judgment for money damages by filing a supersedeas bond. The justice court shall hold a hearing on the motion within five court days after the parties advise the justice court of their failure to stipulate on the amount of the bond. The stay is effective when the supersedeas bond or bonds are filed.

D. The party seeking to stay the execution of the judgment for possession shall file a supersedeas bond in the amount of rent accruing from the date of the judgment until the next periodic rental date, together with costs and attorney fees, if any. The tenant shall pay to the clerk of the justice court, on or before each periodic rental due date during the pendency of the appeal, the amount of rent due under the terms of the lease or rental agreement. Such amounts shall be made payable by the justice court to the owner, landlord or agent as they accrue to satisfy the amount of periodic rent due under the lease or rental agreement. In all cases where the rent due under the terms of the lease or rental agreement is paid through the justice court as set forth in this subsection, the order of the court may include a one-time handling fee in the amount of ten dollars to be paid by the party seeking to stay the execution of the judgment for possession. In no event shall the amounts paid per month exceed the amount of monthly rent charged by the owner for the premises. If the tenant raises habitability as provided for in sections 33-1324 and 33-1364 as an affirmative defense to the nonpayment of rent or the tenant has filed a counterclaim asserting a habitability issue, the justice court shall retain all money paid under this subsection pending a final judgment.

E. If during the pendency of the appeal the party seeking to stay the execution of the judgment for possession fails to pay the rent on the periodic rental due date, the party in whose favor a judgment for possession was issued may move the justice court to lift the stay of the execution of the judgment for possession. The justice court shall hear the motion to lift the stay of the execution of the judgment for possession and release accrued monies, if any, within five court days from the failure of the party to pay the periodic rent due under the terms of the lease or rental agreement. If the judgment appealed from involves a finding of a material and irreparable breach pursuant to section 33-1368 or section 33-1476, subsection D, paragraph 3 the justice court shall treat it as an emergency matter and conduct a hearing on a motion to lift the stay of execution of the writ of restitution within three days. If the third day is a Saturday, Sunday or other legal holiday, the hearing shall be held on the next day thereafter.

F. The party seeking to stay the execution of the judgment for money damages shall file a supersedeas bond in the amount of the judgment, together with costs and attorney fees, if any. The amount of the bond shall be fixed by the court and payable to the clerk of the justice court.

#### **12-1502. [Proceedings to compel or stay arbitration](#)**

A. On application of a party showing an agreement described in section 12-1501, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the

opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party. Otherwise, the application shall be denied.

B. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

C. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection A of this section, the application shall be made therein. Otherwise and subject to section 12-2101, the application may be made in any court of competent jurisdiction.

D. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

E. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

## **12-1598: Definitions**

In this article, unless the context otherwise requires:

1. "Debt scheduling" means counseling and assistance provided to persons by a qualified debt counseling organization if:

(a) The counseling and assistance are manifested by a written agreement.

(b) The persons pay that portion of their income that has been determined to not be required to make payments for support of a person or to maintain health or the essentials of life.

(c) The payments are made to the qualified debt counseling organization until the debts are fully satisfied.

(d) The debts are determined as follows:

(i) The creditors are notified by the qualified debt counseling organization of the person's intent to participate in debt scheduling and of their opportunity to object to the participation within fifteen days after receiving the notice.

(ii) A creditor not so notified is not subject to the agreement.

(iii) A creditor who timely objects, in writing, is not subject to the agreement.

(iv) A creditor who does not timely respond to the notice, in writing, is subject to the agreement.

(e) The agreement is terminated on the occurrence of any of the following:

(i) Agreement of the parties.

(ii) Payment in full.

(iii) Death of the persons.

(iv) Filing of a voluntary or involuntary petition in bankruptcy.

(v) Failure to pay, within fifteen days of its due date, any payment due under the agreement.

2. "Deliver" means any of the following:

(a) To hand deliver.

(b) To mail by regular first class mail to the address which the sender determines through reasonable good faith efforts to be best calculated to reach the recipient in a timely manner.

(c) To serve on a party pursuant to the rules of civil procedure applicable to service of a summons.

3. "Disposable earnings" means that amount remaining from the gross earnings for a pay period after the deductions required by state and federal law.

4. "Earnings" means compensation paid or payable for personal services, whether these payments are called wages, salary, commission, bonus or otherwise. Earnings include periodic payments pursuant to a pension or retirement program.

5. "Effective agreement" means an agreement under which no act of termination has occurred.

6. "Exempt earnings" means those earnings or that portion of earnings which pursuant to state or federal law is not subject to judicial process including garnishment.

7. "Good faith" means honesty in fact in the conduct or transaction concerned.

8. "Judgment creditor" means a party who has a money judgment or an order for support of a person that is due and unpaid.

9. "Judgment debtor" means a party against whom a money judgment or order for support of a person has been awarded.

10. "Nonexempt earnings" means those earnings or that portion of earnings which is subject to judicial process including garnishment.

11. "Payday" means the fixed, regular day for payment of wages designated by an employer pursuant to section 23-351.

12. "Qualified debt counseling organization" means a nonprofit corporation authorized to do business in this state for the purpose of counseling persons with respect to their financial obligations and assisting them in dealing with their creditors.

13. "Receipt" means actually received.

## **12-1598.01: Scope of article**

A. The provisions of this article are applicable to indebtedness owed to a judgment debtor by a garnishee for monies which are earnings as defined in section 12-1598, paragraph 4. Earnings become monies, as defined in section 12-1570, paragraph 6, upon their disbursement by the employer to or for the account of the employee, except disbursements into a pension or retirement fund.

B. The provisions of this article are not applicable to garnishments of:

1. Indebtedness owed to a judgment debtor by a garnishee for amounts which are not earnings as defined in section 12-1598, paragraph 4.

2. Monies held by a garnishee on behalf of a judgment debtor.

3. Personal property of a judgment debtor that is in the possession of a garnishee.

4. Shares or securities of a corporation or a proprietary interest in a corporation belonging to a judgment debtor, if the garnishee is a corporation.

## **12-1598.02: Grounds for issuance of writ of garnishment of earnings**

The clerk of the court, justice of the peace or city or town magistrate shall issue writs of garnishments of earnings, returnable to that court, only in cases in which a party to that action is a judgment creditor. The city or town magistrate shall issue writs of garnishment only for nonpayment of fines, fees, sanctions and restitution imposed in that court.

## **12-1598.03: Application for writ of garnishment for earnings**

A writ of garnishment shall be issued pursuant to this article after the judgment creditor or a person on the judgment creditor's behalf makes an application in writing. The application shall state the following:

1. That the judgment creditor is a party in an action to whom a money judgment has been awarded.

2. That the judgment creditor has made demand on the judgment debtor for payment of the amount adjudged due, but the judgment debtor has not paid that amount and the judgment debtor has not agreed and continued to pay the nonexempt portion of the judgment debtor wages until the judgment is satisfied.

3. The amount of the outstanding balance due on the judgment on the date that the application is made, together with interest, accrued attorney fees, including fees for the garnishment, if allowed by the judgment or contract and allowable costs, is that amount stated on the application.
4. That the garnishee is believed to be an employer of the judgment debtor or otherwise owes or will owe to the judgment debtor disposable earnings.
5. The name and address of the garnishee or the garnishee's authorized agent.
6. That the judgment creditor has not received notice of the judgment debtor's intent to enter into an agreement for debt scheduling with a qualified debt counseling organization or, if such a notice has been received, that the judgment creditor timely objected, in writing, to the judgment debtor's participation in such an agreement or that the judgment creditor has been notified that the agreement is no longer effective.

### **12-1598.04: Issuance of writ of garnishment for earnings; service and return of writ; lien on nonexempt earnings**

A. If a party in an action has been awarded a money judgment and has submitted the application provided for in section 12-1598.03, the clerk, justice of the peace or city or town magistrate shall immediately issue a writ and summons of garnishment directed to the sheriff, the constable or any officer authorized by law to serve process in the county where the garnishee is alleged to be which commands him to immediately summon the garnishee to appear before the court out of which the writ issued within the time specified in the writ to answer the writ.

B. The writ shall state:

1. The amount of the outstanding balance due on the judgment, including accrued interest, attorney fees and allowable costs, as of the date of the issuance of the writ, and the rate at which interest accrues on that judgment.
2. The name and address of the garnishee or his authorized agent.
3. The name and address of the judgment creditor and his attorney, if applicable.
4. The last mailing address of the judgment debtor known to the judgment creditor.

C. The judgment creditor, in the manner required for a summons by rules of the court in civil matters, shall serve on the garnishee two copies of the writ of garnishment and summons, a copy of the underlying judgment, four copies of the answer form, two copies of the notice to judgment debtor and request for hearing form, two copies of the instructions to garnishee and four copies of the nonexempt earnings statement provided for in section 12-1598.16.

D. The judgment creditor shall deliver to the judgment debtor a copy of the writ and the initial notice to judgment debtor and request for hearing form within three days, not including weekends and holidays, after service of the summons and writ of garnishment on the garnishee. The judgment creditor shall certify in writing to the court the date and manner of delivery.

E. The caption of pleadings in connection with a writ of garnishment shall identify which party is the judgment creditor, using that term, and which party is the judgment debtor, using that term, in addition to other party designations already in the caption.

### **12-1598.05: Initial lien**

A. The writ is a lien on the nonexempt earnings of the judgment debtor from the date of service of the writ until any one of the following occurs:

1. An order of continuing lien is entered.
2. If no order is entered for a period of forty-five days after the date of the filing of the answer.
3. The writ is quashed, released or becomes ineffective as a result of the circumstances set forth in section 12-1598.10, subsection D.

B. The garnishee shall not remit any withheld earnings to the judgment creditor until an order of the court has been entered pursuant to section 12-1598.10.

C. The garnishee is not liable to the judgment creditor for failing to withhold earnings from a judgment debtor if those earnings were paid to the judgment debtor on a payday falling within three days, not including weekends and holidays, after the date of the service of the writ.

### **12-1598.06: Time for answer**

The writ, whether issued in the superior court, the justice court or the municipal court, shall require the garnishee to answer within ten days from service of the writ.

### **12-1598.07: Objection to garnishment, answer or nonexempt earnings statement; hearing**

A. A party who has an objection to the writ of garnishment, the answer of garnishee or a nonexempt earnings statement may file a written objection and request for hearing on a form similar to those set forth in section 12-1598.16. The hearing must be requested no later than ten days after receipt of the answer or nonexempt earnings statement objected to unless good cause for filing the request later is shown. At the time of filing the request for hearing form, the party filing the objection shall deliver a copy of the form to all parties to the writ.

B. The hearing on an objection to the writ, answer or amount withheld or on a claim of exemption shall be commenced within ten days after receipt of the request by the court but may be continued for good cause on terms the court deems appropriate after due consideration of the importance of the judgment debtor's rights and the need for a speedy determination. Good cause includes a situation in which the objection raised at the hearing is different from that set forth in the request for hearing form. The hearing shall not be held later than fifteen days after the date the request was received by the court unless the request for a continuance is made by the judgment debtor.

C. A party requesting a hearing pursuant to this section is required to state the grounds for the party's objection in writing, but the objecting party is not limited to those written objections at the hearing conducted pursuant to this section.

D. The court shall notify the parties of the date and time of the hearing at least two days, not including weekends and holidays, before the date of the hearing.

E. The prevailing party may be awarded costs and attorney fees in a reasonable amount determined by the court. An award of attorney fees that are incurred due to the objection shall not be assessed against nor is it chargeable to the judgment debtor unless the judgment debtor is found to have objected solely for the purpose of delay or to harass the judgment creditor.

### **12-1598.08: Answer of garnishee to writ of garnishment of earnings; filing; delivery; notice**

A. The answer of the garnishee shall be under oath, in writing and signed by him and shall make true answers to the writ. If there are more judgment debtors than one, the garnishee shall answer as to each judgment debtor named in the writ. The answer of any garnishee, including a corporate garnishee, may be filed by the garnishee without representation of an attorney.

B. The answer of the garnishee shall set forth the following:

1. Whether the judgment debtor was employed by the garnishee on the date the writ was served.
2. Whether the garnishee anticipates owing earnings within sixty days after the date of service of the writ.
3. If the garnishee is unable to determine the identity of the judgment debtor after making a good faith effort to do so, a statement of the effort made and reasons for such inability.
4. The dates of the next two paydays occurring after the date of service of the writ.
5. The pay period of the judgment debtor, whether weekly, biweekly, semimonthly, monthly or another specified period.
6. The amount of the outstanding judgment now due and owing as stated in the writ.
7. Whether the judgment debtor is subject to an existing wage assignment, garnishment or levy, and if so, the name, address and telephone number of that judgment creditor.
8. The name, address and telephone number of the garnishee.
9. The date and manner of delivery of a copy of the answer to the judgment debtor and judgment creditor.

C. The garnishee shall deliver a copy of the answer to the judgment creditor or the judgment creditor's attorney, if applicable. At the same time the garnishee shall deliver a copy of the answer

and a copy of the notice to judgment debtor and request for hearing form to the judgment debtor. The garnishee shall state the time and manner of delivery in the answer.

### **12-1598.09: Discharge of garnishee**

If it appears from the answer of the garnishee that he did not employ the judgment debtor at the time the writ was served, would not owe earnings to the judgment debtor within sixty days after service of the writ on the garnishee or the garnishee was unable to determine the identity of the judgment debtor after making a good faith effort to do so, and if no written objection is timely filed, the court shall enter judgment discharging the garnishee.

### **12-1598.10: Continuing lien on earnings; order**

A. If it appears from the answer of the garnishee that the judgment debtor was an employee of the garnishee, or that the garnishee otherwise owed earnings to the judgment debtor when the writ was served, or earnings would be owed within sixty days thereafter and there is no timely written objection to the writ or the answer of the garnishee filed, on application by the judgment creditor the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor who is entitled to such monies subject to the judgment debtor's right to objection and hearing pursuant to this article. The court shall further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor.

B. If a timely objection is filed the court shall conduct a hearing pursuant to section 12-1598.07 and shall make the following determinations:

1. Whether the writ is valid against the judgment debtor.
2. The amount outstanding on the judgment at the time the writ was served, plus accruing attorney fees and costs.
3. Whether the judgment debtor was employed by the garnishee at the time the writ was served.
4. Whether earnings were owed or would be owed by the garnishee to the judgment debtor within sixty days after the service of the writ.
5. Whether the debt was, at the time of service of the writ, subject to an effective agreement for debt scheduling between the judgment debtor and a qualified debt counseling organization.

C. If the court makes an affirmative determination under subsection B, paragraph 1 of this section and subsection B, paragraph 3 or 4 of this section and determines that the debt was not, at the time of service of the writ, subject to an effective agreement between the judgment debtor and a qualified debt counseling organization, the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor and further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. Otherwise the court shall order the garnishee discharged from the writ.

D. A continuing lien ordered pursuant to this section is invalid and of no force and effect on the occurrence of any of the following conditions:

1. The underlying judgment is satisfied in full, is vacated or expires.
  2. The judgment debtor leaves the garnishee's employ for more than sixty days or, if the judgment debtor is an employee of a school district, a charter school, the Arizona state schools for the deaf and the blind or an accommodation school and the judgment debtor is subject to an employment contract that specifies that paydays are restricted to the school year, for more than ninety days.
  3. The judgment creditor releases the garnishment.
  4. The proceedings are stayed by a court of competent jurisdiction, including the United States bankruptcy court.
  5. The judgment debtor has not earned any nonexempt earnings for at least sixty days or, if the judgment debtor is an employee of a school district, a charter school, the Arizona state schools for the deaf and the blind or an accommodation school and the judgment debtor is subject to an employment contract that specifies that paydays are restricted to the school year, for at least ninety days.
  6. The court orders that the garnishment be quashed.
- E. If no objections are filed to the answer of the garnishee and an order of continuing lien is not entered within forty-five days after the filing of the answer of the garnishee, any earnings held by the garnishee shall be released to the judgment debtor and the garnishee shall be discharged from any liability on the garnishment.
- F. If at the hearing the court determines that the judgment debtor is subject to the twenty-five percent maximum disposable earnings provision under section 33-1131, subsection B and based on clear and convincing evidence that the judgment debtor or the judgment debtor's family would suffer extreme economic hardship as a result of the garnishment, the court may reduce the amount of nonexempt earnings withheld under a continuing lien ordered pursuant to this section from the twenty-five percent to not less than fifteen percent.
- G. A court order entered pursuant to this section if recorded does not constitute a lien against real property pursuant to section 33-961.
- H. The court, sitting without a jury, shall decide all issues of fact and law.

## **12-1598.10; Version 2: Continuing lien on earnings; order**

A. If it appears from the answer of the garnishee that the judgment debtor was an employee of the garnishee, or that the garnishee otherwise owed earnings to the judgment debtor when the writ was served, or earnings would be owed within sixty days thereafter and there is no timely written objection to the writ or the answer of the garnishee filed, on application by the judgment creditor the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor who is entitled to such monies subject to the judgment debtor's right to objection and hearing pursuant to this article. The court shall further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor.

B. If a timely objection is filed the court shall conduct a hearing pursuant to section 12-1598.07 and shall make the following determinations:

1. Whether the writ is valid against the judgment debtor.
2. The amount outstanding on the judgment at the time the writ was served, plus accruing costs.
3. Whether the judgment debtor was employed by the garnishee at the time the writ was served.
4. Whether earnings were owed or would be owed by the garnishee to the judgment debtor within sixty days after the service of the writ.
5. Whether the debt was, at the time of service of the writ, subject to an effective agreement for debt scheduling between the judgment debtor and a qualified debt counseling organization.

C. If the court makes an affirmative determination under subsection B, paragraph 1 of this section and subsection B, paragraph 3 or 4 of this section and determines that the debt was not, at the time of service of the writ, subject to an effective agreement between the judgment debtor and a qualified debt counseling organization, the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor and further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. Otherwise the court shall order the garnishee discharged from the writ.

D. A continuing lien ordered pursuant to this section is invalid and of no force and effect on the occurrence of any of the following conditions:

1. The underlying judgment is satisfied in full, is vacated or expires.
2. The judgment debtor leaves the garnishee's employ for more than sixty days or, if the judgment debtor is an employee of a school district, a charter school, the Arizona state schools for the deaf and the blind or an accommodation school and the judgment debtor is subject to an employment contract that specifies that paydays are restricted to the school year, for more than ninety days.
3. The judgment creditor releases the garnishment.
4. The proceedings are stayed by a court of competent jurisdiction, including the United States bankruptcy court.
5. The judgment debtor has not earned any nonexempt earnings for at least sixty days or, if the judgment debtor is an employee of a school district, a charter school, the Arizona state schools for the deaf and the blind or an accommodation school and the judgment debtor is subject to an employment contract that specifies that paydays are restricted to the school year, for at least ninety days.
6. The court orders that the garnishment be quashed.

E. If no objections are filed to the answer of the garnishee and an order of continuing lien is not entered within forty-five days after the filing of the answer of the garnishee, any earnings held by the

garnishee shall be released to the judgment debtor and the garnishee shall be discharged from any liability on the garnishment.

F. If at the hearing the court determines that the judgment debtor is subject to the ten percent maximum disposable earnings provision under section 33-1131, subsection B and based on clear and convincing evidence that the judgment debtor or the judgment debtor's family would suffer extreme economic hardship as a result of the garnishment, the court may reduce the amount of nonexempt earnings withheld under a continuing lien ordered pursuant to this section from the ten percent to not less than five percent.

G. A court order entered pursuant to this section if recorded does not constitute a lien against real property pursuant to section 33-961.

H. The court, sitting without a jury, shall decide all issues of fact and law.

### **12-1598.11: Continuing lien procedure; nonexempt earnings statement**

A. An order of continuing lien on nonexempt earnings entered pursuant to this article requires the garnishee to continue to withhold the nonexempt earnings of the judgment debtor for as long as the continuing lien remains in effect.

B. Beginning with the pay period during which the writ was served, and while the continuing lien remains in effect, for each pay period the garnishee shall do the following:

1. Complete the nonexempt earnings statement.
  2. Deliver the nonexempt earnings statement to the judgment debtor with his exempt earnings for that pay period.
  3. At the same time deliver a copy of the nonexempt earnings statement to the judgment creditor or his attorney.
- C. After the entry of an order of continuing lien pursuant to section 12-1598.10, and for each pay period thereafter, the garnishee shall deliver the nonexempt earnings to the judgment creditor or his attorney, together with the nonexempt earnings statement.

D. Neither the original nor a copy of the nonexempt earnings statement shall be filed with the court unless an objection to the amount withheld, if any, is timely filed by a party.

E. The judgment creditor shall deliver to the garnishee sufficient copies of the appropriate nonexempt earnings statement and request for hearing forms so that the garnishee is able to comply with the requirements of this section, unless the judgment creditor is advised that the garnishee will supply his own forms.

### **12-1598.12: Reporting by judgment creditor**

A. Except as provided in subsection B of this section, as long as the order of continuing lien is in effect the judgment creditor shall issue a report in writing to the garnishee and the judgment debtor within twenty-one days after the end of each calendar quarter.

B. The judgment creditor shall report in writing to the garnishee and judgment debtor within twenty-one days after payment is received from the garnishee reducing the outstanding balance on the judgment to \$500 or less and within the first ten days of each calendar month thereafter until the judgment is satisfied.

C. The reports required in subsections A and B of this section shall contain the following:

1. The beginning and ending date of the reporting period for that report. The beginning date of the first reporting period is the date the writ was served.
2. The date and amount of each payment received during the reporting period.
3. The total amount credited to the judgment balance for that reporting period.
4. The interest, attorney fees and costs accrued during that reporting period.
5. The total outstanding balance due on the judgment as of the ending date of the reporting period.

D. It is the obligation of the judgment creditor to take reasonable action to ensure that the garnishee does not withhold more nonexempt earnings of the judgment debtor than are necessary to satisfy the underlying judgment. Reasonable action includes at least written notice directed to the garnishee or the garnishee's authorized representative if the balance due on the judgment is less than double the amount of nonexempt earnings received in the preceding two pay periods. The judgment creditor shall instruct the garnishee to cease withholding earnings after the full amount of the judgment has been paid to the judgment creditor or when the judgment creditor has been notified that sufficient monies have been withheld to satisfy the underlying judgment.

E. Immediately after the underlying judgment is satisfied or expires, the judgment creditor shall file with the clerk of the court a satisfaction or release of the writ and shall deliver a copy of that satisfaction or release to the garnishee, the judgment debtor and any creditor who has delivered a written request for such a notice to the judgment creditor or the judgment creditor's attorney.

### **12-1598.13: Contempt proceedings; default of garnishee**

A. If the judgment creditor fails to comply with any duty imposed upon him by this article, the court shall, upon petition of any party to the proceedings affected by such failure and after notice, hold a hearing to determine whether such failure to comply, if any, was occasioned by mistake, inadvertence or excusable neglect. If the court determines that any failure to comply was not the result of mistake, inadvertence or excusable neglect, the court shall find the judgment creditor in contempt and shall award the petitioner all of the following:

1. An amount to compensate for actual losses, if any, caused by the failure to comply.
2. Reasonable attorney fees, if the petitioner was represented by an attorney at such hearing.

3. Court costs.

4. An additional amount of not less than one hundred nor more than one thousand dollars.

B. If a garnishee fails after written notice to deliver nonexempt earnings to the judgment creditor within thirty days after the ending date of the pay period, or fails after written notice to deliver the nonexempt earnings statement to the judgment debtor with the exempt earnings, the judgment debtor may petition the court for relief. The court shall, after notice, hold a hearing to determine if such failure, if any, was wilful or the result of gross negligence. If the court determines that the failure was wilful or the result of gross negligence, the court shall find the garnishee in contempt and shall award the judgment debtor all of the following:

1. An amount to compensate for actual losses, if any, caused by the failure to comply.
2. Reasonable attorney fees, if the judgment debtor was represented by an attorney at such hearing.
3. Court costs. The court may award the judgment debtor an additional amount not to exceed four hundred dollars.

C. While an order of continuing lien pursuant to section 12-1598.10 is in effect, if the garnishee fails to deliver to the judgment creditor the nonexempt earnings of the judgment debtor, if any, and the copy of the nonexempt earnings statement within fourteen days of the end of the pertinent pay period, and the judgment creditor thereafter delivers a written demand for the nonexempt earnings and statement, and the garnishee does not comply within fourteen days of the receipt of the written demand, the judgment creditor may petition the court for relief. The court shall, after notice, hold a hearing to determine whether the failure to comply with the written demand within fourteen days of receipt, if any, was wilful or the result of gross negligence. If the court determines that the failure was wilful or the result of gross negligence, the court shall find the garnishee in contempt and shall award the judgment creditor all of the following:

1. An amount to compensate for actual losses, if any, caused by the failure to comply.
2. Reasonable attorney fees, if the judgment creditor was represented by an attorney at such hearing.
3. Court costs. The court may award the judgment creditor an additional amount not to exceed four hundred dollars.

D. If after conducting a hearing required by subsection A, B or C of this section, the court determines that a petition filed pursuant to subsection A, B or C of this section is without merit, the court may award reasonable attorney fees to any party adversely affected by the petition, if the party adversely affected was represented by an attorney at such hearing.

E. A party may request the court to order the relief set forth in subsection A, B, C or D of this section in the case which is the basis of the garnishment.

F. This section does not restrict a party from pursuing any common law remedies.

G. The garnishee may conclusively rely on and is not liable to the judgment debtor for acting in reliance on the validity and authenticity of a garnishment which is regular on its face.

H. If a garnishee fails to answer within the time specified in the writ, the party for whom the writ has been issued may petition the court for the issuance of an order requiring the garnishee to appear before the court at a time and place specified in the order to answer the writ or to file and serve a copy of the answer on the party for whom the writ has been issued, or on his attorney if the party is represented by counsel, at least five days before the appearance date. If the garnishee fails to appear or file and serve the answer after the service of the order requiring the appearance in person or answer on the garnishee, the court may render judgment by default against the garnishee for the full amount of the judgment against the judgment debtor. The court may award a reasonable attorney's fee to the party for whom the writ was issued and against the garnishee if the writ was not answered within the time specified in the writ and a petition requiring the garnishee to appear or answer was filed as provided in this section.

### **12-1598.14: Priority**

A. Except as provided in subsections B and C, conflicting wage garnishments and levies rank according to priority in time of service.

B. Garnishments, levies and wage assignments which are not for the support of a person are inferior to wage assignments for the support of a person. Garnishments which are not for the support of a person and levies are inferior to garnishments for the support of a person.

C. If a judgment debtor's earnings become subject to more than one writ of garnishment pursuant to this article, and because of the application of the priorities set forth in subsections A and B a judgment creditor recovers no nonexempt earnings for two consecutive paydays, the lien on earnings of such judgment creditor is invalid and of no force and effect, and the garnishee shall notify the judgment creditor accordingly.

### **12-1598.15: Taxing costs**

A. If the garnishee is discharged on the garnishee's answer, the cost of the proceeding, including reasonable compensation to the garnishee, shall be taxed against the judgment creditor.

B. If there is no written objection to the answer of the garnishee and the garnishee is held on the garnishee's answer, the attorney fees that are allowed by section 12-1598.03, paragraph 3 and costs as provided in subsection A of this section shall be taxed against the judgment debtor.

C. If the answer or nonexempt earnings statement is objected to in writing the attorney fees and costs shall abide the issue.

D. If no objection is filed to the answer of the garnishee, the costs provided in subsections A and B of this section shall not exceed \$50 excluding costs of service and the cost of issuance of the writ.

E. While a continuing lien is in effect the garnishee may deduct from the nonexempt earnings of the judgment debtor the amount of \$5 each pay period as a fee for preparing and delivering the nonexempt earnings statement. If there were not sufficient nonexempt earnings to collect this fee,

and an amount arising from this fee remains owing when the writ becomes invalid or is released, the amount is chargeable against the judgment creditor and not the judgment debtor.

## **12-1598.16: Forms**

A. The court, justice of the peace or city or town magistrate shall provide to the parties, at no charge, copies of the following documents:

1. The initial notice to judgment debtor and request for hearing form required to be delivered pursuant to section 12-1598.04.
2. The notice to judgment debtor and request for hearing form required to be delivered pursuant to section 12-1598.08.
3. The answer form required to be delivered pursuant to sections 12-1598.04 and 12-1598.08.
4. The instructions to garnishee required to be delivered pursuant to section 12-1598.04.
5. The nonexempt earnings statement required to be delivered pursuant to section 12-1598.11.

B. The initial notice to judgment debtor and request for hearing form shall be in a form prescribed by the supreme court and shall contain at a minimum the following:

1. An explanation of the judgment debtor's rights and responsibilities relating to the garnishment procedure, including information concerning:

- (a) Exemption rights.
- (b) Grounds for objecting to the writ.
- (c) The objection and hearing procedures.

2. A form on which the judgment debtor may request a hearing.

C. The initial notice to judgment debtor and request for hearing form prescribed by the supreme court shall be in substantially the following form:

Initial notice to judgment debtor

To collect his judgment against you the judgment creditor has asked this court to issue a writ of garnishment (see copy of writ attached). Information about the judgment and the name and address of the judgment creditor and garnishee are stated in the writ and the copy of the judgment, which is attached.

The writ of garnishment is a court order requiring the garnishee to withhold a certain amount from your earnings and to continue to withhold a portion of your earnings until the judgment is satisfied or the writ is quashed by the court or released by the judgment creditor.

The law provides that a certain amount of each paycheck or other earnings is exempt from collection by a writ of garnishment. In some cases of very low income no amount can be garnished except for an order for support of a person. Different exemption rights may apply to the collection of taxes.

Within ten days after the date the garnishee was served with the writ of garnishment, he is required to deliver to you the following documents:

1. Answer of garnishee.
2. Notice to judgment debtor, which explains your rights and the procedures in the garnishment process.
3. Request for hearing form, which you can use to request a hearing if you believe that the amount withheld from your earnings is greater than the law allows or that the garnishment is invalid.

On each normal payday you should receive some earnings (paycheck) for the amount the garnishee calculates is protected by law. That calculation is made on a nonexempt earnings statement, a copy of which should accompany your paycheck. If the judgment creditor's debt is subject to an effective agreement for debt scheduling between you and a qualified debt counseling organization and if you do not receive a paycheck, or if a copy of the nonexempt earnings statement does not accompany your paycheck, you may request a hearing.

To request a hearing for the reasons described above, fill out the attached request for hearing form and deliver it to this court's clerk's office. At the same time you must deliver a copy (photocopy or handwritten) of the request for hearing to the garnishee and to the judgment creditor, or his attorney, at the address stated on the writ of garnishment.

You will also be given an opportunity to request a hearing after you receive the answer of garnishee. A request for hearing can be made no later than ten days after you receive the answer of garnishee, unless good cause is shown why the request was filed later.

If you request a hearing, the court or justice of the peace will set the hearing within ten days of the date you submitted your request for hearing, and the court will notify you, the judgment creditor and the garnishee of the date, time and place of the hearing.

## **12-1598.17: Mailing; receipt; presumptions**

A. For the purposes of this article, it is presumed that a document has been received five days after it is mailed as provided in section 12-1598, paragraph 2, subdivision (b).

B. For the purposes of this article, if a party to the garnishment action mails a document to the address contained in the writ or to the most recent address contained in the party's records, it is presumed that the party has complied with the good faith requirement of section 12-1598, paragraph 2, subdivision (b).

C. For the purposes of this article, delivery as defined by section 12-1598, paragraph 2, subdivision (b) shall not be deemed service by mail.

## **12-1809: Injunction against harassment; petition; venue; fees; notices; enforcement; definition**

A. A person may file a verified petition with a magistrate, justice of the peace or superior court judge for an injunction prohibiting harassment. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff, and the minor is a specifically designated person for the purposes of subsection F of this section. If a person is either temporarily or permanently unable to request an injunction, a third party may request an injunction on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. Notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an injunction against harassment.

B. An injunction against harassment shall not be granted:

1. Unless the party who requests the injunction files a written verified petition for injunction.
2. Against a person who is less than twelve years of age unless the injunction is granted by the juvenile division of the superior court.
3. Against more than one defendant.

C. The petition shall state all of the following:

1. The name of the plaintiff. The plaintiff's address and contact information shall be disclosed to the court for purposes of service and notification. The address and contact information shall not be listed on the petition. Whether or not the court issues an injunction against harassment, the plaintiff's address and contact information shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
2. The name and address, if known, of the defendant.
3. A specific statement showing events and dates of the acts constituting the alleged harassment.
4. The name of the court in which there was or is any prior or pending proceeding or order concerning the conduct that is sought to be restrained.
5. The relief requested.

D. A fee shall not be charged for filing a petition under this section. Fees for service of process may be deferred or waived under any rule or law applicable to civil actions, except that fees for service of process shall not be charged if the petition arises out of sexual violence as defined in section 23-371. The court shall advise a plaintiff that the plaintiff may be eligible for the deferral or waiver of these fees at the time the plaintiff files a petition. The court shall not require the plaintiff to perform community restitution as a condition of the waiver or deferral of fees for service of process. A law enforcement agency or constable shall not require the advance payment of fees for service of process of injunctions against harassment. If the court does not waive the fees, the serving agency

may assess the actual fees against the plaintiff. On request of the plaintiff, an injunction against harassment that is issued by a municipal court may be served by the police agency for that city if the defendant can be served within the city. If the defendant cannot be served within the city, the police agency in the city in which the defendant can be served may serve the injunction. On request of the plaintiff, each injunction against harassment that is issued by a justice of the peace shall be served by the constable for that jurisdiction if the defendant can be served within the jurisdiction. If the defendant cannot be served within that jurisdiction, the constable in the jurisdiction in which the defendant can be served shall serve the injunction. On request of the plaintiff, an injunction against harassment that is issued by a superior court judge or commissioner may be served by the sheriff of the county. If the defendant cannot be served within that jurisdiction, the sheriff in the jurisdiction in which the defendant can be served may serve the order. The court shall provide, without charge, forms for purposes of this section for assisting parties without counsel.

E. The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the injunction requested should issue without a further hearing. Rules 65(a)(1) and 65(e) of the Arizona rules of civil procedure do not apply to injunctions that are requested pursuant to this section. If the court finds reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition or that good cause exists to believe that great or irreparable harm would result to the plaintiff if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and the court finds specific facts attesting to the plaintiff's efforts to give notice to the defendant or reasons supporting the plaintiff's claim that notice should not be given, the court shall issue an injunction as provided in subsection F of this section. If the court denies the requested relief, it may schedule a further hearing within ten days with reasonable notice to the defendant. For the purposes of determining the one-year period, any time that the defendant has been incarcerated or out of this state shall not be counted.

F. If the court issues an injunction, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more acts of harassment.
2. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons.
3. Grant relief necessary for the protection of the alleged victim and other specifically designated persons proper under the circumstances.

G. The court shall not grant a mutual injunction against harassment. If opposing parties separately file verified petitions for an injunction against harassment, the courts after consultation between the judicial officers involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross injunctions against harassment.

H. At any time during the period during which the injunction is in effect, the defendant is entitled to one hearing on written request. A fee may not be charged for requesting a hearing. A hearing that is requested by a defendant shall be held within ten days from the date requested unless the court finds compelling reasons to continue the hearing. The hearing shall be held at the earliest possible time. An ex parte injunction that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office

where the request may be filed. After the hearing, the court may modify, quash or continue the injunction.

I. The injunction shall include the following statement:

#### Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

J. An injunction that is not served on the defendant within one year after the date that the injunction is issued expires. The injunction is effective on the defendant on service of a copy of the injunction and petition and expires one year after service on the defendant. A modified injunction is effective on service and expires one year after service of the initial injunction and petition.

K. A supplemental information form that is used solely for the purposes of service of process on the defendant and that contains information provided by the plaintiff is confidential.

L. Each affidavit, declaration, acceptance or return of service shall be filed as soon as practicable but not later than seventy-two hours, excluding weekends and holidays, with the clerk of the issuing court or as otherwise required by court rule. This filing shall be completed in person, electronically or by fax.

M. The supreme court shall maintain a central repository for injunctions. Within twenty-four hours after the affidavit, declaration, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the injunction or any modified injunction was issued shall enter the order and proof of service into the supreme court's central repository for injunctions. The supreme court shall register the injunction with the national crime information center. The effectiveness of an injunction does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an injunction, whether or not registered, is presumed to be a valid existing order of the court for a period of one year from the date of service of the injunction on the defendant.

N. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an injunction that is issued pursuant to this section, whether or not the violation occurred in the presence of the officer. The provisions for release under section 13-3903 do not apply to an arrest made pursuant to this subsection. A person who is arrested pursuant to this subsection may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

O. If a peace officer responds to a call alleging that harassment has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An injunction pursuant to this section.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.

P. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The municipal court and the justice court may hear and decide all matters arising pursuant to this section. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, section 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. A fee may not be charged to either party for filing an appeal.

Q. A peace officer who makes an arrest pursuant to this section is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice. A peace officer is not civilly liable for noncompliance with subsection O of this section.

R. This section does not apply to preliminary injunctions issued pursuant to an action for dissolution of marriage or legal separation or for protective orders against domestic violence.

S. In addition to the persons who are authorized to serve process pursuant to rule 4(d), Arizona rules of civil procedure, a peace officer or a correctional officer as defined in section 41-1661 who is acting in the officer's official capacity may serve an injunction against harassment that is issued pursuant to this section.

T. For the purposes of this section, "harassment":

1. Means either of the following:

(a) A series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.

(b) One or more acts of sexual violence as defined in section 23-371.

2. Includes unlawful picketing, trespassory assembly, unlawful mass assembly, concerted interference with lawful exercise of business activity and engaging in a secondary boycott as defined in section 23-1321 and defamation in violation of section 23-1325.

## **12-1810: Injunction against workplace harassment; definitions**

A. An employer or an authorized agent of an employer may file a written verified petition with a magistrate, justice of the peace or superior court judge for an injunction prohibiting workplace harassment.

B. The court shall not grant an injunction against workplace harassment against either:

1. A person who is under twelve years of age unless the injunction is granted by the juvenile division of the superior court.
2. More than one defendant.

C. The petition shall state all of the following:

1. The name of the employer.
2. The name and address, if known, of the defendant.
3. A specific statement showing the events and dates of the acts that constitute harassment toward the employer or any person who enters the employer's property or who is performing official work duties.

D. The filing fee for a petition that is filed pursuant to this section is established pursuant to sections 12-284, 22-281 and 22-404.

E. The court shall review the petition and any evidence offered by the employer to determine whether to issue the injunction without further hearing. Rules 65(a)(1) and 65(e) of the Arizona rules of civil procedure do not apply to injunctions requested pursuant to this section. If the court finds reasonable evidence of workplace harassment by the defendant or that good cause exists to believe that great or irreparable harm would result to the employer or any other person who enters the employer's property or who is performing official work duties or if the injunction is not granted before the defendant or the defendant's attorney can be heard in opposition and the court finds specific facts that attest to the employer's efforts to give notice to the defendant or reasons supporting the employer's claim that notice should not be given, the court shall issue an injunction pursuant to subsection F of this section. If the court denies the requested relief, the court may schedule a further hearing within ten days with reasonable notice to the defendant.

F. If the court grants an injunction against workplace harassment, the court may do any of the following:

1. Restrain the defendant from coming near the employer's property or place of business and restrain the defendant from contacting the employer or other person while that person is on or at the employer's property or place of business or is performing official work duties.
2. Grant any other relief necessary for the protection of the employer, the workplace, the employer's employees or any other person who is on or at the employer's property or place of business or who is performing official work duties.

G. If the court issues an ex parte injunction pursuant to this section, the injunction shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office in which the request may be filed. At any time during the period that the injunction is in effect, the defendant may request a hearing. The court shall hold the hearing within ten days after the date of the written request unless the court finds compelling reasons to continue

the hearing. The hearing shall be held at the earliest possible time. After the hearing, the court may modify, quash or continue the injunction.

H. An injunction against workplace harassment that is issued pursuant to this section shall include the following statement:

#### Warning

This is an official court order. If you disobey this order, you may be arrested and prosecuted for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

I. An injunction that is not served on the defendant within one year after the date that the injunction is issued expires. The injunction is effective on the defendant on service of a copy of the injunction and petition and expires one year after service on the defendant. A modified injunction is effective on service and expires one year after service of the initial injunction and petition.

J. A supplemental information form that is used solely for the purposes of service of process on the defendant and that contains information provided by the plaintiff is confidential.

K. Each affidavit, declaration, acceptance or return of service shall be filed as soon as practicable but not later than seventy-two hours, excluding weekends and holidays, with the clerk of the issuing court or as otherwise required by court rule. The filing shall be completed in person, electronically or by fax.

L. The supreme court shall maintain a central repository for injunctions. Within twenty-four hours after the affidavit, declaration, acceptance or return of service has been filed, excluding weekends and holidays, the court that issued the injunction shall enter the order and proof of service into the supreme court's central repository for injunctions. The supreme court shall register a copy of the injunction and a copy of the affidavit of service of process or acceptance of service with the national crime information center. The effectiveness of an injunction does not depend on the injunction's registration, and for enforcement purposes pursuant to section 13-2810, a copy of an injunction, whether or not registered, is presumed to be a valid existing order of the court for one year after the date on which the defendant was served. Any changes or modifications to the injunction are effective on entry by the court and shall be registered with the clerk of the issuing court, or as otherwise required by court rule, within twenty-four hours after the entry, excluding weekends and holidays.

M. This section does not:

1. Expand, diminish, alter or modify the duty of an employer to provide a safe workplace for its employees and other persons.
2. Permit a court to issue a temporary restraining order or injunction that prohibits speech or other activities that are constitutionally protected or otherwise protected by law, including actions involving organized labor disputes that do not involve unlawful picketing, trespassory assembly, unlawful mass assembly, concerted interference with lawful exercise of business activity and engaging in a secondary boycott as defined in section 23-1321, defamation in violation of section 23-1325 or any actual or threatened misrepresentation, fraud, duress, violence or breach of the peace.

3. Preclude either party from being represented by private counsel or appearing on the party's own behalf.

N. When the employer has knowledge that a specific person or persons are the target of harassment as defined by this section, the employer shall make a good faith effort to provide notice to the person or persons that the employer intends to petition the court for an injunction against workplace harassment.

O. Whether or not a violation occurs in the presence of a peace officer, a peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an injunction that was issued pursuant to this section. The release provisions under section 13-3903 do not apply to an arrest made pursuant to this subsection. A person who is arrested pursuant to this subsection may be released from custody pursuant to the Arizona rules of criminal procedure or any applicable statute. The court shall include in an order for release any pretrial release conditions that the court deems appropriate.

P. The remedies under this section for the enforcement of protection orders are in addition to any other civil and criminal remedies that are available. The municipal court and the justice court may hear and decide all matters arising pursuant to this section. On notice to the affected party and after a hearing, the court may enter an order that requires any party to pay the costs of the action, including reasonable attorney fees. A party may appeal an order entered by a justice court or municipal court pursuant to section 22-261 or 22-425 and the superior court rules of civil appellate procedure without regard to an amount in controversy.

Q. A peace officer who makes an arrest pursuant to this section is immune from civil or criminal liability if the officer acts on probable cause.

R. An employer is immune from civil liability for seeking or failing to seek an injunction under this section unless the employer is seeking an injunction primarily to accomplish a purpose for which the injunction was not designed. Any action or statement by an employer under this section shall not be deemed an admission by the employer of any fact. An action or statement by an employer under this section may be used for impeachment purposes.

S. In addition to the persons who are authorized to serve process pursuant to rule 4(d), Arizona rules of civil procedure, a peace officer may serve an injunction against workplace harassment pursuant to this section.

T. For the purposes of this section:

1. "Employer" means an individual, partnership, association or corporation or a person or group of persons who act, directly or indirectly, on behalf of or in the interest of an employer and with the consent of the employer. Employer includes this state, a political subdivision of this state and any school district or other special district.

2. "Harassment" means a single threat or act of physical harm or damage or a series of acts over any period of time that would cause a reasonable person to be seriously alarmed or annoyed and includes unlawful picketing, trespassory assembly, unlawful mass assembly, concerted interference with lawful exercise of business activity and engaging in a secondary boycott as defined in section 23-1321 and defamation in violation of section 23-1325.

## **13-205: Affirmative defenses; justification; burden of proof**

A. Except as otherwise provided by law, a defendant shall prove any affirmative defense raised by a preponderance of the evidence. Justification defenses under chapter 4 of this title are not affirmative defenses. Justification defenses describe conduct that, if not justified, would constitute an offense but, if justified, does not constitute criminal or wrongful conduct. If evidence of justification pursuant to chapter 4 of this title is presented by the defendant, the state must prove beyond a reasonable doubt that the defendant did not act with justification.

B. This section does not affect the presumption contained in section 13-411, subsection C and section 13-503.

## **Domestic violence; definition; classification; sentencing option; arrest and procedure for violation; weapon seizure**

A. "Domestic violence" means any act that is a dangerous crime against children as defined in section 13-705 or an offense prescribed in section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1202, 13-1203, 13-1204, 13-1302, 13-1303, 13-1304, 13-1406, 13-1425, 13-1502, 13-1503, 13-1504, 13-1602 or 13-2810, section 13-2904, subsection A, paragraph 1, 2, 3 or 6, section 13-2910, subsection A, paragraph 8 or 9, section 13-2915, subsection A, paragraph 3 or section 13-2916, 13-2921, 13-2921.01, 13-2923, 13-3019, 13-3601.02 or 13-3623, if any of the following applies:

1. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or having resided in the same household.
2. The victim and the defendant have a child in common.
3. The victim or the defendant is pregnant by the other party.
4. The victim is related to the defendant or the defendant's spouse by blood or court order as a parent, grandparent, child, grandchild, brother or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law or sister-in-law.
5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant.
6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship. The following factors may be considered in determining whether the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship:
  - (a) The type of relationship.
  - (b) The length of the relationship.
  - (c) The frequency of the interaction between the victim and the defendant.

(d) If the relationship has terminated, the length of time since the termination.

B. A peace officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether the offense was committed within or without the presence of the peace officer. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the peace officer shall arrest a person who is at least fifteen years of age, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense was committed within or without the presence of the peace officer, unless the officer has reasonable grounds to believe that the circumstances at the time are such that the victim will be protected from further injury. Failure to make an arrest does not give rise to civil liability except pursuant to section 12-820.02. In order to arrest both parties, the peace officer shall have probable cause to believe that both parties independently have committed an act of domestic violence. An act of self-defense that is justified under chapter 4 of this title is not deemed to be an act of domestic violence. The release procedures available under section 13-3883, subsection A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

C. A peace officer may question the persons who are present to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the peace officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm that is owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic violence.

D. If a firearm is seized pursuant to subsection C of this section, the peace officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least seventy-two hours by the law enforcement agency that seized the firearm.

E. If a firearm is seized pursuant to subsection C of this section, the victim shall be notified by a peace officer before the firearm is released from temporary custody.

F. If there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a notice of intent to retain the firearm in the appropriate superior, justice or municipal court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within ten days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

G. A peace officer is not liable for any act or omission in the good faith exercise of the officer's duties under subsections C, D, E and F of this section.

H. Each indictment, information, complaint, summons or warrant that is issued and that involves domestic violence shall state that the offense involved domestic violence and shall be designated by the letters DV. A domestic violence charge shall not be dismissed or a domestic violence conviction shall not be set aside for failure to comply with this subsection.

I. A person who is arrested pursuant to subsection B of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. Any order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant.

J. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall inform in writing any alleged or potential victim of the procedures and resources available for the protection of the victim including:

1. An order of protection pursuant to section 13-3602, an injunction pursuant to section 25-315 and an injunction against harassment pursuant to section 12-1809.
2. The emergency telephone number for the local police agency.
3. Telephone numbers for emergency services in the local community.
4. Websites for local resources related to domestic violence.

K. A peace officer is not civilly liable for noncompliance with subsection J of this section.

L. If a person is convicted of an offense involving domestic violence and the victim was pregnant at the time of the commission of the offense, at the time of sentencing the court shall take into consideration the fact that the victim was pregnant and may increase the sentence.

M. An offense that is included in domestic violence carries the classification prescribed in the section of this title in which the offense is classified. If the defendant committed a felony offense listed in subsection A of this section against a pregnant victim and knew that the victim was pregnant or if the defendant committed a felony offense causing physical injury to a pregnant victim and knew that the victim was pregnant, the maximum sentence otherwise authorized for that violation shall be increased by up to two years.

N. When a peace officer responds to a call alleging that domestic violence has been or may be committed, the officer shall determine if a minor is present. If a minor is present, the peace officer shall conduct a child welfare check to determine if the child is safe and if the child might be a victim of domestic violence or child abuse.

### **13-3601.01: Domestic violence; treatment; definition**

A. The judge shall order a person who is convicted of a misdemeanor domestic violence offense to complete a domestic violence offender treatment program that is provided by a facility approved by the court pursuant to rules adopted by the supreme court, the department of health services, the United States department of veterans affairs or a probation department. If a person has previously been ordered to complete a domestic violence offender treatment program pursuant to this section, the judge shall order the person to complete a domestic violence offender treatment program unless the judge deems that alternative sanctions are more appropriate. The department of health services shall adopt and enforce guidelines that establish standards for domestic violence offender treatment program approval.

B. On conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has previously been convicted of a violation of a domestic violence offense or is convicted of a misdemeanor domestic violence offense and has previously been convicted of an act in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation. If the court orders supervised probation, the court may conduct an intake assessment when the person begins the term of probation and may conduct a discharge summary when the person is released from probation. If the person is incarcerated and the court receives confirmation that the person is employed or is a student, the court, on pronouncement of any jail sentence, may provide in the sentence that the person, if the person is employed or is a student and can continue the person's employment or studies, may continue the employment or studies for not more than twelve hours a day nor more than five days a week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.

C. A person who is ordered to complete a domestic violence offender treatment program shall pay the cost of the program.

D. If a person is ordered to attend a domestic violence offender treatment program pursuant to this section, the program shall report to the court whether the person has attended the program and has successfully completed the program.

E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply to convictions for offenses that were committed on or after January 1, 1999.

F. For the purposes of this section, "domestic violence offense" means an offense involving domestic violence as defined in section 13-3601.

### **13-3601.02: Aggravated domestic violence; classification; definition**

A. A person is guilty of aggravated domestic violence if the person within a period of eighty-four months commits a third or subsequent violation of a domestic violence offense or is convicted of a violation of a domestic violence offense and has previously been convicted of any combination of convictions of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a violation of a domestic violence offense.

B. A person who is convicted under this section and who within a period of eighty-four months has been convicted of two prior violations of a domestic violence offense or acts in another state, a court

of the United States or a tribal court that if committed in this state would be a domestic violence offense is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than four months in jail.

C. A person who is convicted under this section and who within a period of eighty-four months has been convicted of three or more prior violations of a domestic violence offense or acts in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in jail.

D. The dates of the commission of the offenses are the determining factor in applying the eighty-four month provision in subsection A of this section regardless of the sequence in which the offenses were committed. For purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.

E. For the purposes of this section, prior convictions for misdemeanor domestic violence offenses apply only to convictions for offenses that were committed on or after January 1, 1999.

F. Aggravated domestic violence is a class 5 felony.

G. For the purposes of this section, "domestic violence offense" means an offense involving domestic violence as defined in section 13-3601.

## **13-3602: Order of protection; procedure; contents; arrest for violation; penalty; protection order from another jurisdiction; definition**

A. A person may file a verified petition, as in civil actions, with a magistrate, justice of the peace or superior court judge for an order of protection for the purpose of restraining a person from committing an act included in domestic violence. If the person is a minor, the parent, legal guardian or person who has legal custody of the minor shall file the petition unless the court determines otherwise. The petition shall name the parent, guardian or custodian as the plaintiff and the minor is a specifically designated person for the purposes of subsection G of this section. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. For the purposes of this section, notwithstanding the location of the plaintiff or defendant, any court in this state may issue or enforce an order of protection.

B. An order of protection shall not be granted:

1. Unless the party who requests the order files a written verified petition for an order.
2. Against a person who is less than twelve years of age unless the order is granted by the juvenile division of the superior court.
3. Against more than one defendant.

C. The petition shall state the:

1. Name of the plaintiff. The plaintiff's address and contact information shall be disclosed to the court for purposes of service and notification. The address and contact information shall not be listed on the petition. Whether or not the court issues an order of protection, the plaintiff's address and contact information shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.

2. Name and address, if known, of the defendant.

3. Specific statement, including dates, of the domestic violence alleged.

4. Relationship between the parties pursuant to section 13-3601, subsection A and whether there is pending between the parties an action for maternity or paternity, annulment, legal separation or dissolution of marriage.

5. Name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct that is sought to be restrained.

6. Desired relief.

D. A fee shall not be charged for filing a petition under this section or for service of process. Each court shall provide, without charge, forms for purposes of this section for assisting parties without counsel. The court shall make reasonable efforts to provide the appropriate information to both parties on emergency and counseling services that are available in the local area.

E. The court shall review the petition, any other pleadings on file and any evidence offered by the plaintiff, including any evidence of harassment by electronic contact or communication, to determine whether the orders requested should issue without further hearing. The court shall issue an order of protection under subsection G of this section if the court determines that there is reasonable cause to believe any of the following:

1. The defendant may commit an act of domestic violence.

2. The defendant has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.

F. For the purposes of determining the period of time under subsection E, paragraph 2 of this section, any time that the defendant has been incarcerated or out of this state shall not be counted. If the court denies the requested relief, it may schedule a further hearing within ten days, with reasonable notice to the defendant.

G. If a court issues an order of protection, the court may do any of the following:

1. Enjoin the defendant from committing a violation of one or more of the offenses included in domestic violence.

2. Grant one party the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result. If the other party is accompanied by a law enforcement officer, the other party may return to the residence on one occasion to retrieve belongings. A law enforcement officer is not liable for any act or omission in the good faith exercise of the officer's duties under this paragraph. While the order of protection is in effect, if a party was granted the use and exclusive possession of the parties' residence and subsequently moves out of the house, the party must file a notice in writing with the court within five days after moving out of the residence. After receiving the notification from the plaintiff, the court shall provide notice to the defendant that the plaintiff has moved out of the residence and of the defendant's right to request a hearing pursuant to subsection L of this section.

3. Restrain the defendant from contacting the plaintiff or other specifically designated persons and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.

4. If the court finds that the defendant is a credible threat to the physical safety of the plaintiff or other specifically designated persons, prohibit the defendant from possessing or purchasing a firearm for the duration of the order. If the court prohibits the defendant from possessing a firearm, the court shall also order the defendant to transfer any firearm owned or possessed by the defendant immediately after service of the order to the appropriate law enforcement agency for the duration of the order. If the defendant does not immediately transfer the firearm, the defendant shall transfer the firearm within twenty-four hours after service of the order.

5. If the order was issued after notice and a hearing at which the defendant had an opportunity to participate, require the defendant to complete a domestic violence offender treatment program that is provided by a facility approved by the department of health services or a probation department or any other program deemed appropriate by the court.

6. Grant relief that is necessary for the protection of the alleged victim and other specifically designated persons and that is proper under the circumstances.

7. Grant the plaintiff the exclusive care, custody or control of any animal that is owned, possessed, leased, kept or held by the plaintiff, the defendant or a minor child residing in the residence or household of the plaintiff or the defendant, and order the defendant to stay away from the animal and forbid the defendant from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect in violation of section 13-2910 or otherwise disposing of the animal.

H. The court shall not grant a mutual order of protection. If opposing parties separately file verified petitions for an order of protection, the courts after consultation between the judges involved may consolidate the petitions of the opposing parties for hearing. This does not prohibit a court from issuing cross orders of protection.

I. After granting an order of protection, the court shall provide the order to a law enforcement agency or a constable as set forth in subsection J of this section for service or to an entity that is authorized in subsection K of this section to serve process. The agency or entity serving the order shall provide confirmation of service to the plaintiff as soon as practicable. If service of an order cannot be completed within fifteen days after the agency or entity receives the order, the agency or entity that is attempting service shall notify the plaintiff and continue to attempt service. This notification may be completed by a victim notification system, if available.

J. If the order of protection is provided to a law enforcement agency or a constable, service of an order of protection is as follows:

1. For each order of protection that is issued by a municipal court, if the defendant can be served within that city or town, the order shall be served by the law enforcement agency of that city or town. If the order can be served in another city or town, the order shall be served by the law enforcement agency of that city or town. If the order cannot be served within a city or town, the order shall be served by the sheriff or constable of the county in which the defendant can be served.

2. For each order of protection that is issued by a justice of the peace, the order of protection shall be served by the sheriff or constable of the county in which the defendant can be served or by a municipal law enforcement agency.

3. For each order of protection that is issued by a superior court judge or commissioner, the order of protection shall be served by the sheriff or constable of the county where the defendant can be served.

K. In addition to persons authorized to serve process pursuant to rule 4(d) of the Arizona rules of civil procedure, a peace officer or a correctional officer as defined in section 41-1661 who is acting in the officer's official capacity may serve an order of protection that is issued pursuant to this section. Service of the order of protection has priority over other service of process that does not involve an immediate threat to the safety of a person.

L. At any time during the period during which the order is in effect, a party who is under an order of protection or who is restrained from contacting the other party is entitled to one hearing on written request. No fee may be charged for requesting a hearing. A hearing that is requested by a party who is under an order of protection or who is restrained from contacting the other party shall be held within ten days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time. An ex parte order that is issued under this section shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office where the request may be filed. After the hearing, the court may modify, quash or continue the order. If the exclusive use of the home is awarded to the party, the court, on written request of a party, may hold additional hearings at any time if there is a change in circumstances related to the primary residence.

M. The order shall include the following statement:

Warning

This is an official court order. If you disobey this order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this order.

N. An order of protection that is not served on the defendant within one year after the date that the order is issued expires. An order is effective on the defendant on service of a copy of the order and petition. An order expires two years after service on the defendant. A modified order is effective on service and expires two years after service of the initial order and petition.

O. A supplemental information form that is used by the court or a law enforcement agency solely for the purposes of service of process on the defendant and that contains information provided by the plaintiff is confidential.

P. Each affidavit, declaration, acceptance or return of service shall be filed as soon as practicable but not later than seventy-two hours, excluding weekends and holidays, with the clerk of the issuing court or as otherwise required by court rule. This filing shall be completed in person, electronically or by fax.

Q. The supreme court shall maintain a central repository for orders of protection. Within twenty-four hours after the affidavit, declaration, acceptance or return of service has been filed, excluding weekends and holidays, the court from which the order or any modified order was issued shall enter the order and proof of service into the supreme court's central repository for orders of protection. The supreme court shall register the order with the national crime information center. The effectiveness of an order does not depend on its registration, and for enforcement purposes pursuant to section 13-2810, a copy of an order of the court, whether or not registered, is presumed to be a valid existing order of the court for a period of two years from the date of service of the order on the defendant.

R. A peace officer, with or without a warrant, may arrest a person if the peace officer has probable cause to believe that the person has violated section 13-2810 by disobeying or resisting an order that is issued in any jurisdiction in this state pursuant to this section, whether or not such violation occurred in the presence of the officer. Criminal violations of an order issued pursuant to this section shall be referred to an appropriate law enforcement agency. The provisions for release under section 13-3883, subsection A, paragraph 4 and section 13-3903 do not apply to an arrest made pursuant to this section. For the purposes of this section, any court in this state has jurisdiction to enforce a valid order of protection that is issued in this state and that has been violated in any jurisdiction in this state.

S. A person who is arrested pursuant to subsection R of this section may be released from custody in accordance with the Arizona rules of criminal procedure or any other applicable statute. An order for release, with or without an appearance bond, shall include pretrial release conditions that are necessary to provide for the protection of the alleged victim and other specifically designated persons and may provide for any other additional conditions that the court deems appropriate, including participation in any counseling programs available to the defendant. The agency with custody of the defendant shall make reasonable efforts to contact the victim and other specifically designated persons in the order of protection, if known to the custodial agency, who requested notification immediately on release of the arrested person from custody.

T. The remedies provided in this section for enforcement of the orders of the court are in addition to any other civil and criminal remedies available. The superior court shall have exclusive jurisdiction to issue orders of protection in all cases if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. A municipal court or justice court shall not issue an order of protection if it appears from the petition that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties. After issuance of an order of protection, if the municipal court or justice court determines that an action for maternity or paternity, annulment, legal separation or dissolution of marriage is pending between the parties, the municipal court or justice court shall stop further proceedings in the action and forward all papers, together with a certified copy of docket entries or any other record in the action, to the superior court where they shall be docketed in the pending

superior court action and shall proceed as though the petition for an order of protection had been originally brought in the superior court. Notwithstanding any other law and unless prohibited by an order of the superior court, a municipal court or justice court may hold a hearing on all matters relating to its ex parte order of protection if the hearing was requested before receiving written notice of the pending superior court action. No order of protection shall be invalid or determined to be ineffective merely because it was issued by a lower court at a time when an action for maternity or paternity, annulment, legal separation or dissolution of marriage was pending in a higher court. After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the action, including reasonable attorney fees, if any. An order that is entered by a justice court or municipal court after a hearing pursuant to this section may be appealed to the superior court as provided in title 22, chapter 2, article 4, section 22-425, subsection B and the superior court rules of civil appellate procedure without regard to an amount in controversy. No fee may be charged to either party for filing an appeal. For the purposes of this subsection, "pending" means, with respect to an action for annulment, legal separation or dissolution of marriage or for maternity or paternity, either that:

1. An action has been commenced but a final judgment, decree or order has not been entered.
2. A post-decree proceeding has been commenced but a judgment, decree or order finally determining the proceeding has not been entered.

U. A peace officer who makes an arrest pursuant to this section or section 13-3601 is not civilly or criminally liable for the arrest if the officer acts on probable cause and without malice.

V. A valid protection order that is related to domestic or family violence and that is issued by a court in another state, a court of a United States territory or a tribal court shall be accorded full faith and credit and shall be enforced as if it were issued in this state for as long as the order is effective in the issuing jurisdiction. For the purposes of this subsection:

1. A protection order includes any injunction or other order that is issued for the purpose of preventing violent or threatening acts or harassment against, contact or communication with or physical proximity to another person. A protection order includes temporary and final orders other than support or child custody orders that are issued by civil and criminal courts if the order is obtained by the filing of an independent action or is a pendente lite order in another proceeding. The civil order shall be issued in response to a complaint, petition or motion that was filed by or on behalf of a person seeking protection.
2. A protection order is valid if the issuing court had jurisdiction over the parties and the matter under the laws of the issuing state, a United States territory or an Indian tribe and the person against whom the order was issued had reasonable notice and an opportunity to be heard. If the order is issued ex parte, the notice and opportunity to be heard shall be provided within the time required by the laws of the issuing state, a United States territory or an Indian tribe and within a reasonable time after the order was issued.
3. A mutual protection order that is issued against both the party who filed a petition or a complaint or otherwise filed a written pleading for protection against abuse and the person against whom the filing was made is not entitled to full faith and credit if either:

(a) The person against whom an initial order was sought has not filed a cross or counter petition or other written pleading seeking a protection order.

(b) The issuing court failed to make specific findings supporting the entitlement of both parties to be granted a protection order.

4. A peace officer may presume the validity of and rely on a copy of a protection order that is issued by another state, a United States territory or an Indian tribe if the order was given to the officer by any source. A peace officer may also rely on the statement of any person who is protected by the order that the order remains in effect. A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order pursuant to this section.

W. For the purposes of this section, "victim notification system" means an automated system that may provide plaintiffs and crime victims with an automated notification regarding the person's case.

### **13-3624: Emergency orders of protection**

A. In counties with a population of one hundred fifty thousand persons or more, the presiding judge of the superior court, during the hours that the courts are closed, shall make available on a rotating basis a judge, justice of the peace, magistrate or commissioner who shall issue emergency orders of protection by telephone. In counties with a population of less than one hundred fifty thousand persons, any judge, justice of the peace, magistrate or commissioner may issue emergency orders of protection by telephone during the hours that the courts are closed.

B. The court, within twenty-four hours after a defendant is arrested for an act of domestic violence, shall register a certified copy of the release order with the sheriff's office of the county in which the order was issued. The court shall notify the sheriff's office of material changes in the release order, if the conditions of the release order are no longer in effect and when the charges are resolved. The sheriff in each county shall maintain a central repository for release orders so that the existence and validity of the orders can be easily verified. The law enforcement agency shall advise domestic violence victims where the victim may verify the registration and conditions of a release order.

C. The judge, justice of the peace, magistrate or commissioner who is authorized to issue emergency orders of protection may issue a written or oral ex parte emergency order of protection if a peace officer states that the officer has reasonable grounds to believe that a person is in immediate and present danger of domestic violence based on an allegation of a recent incident of actual domestic violence pursuant to section 13-3601, subsection A.

D. An emergency order of protection may include any of the following:

1. The defendant may be enjoined from committing a violation of one or more of the offenses included in domestic violence.

2. One party may be granted the use and exclusive possession of the parties' residence on a showing that there is reasonable cause to believe that physical harm may otherwise result.

3. The defendant may be restrained from contacting the plaintiff and coming near the residence, place of employment or school of the plaintiff or other specifically designated locations or persons on a showing that there is reasonable cause to believe that physical harm may otherwise result.

4. If the court finds that the defendant may inflict bodily injury or death on the plaintiff, the defendant may be prohibited from possessing or purchasing a firearm for the duration of the order.

E. An emergency order of protection expires seven calendar days after issuance, unless otherwise continued by the court.

F. A judge, justice of the peace, magistrate or commissioner may issue an oral emergency order of protection pursuant to subsection C of this section on request of the alleged victim, if there is a finding that a person's life or health is in imminent danger. If a person is either temporarily or permanently unable to request an order, a third party may request an order of protection on behalf of the plaintiff. After the request, the judicial officer shall determine if the third party is an appropriate requesting party for the plaintiff. The judicial officer who issues an oral emergency order of protection shall document the issuance of the order as soon as practicable. The officer who receives the verbal order shall write and sign the order. The emergency order shall be served on the defendant, and a copy shall be given to the protected party. The emergency order shall be filed as soon as practicable after its issuance. The law enforcement agency shall file a certificate of service with the court and shall register the emergency order with the national crime information center as soon as practicable. If a person who is named in the order and who has not received personal service of the order but has received actual notice of the existence and substance of the order commits an act that violates the order, the person is subject to any penalty for the violation.

G. The availability of an emergency order of protection is not affected by either party leaving the residence.

H. A law enforcement agency that has jurisdiction to enforce an emergency order of protection shall enforce the emergency order when it has reasonable cause to believe that the order has been violated.

I. Failure of a law enforcement agency to enforce an emergency order of protection pursuant to this section does not give rise to civil liability except pursuant to section 12-820.02.

## **22-201: Jurisdiction of civil actions**

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

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

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

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

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

1. Civil actions pursuant to subsections B and C of this section.
2. Small claims pursuant to chapter 5 of this title.
3. Civil traffic offenses unless a civil traffic offense is filed in a municipal court by a municipal officer or agent or by an officer employed by a law enforcement agency under contract to that municipality to provide law enforcement services.
4. Special detainers and forcible detainers pursuant to title 33, chapters 11 and 19 and forcible detainers pursuant to title 33, chapter 3 if the amount of rent requested is ten thousand dollars or less.

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

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

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

## **22-512: Parties; representation**

A. Any natural person, corporation, partnership, association, marital community or other organization may commence or defend a small claims action, but an assignee or other person not a real party to the original transaction giving rise to the action may not commence an action except as a personal representative duly appointed pursuant to a proceeding as provided in title 14.

B. In a small claims action:

1. An individual shall represent himself.

2. Either spouse or both may represent a marital community.
3. An active general partner or an authorized full-time employee shall represent a partnership.
4. A full-time officer or authorized employee shall represent a corporation.
5. An active member or an authorized full-time employee shall represent an association.
6. Any other organization or entity shall be represented by one of its active members or authorized full-time employees.
7. An attorney-at-law shall not appear or take any part in the filing or prosecution or defense of any matter designated as a small claim.

C. For an association as defined in section 33-1202 or 33-1802 that has employees or that is contracted with a corporation, limited liability company, limited liability partnership, sole proprietor or other lawfully formed and operating entity that provides management services to the association, the employees of the association and the management company and its officers and employees may lawfully act on behalf of the association and its board of directors by:

1. Recording a notice of lien or notice of claim of lien of the association against an owner's property in a condominium or planned community if all of the following apply:

(a) The association employee or the management company is specifically authorized in writing by the association to record notices of lien or notices of claim of lien on behalf of the association and the officer or employee is a certified legal document preparer as prescribed in the Arizona code of judicial administration.

(b) The association is the original party to the lien and the lien right is not the result of an assignment of rights.

(c) The lien right exists by operation of law pursuant to section 33-1256 or 33-1807 and is not the result of obtaining a final judgment in an action to which the association is a party.

2. Appearing on behalf of the association in a small claims action if all of the following apply:

(a) The employee of the association or the management company is specifically authorized in writing by the association to appear on behalf of the association.

(b) The association is an original party to the small claims action.

D. Notwithstanding subsection B of this section, at any time before the hearing, the parties may stipulate by written agreement to the participation of attorneys in actions designated as small claims.

E. This section is not intended to limit or otherwise interfere with a party's right to assign or to employ counsel to pursue the party's rights and remedies subsequent to the entry of judgment in a small claims action.

F. Attorneys-at-law may represent themselves in propria persona.

G. The prevailing party in a small claims action may assign a monetary judgment to another person that is licensed in this state to collect debts and that may appear in the small claims court as the prevailing party only for the purpose of enforcing the judgment. A person that is assigned a judgment for collection does not represent the prevailing party but shall be treated by the small claims court as the prevailing party for all actions that relate to enforcing the judgment.

## **32-1001: Definitions**

In this chapter, unless the context otherwise requires:

1. "Claim" means an obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due to another, for which a person is employed to demand payment and collect or enforce such payment, and includes:

(a) Obligations for the payment of money to another, in the form of conditional sales agreements, notwithstanding the personal property sold thereunder, for which payment is claimed or may be or is repossessed in lieu of payment.

(b) An obligation for the payment of money or its equivalent and a sum or sums owed, due or asserted to be owed or due that is sold or assigned to a purchaser or assignee for which either:

(i) The final payment has not been tendered to the seller or assignor.

(ii) Title has not yet passed.

(iii) The purchaser or assignee has a right of recourse against the seller or assignor.

2. "Collection agency" means:

(a) All persons engaged directly or indirectly in soliciting claims for collection or in collection of claims owed, due or asserted to be owed or due.

(b) Any person who, in the process of collecting debts occurring in the operation of the person's own business, uses any name other than the person's own name, which would indicate that a third person is collecting or attempting to collect such debts.

3. "Department" means the department of insurance and financial institutions.

4. "Deputy director" means the deputy director of the financial institutions division of the department of insurance and financial institutions.

5. "Financial institution" means a person who does business under any other law of this state or law of another state or the United States relating to banks, trust companies, savings and loan associations, credit unions and savings banks.

6. "Person" means an individual, firm, partnership, association or corporation.

### **32-1021: Original application for license; financial statement; bond; definition**

A. A person desiring to conduct a collection agency shall make an original application to the department on forms prescribed by the deputy director setting forth verified information to assist the deputy director in determining the applicant's ability to meet the requirements of this chapter.

B. An application for an original or a renewal license shall be accompanied by:

1. A financial statement in the form provided in section 32-1022, showing the applicant's assets and liabilities and truly reflecting the applicant's net worth in cash or its equivalent.

2. A bond in the form provided in section 32-1022, computed on a base consisting of the gross annual income of the licensee generated from all business transacted in this state by the licensee during the preceding year, in the minimum amount as follows:

Base	Minimum Bond
Not over \$250,000	\$10,000
\$250,001 to \$500,000	\$15,000
\$500,001 to \$750,000	\$25,000
\$750,001 and over	\$35,000

C. The deputy director may require from all applicants additional information that the deputy director deems necessary in determining whether the applicant is entitled to the license sought.

D. For the purposes of this section, "all business transacted in this state" includes:

1. The collection of debts from debtors who reside in this state, regardless of where the licensee is located.

2. The collection of debts made from an office in this state, regardless of where the debtor resides.

3. The collection of debts made on behalf of creditors who reside in this state, regardless of where the debtor and the collection agent reside.

### **32-1022: Contents of financial statement; bond provisions**

A. The financial statement required by section 32-1021 shall be sworn to by the applicant, if the applicant is an individual, or by a partner, director, manager or treasurer in its behalf if the applicant is

a partnership, corporation or incorporated association. The information in the financial statement shall be confidential and is not a public record.

B. The bond shall run to the people of the state and shall be executed and acknowledged by the applicant as principal and by a corporation, licensed by this state to transact fidelity and surety insurance business, as surety. The bond shall be continuous in form and shall remain in full force and effect at all times while holding a license. The bond shall be conditioned that the applicant, within thirty days after the last day of the month in which a collection is made, shall make an account of and pay to the client the proceeds collected for the client by the applicant, less charges for collection in accordance with the agreement between the applicant and client, but when the amount due the client is less than \$5, payment may be deferred for an additional thirty days.

C. Any surety company intending to withdraw as surety of any licensee shall give sixty days' notice of such intention to the deputy director, which notice shall be by registered mail and shall also give sixty days' notice by registered mail to the licensee addressed to the licensee's last known address. When a surety shall for any cause cancel the bond of any licensee, the deputy director shall immediately notify such licensee by registered mail addressed to the licensee's last known address as shown by the files of the department. The license of any licensee shall be void unless, prior to the termination, a new bond has been filed with the department. A licensee changing the licensee's surety shall file a new bond with the department with a surety on the new bond meeting the qualifications of this section.

D. Notwithstanding section 35-155, in lieu of the bond described in this section, an applicant for a license or renewal of a license may deposit with the deputy director a deposit in the form of cash or alternatives to cash in the amount prescribed under section 32-1021. The deputy director may accept any of the following as an alternative to cash:

1. Certificates of deposit or investment certificates that are payable or assigned to the state treasurer, issued by banks doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.
2. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a savings and loan association or savings bank doing business in this state and fully insured by the federal deposit insurance corporation or any successor institution.
3. Certificates of deposit, investment certificates or share accounts that are payable or assigned to the state treasurer, issued by a credit union doing business in this state and fully insured by the national credit union administration or any successor institution.

E. The deputy director shall deposit the cash or alternative to cash received under this section with the state treasurer. The state treasurer shall hold the cash or alternatives to cash in the name of this state to guarantee the faithful performance of all legal obligations of the person required to post bond pursuant to section 32-1021, subsection B. The person is entitled to receive any accrued interest earned from the alternatives to cash. The state treasurer may impose a fee to reimburse the state treasurer for administrative expenses. The fee shall not exceed \$10 for each cash or alternative to cash deposit and shall be paid by the applicant for a license or renewal of a license. The state treasurer may prescribe rules relating to the terms and conditions of each type of security provided by this section.

F. In addition to such other terms and conditions as the deputy director prescribes by rule or order, the principal amount of the deposit shall be released only on written authorization of the deputy director or on the order of a court of competent jurisdiction. The principal amount of the deposit shall not be released before the expiration of three years after the first to occur of any of the following:

1. The date of substitution of a bond for a cash alternative.
2. The surrender of the license.
3. The revocation of the license.
4. The expiration of the license.

G. A suit may not be commenced on a bond or cash or alternatives to cash later than three years following the act or acts on which the suit is based, except that for claims of fraud or mistake, the period of limitations shall be measured as prescribed in section 12-543, paragraph 3.

## **32-1055: Unlawful acts**

A. It is unlawful for a person to conduct a collection agency in this state without having first applied for and obtained a license under this chapter.

B. A collection agency licensed under this chapter shall not directly or indirectly aid, abet or receive compensation from an unlicensed person. Nothing in this chapter shall prevent a licensed agency from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside this state.

C. A licensee shall not advertise a claim for sale or threaten to so advertise a claim as a means of endeavoring to enforce payment, nor shall a licensee agree to do so for the purpose of soliciting claims. This subsection shall not be deemed to affect a licensee acting as assignee for the benefit of a creditor or acting under a court order.

D. It is unlawful for a person conducting a collection agency in this state to:

1. Fail to render an account of and pay to the client for whom collection has been made the proceeds collected, less collection charges as agreed to by the person and the client, within thirty days from the last day of the month in which the proceeds were collected. If the amount due the client is less than five dollars, payment may be deferred for an additional thirty days.
2. Fail to deposit with a local depository all monies collected by the person and due to the person's clients, and to fail to keep these monies deposited until these monies or equivalent amounts are remitted to the person's clients. Notwithstanding this paragraph, if a person conducting a collection agency does not maintain an office in this state, the person may deposit and keep these monies in a depository in a state where the person maintains the person's principal office.
3. Fail to keep a record of monies collected and the remittance of these monies.

4. Fail to notify the department within ten days of any change of name under which the person does business as a collection agency or address at which the person conducts business.

5. Aid or abet, directly or indirectly, any person, persons or organizations in evading or violating any of the provisions of this chapter.

### **32-1056: Violation; classification**

A. A person operating a collection agency without a license shall be guilty of a class 1 misdemeanor.

B. A licensee violating the provisions of section 32-1055 or the rules and regulations adopted pursuant to this chapter shall be subject to revocation of license and shall be guilty of a class 1 misdemeanor.

### **32-1057: Prosecution of violations; individual liability**

A. The prosecuting officer of a county or city shall prosecute all violations of this chapter occurring within his jurisdiction.

B. An officer or agent of a corporation or association participating in a violation of this chapter by such corporation or association shall be subject to the penalties prescribed by section 32-1056 for an individual.

### **33-343: Premises rendered untenable without fault of lessee; nonliability of tenant for rent; right to quit premises**

The lessee of a building which, without fault or neglect on the part of the lessee, is destroyed or so injured by the elements or any other cause as to be untenable or unfit for occupancy, is not liable thereafter to pay rent to the lessor or owner unless expressly provided by written agreement, and the lessee may thereupon quit and surrender possession of the premises.

### **33-361: Violation of lease by tenant; right of landlord to reenter; summary action for recovery of premises; appeal; lien for unpaid rent; enforcement; notice and pleading requirements**

A. When a tenant neglects or refuses to pay rent when due and in arrears for five days, or when a tenant violates any provision of the lease, the landlord or person to whom the rent is due, or the agent of the landlord or person to whom the rent is due, may reenter and take possession or, without formal demand or reentry, commence an action for recovery of possession of the premises.

B. The action shall be commenced, conducted and governed as provided for actions for forcible entry or detainer and shall be tried not less than five nor more than thirty days after its commencement. In addition to determining the right to actual possession, the court may assess damages, attorney fees and costs pursuant to section 12-1178.

C. If judgment is given for the plaintiff, the defendant, in order to perfect an appeal, shall file a bond with the court in an amount fixed and approved by the court and payable to the clerk of the superior court, conditioned that the appellant will prosecute the appeal to effect and will pay the rental value of the premises pending the appeal and all damages, attorney fees, costs and rent adjudged against the appellant.

D. If the tenant refuses or fails to pay rent owing and due, the landlord shall have a lien on and may seize as much personal property of the tenant located on the premises and not exempted by law as is necessary to secure payment of the rent. If the rent is not paid and satisfied within sixty days after seizure as provided for in this section, the landlord may sell the seized personal property in the manner provided by section 33-1023.

E. When premises are sublet or the lease is assigned, the landlord shall have a like lien against the sublessee or assignee as the landlord has against the tenant and may enforce it in the same manner.

F. Notwithstanding any other law, an agency of this state and an individual court may not adopt or enforce a rule or policy that requires a mandatory or technical form for providing notice or for pleadings in an action for forcible entry or forcible or special detainer. The form of any notice or pleading that meets statutory requirements for content and formatting of a notice or pleading is sufficient to provide notice and to pursue an action for forcible entry or forcible or special detainer.

### **33-722: Election between action on debt or to foreclose**

If separate actions are brought on the debt and to foreclose the mortgage given to secure it, the plaintiff shall elect which to prosecute and the other shall be dismissed.

### **33-1101: Homestead exemptions; persons entitled to hold homesteads; equity**

A. Any person eighteen years of age or over, married or single, who resides within this state may hold as a homestead exempt from execution and forced sale, not exceeding \$250,000 in value, any one of the following:

1. The person's interest in real property in one compact body on which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land on which that mobile home is located.

B. Only one homestead exemption may be held by a married couple or a single person under this section. The value as specified in this section refers to the equity of a single person or married couple. If a married couple lived together in a dwelling house, a condominium or cooperative, a mobile home or a mobile home plus land on which the mobile home is located and are then divorced, the total exemption allowed for that residence to either or both persons shall not exceed \$250,000 in value.

C. The homestead exemption, not exceeding the value provided for in subsection A of this section, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter. The homestead exemption does not attach to the person's interest in identifiable cash proceeds from refinancing the homestead property. Only one homestead exemption at a time may be held by a person under this section.

D. For purposes of determining the amount of equity in a homestead property that is sold or for determining whether the property owner is receiving cash back from refinancing the homestead property, the parties may rely on the valuation of the property in the final closing document disclosure that is used for that transaction.

### **33-1126: Money benefits or proceeds; exception**

A. The following property of a debtor is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding \$20,000.
2. The earnings of the minor child of a debtor or the proceeds of these earnings by reason of any liability of the debtor not contracted for the special benefit of the minor child.
3. All monies received by or payable to a person entitled to receive child support or spousal maintenance pursuant to a court order.
4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.
5. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance on any property exempt under this article.
6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with interest on that amount, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph,

"dependent" means a family member who is dependent on the insured debtor for not less than half support.

7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1 is not exempt. The exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.

8. Any claim for damages recoverable by any person by reason of any levy on or sale under execution of that person's exempt personal property or by reason of the wrongful taking or detention of that property by any person, and the judgment recovered for damages.

9. A total of \$300 held in a single account in any one financial institution as defined by section 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried.

10. An interest in a college savings plan under section 529 of the internal revenue code of 1986, either as the owner or as the beneficiary. This does not include money contributed to the plan within two years before a debtor files for bankruptcy.

11. The refundable portion of any federal or state personal income tax credits from any federal or state earned income tax credits and any additional refundable portion of any federal or state child tax credits. The amount of the exemption shall be the lesser of the total combined amount of federal and state tax refunds or the total combined amount of any federal or state earned income tax credits and any federal or state child tax credits claimed on the return.

B. Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred compensation plan under section 457 of the United States internal revenue code of 1986, as amended, whether the beneficiary's interest arises by inheritance, designation, appointment or otherwise, is exempt from all claims of creditors of the beneficiary or participant. This subsection does not apply to any of the following:

1. An alternate payee under a qualified domestic relations order, as defined in section 414(p) of the United States internal revenue code of 1986, as amended. The interest of any and all alternate payees is exempt from any and all claims of any creditor of the alternate payee.

2. Amounts contributed within one hundred twenty days before a debtor files for bankruptcy.

3. The assets of bankruptcy proceedings filed before July 1, 1987.

C. Any person who is at least eighteen years of age, married or single, who resides within this state and who does not exercise the homestead exemption under article 1 of this chapter may claim as a

personal property homestead exempt from all process prepaid rent, including security deposits as provided in section 33-1321, subsection A, for the claimant's residence, not exceeding \$2,000.

D. This section does not exempt property from orders that are the result of a judgment for arrearages of child support or for a child support debt.

### **33-1126; Version 2: Money benefits or proceeds; exception**

A. The following property of a debtor is exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child on the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.
2. The earnings of the minor child of a debtor or the proceeds of these earnings by reason of any liability of the debtor not contracted for the special benefit of the minor child.
3. All monies received by or payable to a person entitled to receive child support or spousal maintenance pursuant to a court order.
4. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on the policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings that would have been subject to that order and subject to any exemption applicable to earnings so replaced.
5. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance on any property exempt under this article.
6. The cash surrender value of life insurance policies where for a continuous unexpired period of two years the policies have been owned by a debtor. The policy shall have named as beneficiary the debtor's surviving spouse, child, parent, brother or sister. The policy may have named as beneficiary any other family member who is a dependent, in the proportion that the policy names any such beneficiary, except that, subject to the statute of limitations, the amount of any premium that is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1, with interest thereon, is not exempt. The exemption provided by this paragraph does not apply to a claim for the payment of a debt of the insured or beneficiary that is secured by a pledge or assignment of the cash value of the insurance policy or the proceeds of the policy. For the purposes of this paragraph, "dependent" means a family member who is dependent on the insured debtor for not less than half support.
7. An annuity contract where for a continuous unexpired period of two years that contract has been owned by a debtor and has named as beneficiary the debtor, the debtor's surviving spouse, child, parent, brother or sister, or any other dependent family member, except that, subject to the statute of limitations, the amount of any premium, payment or deposit with respect to that contract is recoverable or avoidable by a creditor pursuant to title 44, chapter 8, article 1 is not exempt. The

exemption provided by this paragraph does not apply to a claim for a payment of a debt of the annuitant or beneficiary that is secured by a pledge or assignment of the contract or its proceeds. For the purposes of this paragraph, "dependent" means a family member who is dependent on the debtor for not less than half support.

8. Any claim for damages recoverable by any person by reason of any levy on or sale under execution of that person's exempt personal property or by reason of the wrongful taking or detention of that property by any person, and the judgment recovered for damages.

9. A total of \$5,000 held in a single account in any one financial institution as defined by section 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried. The exemption prescribed in this paragraph shall be adjusted annually beginning on January 1, 2024 and thereafter on January 1 of each successive year by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, United States city average for all items) or its successor index as published by the United States department of labor, bureau of labor statistics, or its successor agency, with the amount of the exemption rounded up to the nearest \$100.

10. An interest in a college savings plan under section 529 of the internal revenue code of 1986, either as the owner or as the beneficiary. This does not include money contributed to the plan within two years before a debtor files for bankruptcy.

B. Any money or other assets payable to a participant in or beneficiary of, or any interest of any participant or beneficiary in, a retirement plan under section 401(a), 403(a), 403(b), 408, 408A or 409 or a deferred compensation plan under section 457 of the United States internal revenue code of 1986, as amended, whether the beneficiary's interest arises by inheritance, designation, appointment or otherwise, is exempt from all claims of creditors of the beneficiary or participant. This subsection does not apply to any of the following:

1. An alternate payee under a qualified domestic relations order, as defined in section 414(p) of the United States internal revenue code of 1986, as amended. The interest of any and all alternate payees is exempt from any and all claims of any creditor of the alternate payee.

2. Amounts contributed within one hundred twenty days before a debtor files for bankruptcy.

3. The assets of bankruptcy proceedings filed before July 1, 1987.

C. Any person eighteen years of age or over, married or single, who resides within this state and who does not exercise the homestead exemption under article 1 of this chapter may claim as a personal property homestead exempt from all process prepaid rent, including security deposits as provided in section 33-1321, subsection A, for the claimant's residence, not exceeding two thousand dollars.

D. This section does not exempt property from orders that are the result of a judgment for arrearages of child support or for a child support debt.

### **33-1127: School equipment**

The library and philosophical and chemical or other apparatus belonging to a debtor and used for the instruction of youth in any university, college, seminary of learning, or school shall be exempt from execution, attachment or sale on any process issued from any court.

### **33-1130: Tools and equipment used in a commercial activity, trade, business or profession**

The following tools and equipment of a debtor used in a commercial activity, trade, business or profession shall be exempt from process:

1. The tools, equipment, instruments and books, including telephone numbers, client or customer contact information, or marketing tools, such as websites, domain names or any other intangible work product, in the possession of a debtor or the spouse of a debtor primarily used in, and necessary to carry on or develop, the commercial activity, trade, business or profession of the debtor or the debtor's spouse, not in excess of an aggregate fair market value of five thousand dollars. For the purpose of this paragraph, tools do not include a motor vehicle primarily used by a debtor for personal, family or household purposes such as transportation to and from the debtor's place of employment.
2. Farm machinery, utensils, implements of husbandry, feed, seed, grain and animals not in excess of an aggregate value of two thousand five hundred dollars belonging to a debtor whose primary income is derived from farming.
3. All arms, uniforms and accoutrements required by law to be kept by a debtor.

### **33-1308: Exclusions from application of chapter**

The following tools and equipment of a debtor used in a commercial activity, trade, business or profession shall be exempt from process:

1. The tools, equipment, instruments and books, including telephone numbers, client or customer contact information, or marketing tools, such as websites, domain names or any other intangible work product, in the possession of a debtor or the spouse of a debtor primarily used in, and necessary to carry on or develop, the commercial activity, trade, business or profession of the debtor or the debtor's spouse, not in excess of an aggregate fair market value of five thousand dollars. For the purpose of this paragraph, tools do not include a motor vehicle primarily used by a debtor for personal, family or household purposes such as transportation to and from the debtor's place of employment.
2. Farm machinery, utensils, implements of husbandry, feed, seed, grain and animals not in excess of an aggregate value of two thousand five hundred dollars belonging to a debtor whose primary income is derived from farming.
3. All arms, uniforms and accoutrements required by law to be kept by a debtor.

### **33-1324: Landlord to maintain fit premises**

A. The landlord shall:

1. Comply with the requirements of applicable building codes materially affecting health and safety as prescribed in section 9-1303.
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
3. Keep all common areas of the premises in a clean and safe condition.
4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him.
5. Provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
6. Supply running water and reasonable amounts of hot water at all times, reasonable heat and reasonable air-conditioning or cooling where such units are installed and offered, when required by seasonal weather conditions, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat, air-conditioning, cooling or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.

B. If the duty imposed by subsection A, paragraph 1 of this section is greater than any duty imposed by any other paragraph of this section, the landlord's duty shall be determined by reference to that paragraph.

C. The landlord and tenant of a single family residence may agree in writing, supported by adequate consideration, that the tenant perform the landlord's duties specified in subsection A, paragraphs 5 and 6 of this section, and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith, not for the purpose of evading the obligations of the landlord and the work is not necessary to cure noncompliance with subsection A, paragraphs 1 and 2 of this section.

D. The landlord and tenant of any dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling only if:

1. The agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration.
2. The work is not necessary to cure noncompliance with subsection A, paragraphs 1 and 2 of this section.
3. The agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

### **33-1361: Noncompliance by the landlord**

A. Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement, including a material falsification of the written information provided to the tenant, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than ten days after receipt of the notice if the breach is not remedied in ten days. If there is a noncompliance by the landlord with section 33-1324 materially affecting health and safety, the tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than five days after receipt of the notice if the breach is not remedied in five days. For the purposes of this section, material falsification includes false information relating to availability of the unit, except when a holdover tenant is in illegal possession or in violation of the rental agreement, the condition of the premises and any current services as represented by the landlord in writing and any representation regarding future services and any future changes regarding the condition of the premises, the provision of utility services and the designation of the party responsible for the payment of utility services. The rental agreement shall terminate and the dwelling unit shall be vacated as provided in the notice subject to the following:

1. If the breach is remediable by repairs or the payment of damages or otherwise and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate.

2. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.

B. Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or with section 33-1318 or 33-1324.

C. The remedy provided in subsection B of this section is in addition to any right of the tenant arising under subsection A of this section.

D. If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant under section 33-1321.

### **33-1368: Noncompliance with rental agreement by tenant; failure to pay rent; utility discontinuation; liability for guests; definition**

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement, including material falsification of the information provided on the rental application, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate on a date not less than ten days after receipt of the notice if the breach is not remedied in ten days. For the purposes of this section, material falsification includes the following untrue or misleading information about the:

1. Number of occupants in the dwelling unit, pets, income of the prospective tenant, social security number and current employment listed on the application or lease agreement.

2. Tenant's criminal records, prior eviction record and current criminal activity. Material falsification of information in this paragraph is not curable under this section.

If there is a noncompliance by the tenant with section 33-1341 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement will terminate on a date not less than five days after receipt of the notice if the breach is not remedied in five days. However, if the breach is remediable by repair or the payment of damages or otherwise, and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement will not terminate. If there is an additional act of these types of noncompliance of the same or a similar nature during the term of the lease after the previous remedy of noncompliance, the landlord may institute a special detainer action pursuant to section 33-1377 ten days after delivery of a written notice advising the tenant that a second noncompliance of the same or a similar nature has occurred. If there is a breach that is both material and irreparable and that occurs on the premises, which may include an illegal discharge of a weapon, homicide as prescribed in sections 13-1102, 13-1103, 13-1104 and 13-1105, prostitution as defined in section 13-3211, criminal street gang activity as prescribed in section 13-105, activity as prohibited in section 13-2308, the unlawful manufacturing, selling, transferring, possessing, using or storing of a controlled substance as defined in section 13-3451, threatening or intimidating as prohibited in section 13-1202, assault as prohibited in section 13-1203, acts that have been found to constitute a nuisance pursuant to section 12-991 or a breach of the lease agreement that otherwise jeopardizes the health, safety and welfare of the landlord, the landlord's agent or another tenant or involving imminent or actual serious property damage, the landlord may deliver a written notice for immediate termination of the rental agreement and shall proceed under section 33-1377. The foregoing list of actions which may constitute a material and irreparable breach of a tenant's lease is not exhaustive.

B. A tenant may not withhold rent for any reason not authorized by this chapter. If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period of time, the landlord may terminate the rental agreement by filing a special detainer action pursuant to section 33-1377. Before the filing of a special detainer action the rental agreement shall be reinstated if the tenant tenders all past due and unpaid periodic rent and a reasonable late fee set forth in a written rental agreement. After a special detainer action is filed the rental agreement is reinstated only if the tenant pays all past due rent, reasonable late fees set forth in a written rental agreement, attorney fees and court costs. After a judgment has been entered in a special detainer action in favor of the landlord, any reinstatement of the rental agreement is solely in the discretion of the landlord.

C. The landlord may recover all reasonable damages resulting from noncompliance by the tenant with the rental agreement or section 33-1341 or occupancy of the dwelling unit, court costs, reasonable attorney fees and all quantifiable damage caused by the tenant to the premises.

D. The landlord may discontinue utility services provided by the landlord on the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181. Disconnections shall be performed only by a person authorized by the utility whose service is being discontinued. This section does not supersede standard tariff and operational procedures that apply to any public service corporation, municipal corporation or special districts providing utility services in this state.

E. On the day following the day that a writ of restitution or execution is executed pursuant to section 12-1181, the landlord shall comply with section 33-1370, subsections D, E, F, G, H and I regarding the tenant's personal property.

F. For the purposes of this chapter, the tenant shall be held responsible for the actions of the tenant's guests that violate the lease agreement or rules or regulations of the landlord if the tenant could reasonably be expected to be aware that such actions might occur and did not attempt to prevent those actions to the best of the tenant's ability.

G. For the purposes of this section, "days" means calendar days.

### **33-1381: Retaliatory conduct prohibited**

A. Except as provided in this section, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession after any of the following:

1. The tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health and safety.
2. The tenant has complained to the landlord of a violation under section 33-1324.
3. The tenant has organized or become a member of a tenants' union or similar organization.
4. The tenant has complained to a governmental agency charged with the responsibility for enforcement of the wage-price stabilization act.

B. If the landlord acts in violation of subsection A of this section, the tenant is entitled to the remedies provided in section 33-1367 and has a defense in action against him for possession. In an action by or against the tenant, evidence of a complaint within six months prior to the alleged act of retaliation creates a presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of termination of the rental agreement. "Presumption", in this subsection, means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

C. Notwithstanding subsections A and B of this section, a landlord may bring an action for possession if either of the following occurs:

1. The violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant or other person in his household or upon the premises with his consent.
2. The tenant is in default in rent. The maintenance of the action does not release the landlord from liability under section 33-1361, subsection B.

## **33-1904: Inspections**

A. In addition to any other statute or ordinance providing for the inspection of property, a city, town or county or the state may inspect the residential rental property if either of the following occurs:

1. A property owner fails to comply with the provisions of section 33-1902. The property is subject to immediate inspection until there is compliance. If the property is occupied, the inspecting authority shall request consent of the tenant before entering the interior of the structure. Except as otherwise provided by law, the right of inspection does not extend to the interior of a dwelling unit in a space rental mobile home park or recreational vehicle park that is not owned by a landlord unless the tenant is in possession of the dwelling unit or, if the dwelling unit is vacant or abandoned, the owner consents to the inspection. If the tenant refuses to consent to the entry, the inspecting authority has recourse to any remedy provided by law to secure entry.

2. A property has been designated as a slum property by a city, town or county or the state. The city, town, county or state may annually inspect a property designated as a slum property for three consecutive years. A city, town or county or the state shall establish the process by which a property is designated as a slum property.

B. The property owner is responsible for the costs of an inspection that is conducted pursuant to this section. If the property that is inspected is a dwelling unit in a space rental mobile home park or recreational vehicle park that is not owned by a landlord, the owner of the dwelling unit is responsible for the costs of the inspection.

C. On recording a penalty or inspection cost with the recorder's office in the county in which the property is located, the penalty or inspection cost is deemed to be an assessment and is prior to all other liens, obligations or encumbrances except for liens under title 12, chapter 7, article 12, prior recorded mortgages, restitution liens, child support liens and general tax liens. If the property that was inspected was a dwelling unit in a space rental mobile home park or recreational vehicle park that is not owned by a landlord, a lien shall not be recorded against the owner of the property other than the dwelling. The lien may be filed with the department of transportation and, if filed, has the same effect as otherwise provided for in this section.

D. This section shall not affect any other statute or ordinance pertaining to inspection of property.



**Let's check your knowledge!**



<https://quizlet.com/991666592/arizona-revised-statutes-civil-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Justice Court Rules of Civil Procedure



# Arizona Justice Court Rules of Civil Procedure

## Introduction to the Justice Court Rules of Civil Procedure

The Justice Court Rules of Civil Procedure (“JCRCP”) promote a goal of the Supreme Court's Justice 2020 Strategic Agenda, to strengthen the administration of justice. The Justice 2020 Strategic Agenda noted that the legal system can be difficult for people who do not have an attorney, and that simplifying the rules for less complicated cases should make court proceedings more understandable for many people and increase their trust and confidence in the legal system.

These justice court rules are based on the Arizona Rules of Civil Procedure, which apply in superior court. In 2016, the Arizona Supreme Court adopted comprehensive amendments to the Arizona Rules of Civil Procedure (“the superior court rules”), which took effect on January 1, 2017 (the “2016 amendments”). For ease of reference, cross-references to the Arizona Rules of Civil Procedure are shown in brackets at the end of a corresponding section of these rules, for example, [ARCP 99]. A Table of Cross-References at Appendix 4 also cross-references JCRCP provisions with related rules in the Arizona Rules of Civil Procedure. All references to the superior court rules in these rules, or in the Appendices, refer to those rules as in effect before the 2016 amendments. The wording of a justice court rule may be very different, or only slightly different, from a corresponding superior court rule. Differences in language between a justice court rule and a superior court rule are intended only to make the justice court rule simpler and easier to understand. Case law interpreting the superior court rule before the 2016 amendments is authoritative unless a justice court rule expressly adds a requirement or provides a right not found in a superior court rule. The application of case law interpreting a superior court rule as amended in 2016 will depend on the issue addressed. In general, post-2016 case law addressing aspects of a rule that were not substantively changed by the 2016 amendments should continue to be authoritative.

### [2013 Committee Note]

#### **2013 Note by the Committee on Civil Rules of Procedure for Limited Jurisdiction Courts**

Justice court lawsuits usually conclude in one of three ways:

- (1) Often after a complaint is filed and served, the defendant does not file an answer, and a default judgment is entered.
- (2) At other times, the defendant files an answer to a complaint, but the parties settle at an early stage of the lawsuit, either by entry of a judgment or by dismissal of the lawsuit.

(3) In a smaller number of cases, after a defendant files an answer to the complaint, the parties ask the judge to decide the case by motion, or the lawsuit goes to trial, and the judge then enters a judgment.

The table below shows those three categories, and the rules that generally apply in each of these three situations. The table may assist parties in finding many of the rules that apply to their individual lawsuit. Usually, the longer a lawsuit proceeds, the more rules apply.

Category:	See Rules:
<ul style="list-style-type: none"> <li>• A complaint is filed and served</li> <li>• there is no answer and</li> <li>• the lawsuit goes to a default judgment</li> </ul>	101 – 103: General provisions 104: Naming the parties 107 – 109: Presenting claims and defenses; preparing court documents; signatures 110 – 113: Starting a lawsuit: the complaint, the summons, and service of the lawsuit 114 – 115: Deadline for filing a response to a complaint; how to calculate time 140: Entry of default judgment 147: Enforcement of a judgment
<ul style="list-style-type: none"> <li>• An answer to the complaint is filed</li> <li>• the lawsuit is settled by the parties at an early stage</li> <li>• by the entry of a judgment or by dismissal of the lawsuit</li> </ul>	The above rules <i>except Rule 140</i> , and rules:
	116 – 120: Responding to a lawsuit 121: Disclosure statements 130 – 131: Optional mediation conference and pretrial conference 139: Judgment 144: Dismissal of lawsuits
<ul style="list-style-type: none"> <li>• An answer to the complaint is filed</li> <li>• the parties do discovery and the lawsuit proceeds to motions or to trial</li> <li>• after which a judgment is entered</li> </ul>	The above rules, and rules:
	122 – 127: Provisions regarding discovery: depositions, interrogatories, requests for production of documents, requests for admissions, discovery violations 128 – 129: Motions 132 – 138: Trial

## Part I: General Provisions

### Rule 101. Application and Interpretation

**a. Title of these rules.** These rules are called the Justice Court Rules of Civil Procedure (“JCRCP”). **[ARCP 85]**

**b. Application of these rules.** These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts, except that Rule 140 regarding entry of default judgments applies in small claims cases. **[ARCP 1]**

**c. Interpretation of these rules.** Judges and parties should use and interpret these rules so that civil lawsuits are resolved speedily, inexpensively, and fairly. **[ARCP 1]**

**d. Relationship of these rules to the Arizona Rules of Civil Procedure.** These rules replace the Arizona Rules of Civil Procedure (“the superior court rules”). In 2016, the Arizona Supreme Court adopted comprehensive amendments to the Arizona Rules of Civil Procedure (“the superior court rules”), which took effect on January 1, 2017 (the “2016 amendments”). All references to the superior court rules in these rules, or in the Appendices, refer to the Arizona Rules of Civil Procedure as in effect before the 2016 amendments. Differences in language between a justice court rule and a superior court rule are intended to make the justice court rule simpler and easier to understand. Case law interpreting a superior court rule before the 2016 amendments is authoritative unless a justice court rule expressly adds a requirement or provides a right not found in a superior court rule. The application of case law interpreting a superior court rule as amended in 2016 will depend on the issue addressed. In general, post-2016 case law addressing aspects of a rule that were not substantively changed by the 2016 amendments should continue to be authoritative. For ease of reference, any related superior court rules are shown in brackets at the end of a corresponding subsection of these rules. These cross-references utilize the numbering of the superior court rules as in effect before the 2016 amendments.

## Rule 102. Responsibilities of a Party

**a. Meaning of “party”.** Everyone who makes a claim in a lawsuit, or anyone against whom a claim is made, is a party in that lawsuit.

**b. Every party in a lawsuit has these responsibilities:**

(1) *To provide the court with a current address and telephone number:* A party must advise the court in writing of any change in the party's mailing address or telephone number until the lawsuit is over. **[ARCP 5.1(b)]**

(2) *To provide copies of filed documents:* A party must provide a copy of every document the party files with the court to all the other parties in the lawsuit (see Rule 120). **[ARCP 5(a)]**

(3) *To provide a disclosure statement and to respond to discovery requests:* A party must provide a disclosure statement to the other parties in the lawsuit (see Rule 121). A party must also respond to discovery requests made by another party (see Rules 122 through 127). **[ARCP 26.1, 26(a)]**

(4) *To appear in court:* A party must attend all scheduled court proceedings, either personally or through the party's attorney (see Rules 130, 131, and 132).

(5) *To give the court notice of a settlement:* A party must notify the court if a lawsuit that is set for trial has settled before the trial date, and whether the settlement will take place by the entry of a judgment or by dismissal of the lawsuit. **[ARCP 5.1(c)]**

**c. Parties representing themselves.** Parties who represent themselves must read these rules and know the rules that apply to their lawsuit.

**d. Appearance, withdrawal, and substitution of attorneys.** An attorney in a civil lawsuit in justice court must enter an appearance. An attorney who later requests the judge's permission to withdraw as counsel must file a motion that states the reasons for the request to withdraw, and the motion must include the name, address, and telephone number of the client. A motion to withdraw must include the client's signed consent to

the motion being granted; or it must include a statement that the attorney has advised the client of the dates and times of future proceedings and the status of any existing court orders. A notice of substitution of attorneys must contain the signatures of the former attorney and the substituting attorney. The signature of the substituting attorney affirms that the attorney is aware of existing court orders, pending proceedings, and the trial date, and that the attorney will appear on those dates and will be prepared for trial. **[ARCP 5.1]**

## Rule 103. Conduct in Court

**a. Conduct in court.** Parties and witnesses who appear in court must conduct themselves in an orderly, courteous, and dignified manner. Arguments and remarks during a court hearing, other than questions to a witness, must generally be addressed to the court, not to the other parties or their attorneys. **[ARCP 80(a)]**

**b. Exclusion of minors.** The court may exclude children from the courtroom if their presence is not necessary as parties or witnesses. **[ARCP 80(b)]**

**c. Agreements between parties.** An agreement between parties or attorneys concerning their lawsuit that they make out of court is binding on them only if the agreement is in writing and is signed by the parties or their attorneys. If the parties make an agreement orally in court, it is binding only when it is documented in the court records. **[ARCP 80(d)]**

**d. Lost or destroyed records.** If the court's record of a lawsuit or any portion of a lawsuit has been lost or destroyed, a judge may allow a party to replace the missing record by submitting a duplicate record. The judge must give other parties a reasonable opportunity to object to the duplicate record. **[ARCP 80(h)]**

## Part II: The Parties to a Lawsuit

### Rule 104. Naming the Parties

**a. "Plaintiff" defined; multiple plaintiffs.** A plaintiff is the party who makes a claim by filing a lawsuit. There can be more than one plaintiff in a lawsuit if each plaintiff's claims involve common issues and the same transaction(s) or event(s). Each plaintiff must be a real party in interest, that is, each plaintiff must be someone who claims to have been damaged or whose rights are in dispute. Each plaintiff must make the claim in his or her, or its, correct and proper legal name. A mistake in naming the real party in interest must be corrected within a reasonable time, as determined by the judge, after the mistake has been brought to the attention of that plaintiff, and if the plaintiff does not then correct it, the judge may dismiss the claim. **[ARCP 20(a), 17(a)]**

**b. "Defendant" defined; multiple defendants.** A defendant is the party who is sued in a lawsuit. More than one defendant may be sued in a single lawsuit if the claim (or claims) involves the same transaction(s) or event(s), and if the lawsuit will involve an issue that applies to all defendants. **[ARCP 20(a)]**

**c. Naming a defendant by the proper name.** All defendants, including partnerships, executors, administrators, guardians, trustees, a personal representative, a bailee, a

city, town, or county, or a surety, assignor, endorser, minor (child), an incompetent person, or a person authorized by a statute to sue for the benefit of another person, must be identified properly and by the correct legal name. [ARCP 17(a)-(d), (f)-(j)]

**d. “Necessary” and “indispensable” parties.** A person who is not a party to the lawsuit may be “necessary” for a fair hearing of the lawsuit if the court cannot enter complete relief without the person, or if the person has an interest in the lawsuit that the court must resolve. Upon motion of any party, the necessary person will be made a party, served with the lawsuit, and required to participate in the lawsuit. If a necessary person cannot be made a party for any reason, then the court will determine if the absent party is “indispensable” and if so, whether the lawsuit should be dismissed. [ARCP 19(a), (b)]

**e. Definition of a “person.”** A “person” under these rules includes a business or an organization as well as an individual.

## Rule 105. Substitution of Parties During a Lawsuit

Parties may be substituted in a lawsuit in the following situations:

**a. When a party has died during a lawsuit,** and when the claim survives the party's death, upon a motion filed by any party or by the successor or representative of the deceased party, provided that the motion must be filed within ninety (90) days after a notice of the death has been filed with the court; and if no motion is made within that time, the deceased party may be dismissed from the lawsuit. [ARCP 25(a)]

**b. When a defendant has died after a personal injury lawsuit has been filed,** the death will not automatically end the lawsuit, but a personal representative, a successor, or a nominee may be substituted for the deceased defendant upon motion of any party or interested person. [ARCP 25(b)]

**c. When a party becomes incompetent during a lawsuit,** by motion and as provided in Rule 105(a) by using the word “incompetency” rather than “death” and “incompetent” rather than “deceased.” [ARCP 25(c)]

**d. When there has been a transfer of interest during a lawsuit,** the lawsuit may continue by or against the original party, but upon a party's motion the judge may order the person to whom the interest has been transferred to be substituted, or to be named in addition to the original party. [ARCP 25(d)]

**e. When a public officer in an official capacity dies while the lawsuit is pending, or resigns, or ceases to hold office,** the officer's successor is automatically substituted as a party, unless the judge upon motion orders otherwise. [ARCP 25(e)]

## Rule 106. Intervention and Interpleader

**a. Intervention.** When a person has an interest in the subject matter of a lawsuit between other parties and that interest might be affected by a decision in the lawsuit, or a person has a claim or defense in common with a claim or defense in a lawsuit between other people, the person may be able to participate in the lawsuit as a plaintiff or as a defendant. Joining a lawsuit in this way is called “intervention.” Procedures for

intervention are provided in Rule 24 of the Arizona Rules of Civil Procedure, which is included in the appendix to these Rules. **[ARCP 24]**

**b. Interpleader.** When a person might be exposed to double or multiple liability because of claims made against that person, the person may file a lawsuit against those who have the claims, and the court will determine each party's rights and liabilities. For example, a person who has property in which two or more other persons claim ownership may file a lawsuit asking the court to determine ownership. This type of action is called an "interpleader." Procedures for interpleader are provided in Rule 22 of the Arizona Rules of Civil Procedure, which is included in the appendix to these Rules. **[ARCP 22]**

### Part III: Presenting Claims and Defenses; Preparing Court Documents; Signatures

#### Rule 107. Definition of a "Pleading;" Interpretation of Pleadings

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

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

Additional information about these pleadings is contained in Rules 110, 111, 116, 117, 118, and 119. **[ARCP 7(a)]**

**b. Simple and concise statements.** Statements in pleadings must be simple and concise. **[ARCP 8(e)]**

**c. Interpretation of pleadings.** The court will interpret pleadings to do justice. **[ARCP 8(f)]**

#### Rule 108. Preparing a Document for Filing with the Court

**a. Caption.** A "caption" is a heading at the beginning of a document. The first page of every document that is filed with the court, including a pleading as defined in Rule 107(a), must include a caption that contains the name and address of the court where the document is being filed; the names of the parties; the mailing address of the party who is filing the document, and the party's e-mail address if the party has one; and the name of the document. Every document filed with the court after the complaint must also include the case number assigned by the court. See Rule 112(a) concerning the case number. The court may refuse to accept a document that does not meet the requirements of this paragraph. **[ARCP 10(a)]**

**b. Format.** A party must file a document with the court on paper, except that a party may file a document electronically as provided in Arizona Code of Judicial Administration (ACJA) § 1-901. These rules apply to both electronic and paper filings. Electronic filings must be in a format allowed by the court and as provided by ACJA § 1-901. Paper filings must be on only one side of white 8.5 x 11 inch paper, with one-inch margins on the top, bottom, and sides of the page. Documents filed on paper must be typed, printed, or legibly handwritten. Documents filed on forms provided by the court do not need to meet these requirements. The court may issue documents such as notices or orders in either paper or electronic formats. **[ARCP 10(d)]**

**c. Attachments to documents (“exhibits”).** Exhibits may be attached to a document that is filed with the court. An exhibit is considered a part of the document to which it is physically or electronically attached, and an exhibit does not require a separate caption. **[ARCP 10(c)]**

**d. Sensitive data.** A party is responsible for assuring that a document or exhibit that is filed with the court does not include a person's social security number or a financial account number, or if a number is necessary, that it includes only the last four digits of the number; and the court may impose penalties on a party for a violation and to ensure future compliance with this requirement. **[ARCP 5(f)]**

**e. Filing documents.** Unless filing electronically, the original of every document must be filed with the court, but attachments to documents that are filed with the court may be copies. Except for electronically filed documents, documents are filed with the court when they are delivered to and accepted by the court. If a document is filed electronically, the effective date of filing is as provided in the ACJA § 1-901. **[ARCP 5(h), 10(d)]**

**f. Electronically filed documents.** ACJA § 1-901 governs the form of electronically filed documents, including the format, file type and size, format of exhibits and attachments, use of hyperlinks and bookmarks, and originals.

**g. Electronic signatures and electronic notarizations.** The clerk must accept for filing any document that purports to have a signature, including documents that appear to be electronically signed or electronically notarized in accordance with applicable law. If the authenticity or sufficiency of an electronic signature or electronic notarization is disputed, a judicial officer will make a determination under applicable substantive law.

### Rule 109. Signatures on Documents Filed with the Court

**a. Signature.** Every document that is filed with the court, except for exhibits, must be dated and signed by the party's attorney or by the party if the party has no attorney. ACJA § 1-901 governs how a person may sign a document filed through the person's electronic filing service provider account. “Electronic filing service provider” has the same meaning as provided in ACJA § 1-901. When two or more parties jointly file a document, each of these parties must sign it. However, if the document is filed through an electronic medium where only one electronic signature is allowed, all parties who submit the document are responsible for the document under Rule 109(b). Any document filed without being signed and dated may be stricken by the court. **[ARCP 11(a)]**

**b. Documents filed not in good faith, etc.** A signature of an attorney or a party on any document confirms that the person who is signing has read the document; that, to the

person's best knowledge, the statements in the document are truthful; and that the document is filed in good faith, and not to harass another party or to delay the lawsuit. If the court finds that a document was filed in violation of this rule, the court may impose a penalty permitted under Rule 127(d) on the person who signed it. **[ARCP 11(a)]**

**c. "Verification" of a pleading.** A document that is filed with the court is verified if a person has signed it under oath. If A.R.S. § 22-216 or any other law requires that a pleading be verified, the pleading must contain the following verification above the signature and date lines:

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

A verified pleading must be verified by the party who files it or by an individual on behalf of a party if the individual is acquainted with the facts. **[ARCP 9(i), 11(b)]**

**d. Affidavits; declarations under penalty of perjury.** An affidavit is a statement that is sworn to before an authorized official such as a notary. When a party or person is required by these rules or by law to submit an affidavit, the party or person, instead of swearing before an official, may provide a signed statement under oath, which is shown by adding the following words at the end of the statement:

*"I declare under penalty of perjury that the foregoing is true and correct. Signed on the \_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_."*

The individual must place his or her signature directly below those words. **[ARCP 80(i)]**

## Part IV: Starting a Lawsuit: The Complaint, the Summons, and Service of the Lawsuit

### Rule 110. Starting a Lawsuit; Content of a Complaint

**a. Starting ("commencing") a lawsuit.** A lawsuit is started ("commenced") by filing a complaint with the court. **[ARCP 3]**

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

- (1) The proper name of every plaintiff and of every defendant. If a defendant's name is unknown, a complaint may identify the defendant by a fictitious name, and the complaint may be amended when the defendant's true name becomes known. This paragraph also applies to defendants in a third-party complaint.
- (2) In lawsuits to recover on an assigned debt, the identity of the original owner of the debt.
- (3) A statement that the court has legal authority over the subject matter of the claim(s) and over the defendant(s) ("jurisdiction"); and a statement that the Justice Court precinct where the lawsuit is filed is the proper location ("venue").
- (4) A short and clear statement of the factual basis of each claim. Each claim must show that the party has a right to relief from the court.
- (5) A demand that the court award money or another type of remedy allowed by law. If the requested remedy is an amount of money, and the amount can be calculated with certainty, the complaint must state the amount. If the amount of money cannot be calculated with certainty, a specific amount does not need to be stated, but the

complaint must generally describe the damages and it must state that the amount requested does not exceed the jurisdictional limit of the justice court. **[ARCP 8(a), (g), 10(f)]**

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

## Rule 111. Lawsuits Involving Multiple Parties or Multiple Claims

**a. Multiple claims.** A plaintiff may state in a single complaint as many claims as the plaintiff has against a defendant, even if the claims are not related. Claims involving multiple transactions or occurrences must be stated separately so that each claim is clearly presented. Each claim must have its own basis for jurisdiction in the court in which it is brought, and any claim is subject to dismissal if there is no basis for jurisdiction. Alternative claims for recovery of the same damages should not be added together in determining whether the court has jurisdiction. **[ARCP 10(b), 18(a), 20(a)]**

**b. Separate trials concerning claims or parties.** The court may make orders in the interest of justice, including severance of claims or for separate trials of claims, which will prevent a party from being embarrassed, delayed, prejudiced, or put to unreasonable expense, because the party has been named in a lawsuit. **[ARCP 20(b), 21]**

**c. Judgment given on specific claims.** If there are multiple plaintiffs, one plaintiff need not be interested in each of the claims made by the other plaintiffs; and if there are multiple defendants, each defendant need not be interested in defending against all of the claims that are made in the lawsuit. Judgment may be given for one or more of the plaintiffs according to their individual rights, and against one or more of the defendants according to their individual liabilities. **[ARCP 20(a)]**

## Rule 112. Case Number and Filing Date; Issuance of a Summons By the Court; Content of a Summons; Notice to Defendant; Replacement Summons

**a. Case number and filing date.** The court will provide a case number for a complaint when it is filed, and it will stamp on the complaint the date that it is filed. **[ARCP 4(a)]**

**b. Issuance of the summons.** A summons is a document issued by the court when a complaint is filed that requires a defendant to file a response to the complaint. A summons must be the same as the form that is available under Rule 148(b). The court will issue one summons for each defendant named in the complaint, including a defendant identified by a fictitious name under Rule 110(b), and will provide the summons to the plaintiff for service on each defendant. The plaintiff must arrange for service of a copy of the summons and complaint on each defendant as provided by

**Rule 113. A CASE OR CLAIM AGAINST A DEFENDANT CANNOT PROCEED WITHOUT PROPER SERVICE. [ARCP 4(a), (c)]**

**c. Content of the summons.** The summons commands each defendant to file a written response to the complaint with the court within the time period stated in the summons. The summons must notify each defendant that, if a response to the complaint is not filed within the time period stated in the summons, the plaintiff may ask the court to enter a default judgment against the defendant, as provided in Rule 140. **[ARCP 4(b)]**

**d. Notice to defendant.** Before serving the summons and complaint, the plaintiff must attach to each summons a “notice to defendant” as shown in Rule 148(b). The court may not grant a default judgment against a defendant unless the affidavit of service or other proof of service establishes that the notice to defendant was served upon the defendant with the summons and complaint. This requirement does not apply to service by publication. **[See Rule 5(c)(5), Rules of Procedure for Eviction Actions]**

**e. Replacement summons.** The court will issue a replacement summons if needed and upon request. **[ARCP 4(b)]**

**Rule 113. Serving a Summons and Complaint**

**a. Personal service on individuals in the State of Arizona. A CASE OR CLAIM AGAINST A DEFENDANT CANNOT PROCEED WITHOUT PROPER**

**SERVICE.** Except as stated in other sections of this rule, each defendant who is found in the State of Arizona must be personally served with the summons and complaint by a constable or by a certified private process server who is certified under Arizona law. “Personally served” means that the constable or private process server must deliver a copy of the summons and pleading to the individual defendant personally, or leave copies at the individual's residence with a person of suitable age and discretion who lives there, or deliver copies to an authorized agent of the defendant. Promptly after service upon a defendant, the constable or certified private process server must prepare an affidavit as proof that the defendant was served, and the proof of service must be filed with the court. An affidavit of attempted service should be filed with the court only as an exhibit to a motion. **[ARCP 4(d), (g), 4.1(b), (d)]**

**b. Service on a corporation, partnership, limited liability company, or association within the State of Arizona.** Service of a summons and complaint within the State of Arizona upon a corporation, a partnership, a limited liability company, or an association must be made by personally serving an officer, a partner, or a managing or general agent, or by serving any other agent authorized by law to receive service on behalf of the organization. The constable or certified private process server must prepare an affidavit as proof that a corporation, a partnership, a limited liability company, or an association was served, and the proof of service must be filed with the court. **[ARCP 4.1(k), 4(d), (g)]**

**c. Special situations for service of the summons and complaint on a defendant in the State of Arizona.** Service of the summons and complaint within the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.1 of the Arizona Rules of Civil Procedure. The rules listed in sub-sections (1) through (7) below are included in the appendix to these Justice Court Rules of Civil Procedure:

(1) Upon a minor (a child under the age of 18): see Rule 4.1(e);

- (2) upon a minor with a guardian or conservator: see Rule 4.1(f);
- (3) upon an incompetent individual: see Rule 4.1(g);
- (4) upon the State of Arizona, a county, a municipal corporation, or any other governmental entity: see Rule 4.1(h);
- (5) upon a domestic corporation if an authorized officer or agent is not found within the State of Arizona: see Rule 4.1(j);
- (6) by alternative or substituted service: see Rule 4.1(k);
- (7) by service by publication: see Rule 4.1(l).

Proof of service upon any of the above defendants or using one of the above methods must be promptly prepared by the constable or certified private process server who completed service, and the proof of service must be filed with the court, except that proof of service by publication must be filed as provided by Rule 4.1(n). **[ARCP 4.1(e)-(h), (j)-(l), 4(d), (g)]**

**d. Service on an individual outside the State of Arizona.**

(1) *Personal service.* An out-of-state individual may be personally served with a summons and complaint by someone who is authorized to serve process under the laws of the state where service is made on the individual. The meaning of “personally served” is set forth in Rule 113(a). The person who completed service must promptly prepare an affidavit as proof that a defendant was served, and the proof of service must be filed with the court.

(2) *“Alternative” service by certified mail.* Alternatively, and if the defendant lives outside the State of Arizona but inside the United States, service may be made by certified mail, with a return receipt showing restricted delivery to the defendant. The return receipt with defendant's signature must be filed with the court with the plaintiff's affidavit of service. The affidavit must state that the defendant being served is located out-of-state; that the summons and a copy of a specified pleading were mailed to the defendant; that the documents were in fact received by the defendant, as shown by the return receipt that is attached to the affidavit; and the date of receipt of the documents by the defendant who was served. Service by certified mail is complete on the date that defendant signed the receipt, as shown on the return receipt, and if there is no date of defendant's signature on the return receipt, or if the date is not legible, then service is complete on the date the affidavit of service and the return receipt are filed with the court. **[ARCP 4.2(b), (c)]**

**e. Special situations for service of the summons and complaint on a defendant outside the State of Arizona.** Service of the summons and complaint outside the State of Arizona on one of the following defendants, or using one of the following methods, must be made as provided in the following sections of Rule 4.2 of the Arizona Rules of Civil Procedure. The rules listed in sub-sections (1) through (7) below are included in the appendix to these Rules.

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

Proof of service upon any of the above defendants or using one of the above methods must be prepared by the person who completed service, and the proof of service must be filed with the court, except that proof of service under the Nonresident Motorist Act must be made as provided by Rule 4.2(e), and proof of service by publication must be filed as provided by Rule 4.2(f). **[ARCP 4.2(e)-(f), (h)-(l), 4(g)]**

**f. Amendment of summons or proof of service.** A summons or a proof of service may be amended if reasonable and as the judge may allow, and if the amendment does not cause substantial harm to the defendant who was served. **[ARCP 4(h)]**

**g. Acceptance of Service.** Service may be made without the expense of a process server if the defendant agrees in writing to accept service. A defendant may sign an acceptance of service of a summons and complaint if a notarial officer witnesses the signature. The signed acceptance of service must then be returned to the plaintiff and filed with the court. The date of service is the date that the signed acceptance of service is filed with the court. **[ARCP 4(f)]**

**h. Jurisdiction.** A justice court may exercise personal jurisdiction over the parties who have been properly served to the full extent permitted by the constitutions and laws of the State of Arizona and of the United States. **[ARCP 4.2(a)]**

**i. Dismissal because of lack of service; service on some but not all defendants.** After at least twenty (20) days notice to plaintiff, the court may dismiss a complaint as to any defendant who has not been served with the summons and complaint within ninety (90) days after the filing date of the complaint. Before the dismissal date, if the plaintiff shows good reasons why a defendant has not been served, the court may extend the time for service. When some but not all of the defendants in a lawsuit have been timely served, the court may dismiss from the lawsuit the defendants who have not been served, and allow the plaintiff to proceed against the defendants who have been served. **[ARCP 4(i), 5(b)]**

## Part V: Responding to a Lawsuit

### Rule 114. Deadline for Filing a Written Response with the Court After Service of a Complaint, or After Service of a Cross-Claim, Counterclaim, or Third-Party Complaint; Appearance

**a. Time to respond after service of a summons and complaint.** Except as otherwise stated in these rules, a defendant who is served with a summons and complaint within the State of Arizona must file a written answer or response with the court within twenty (20) days after the date of service. A defendant who is served with a summons and complaint outside the State of Arizona must file a written answer or response with the court within thirty (30) days after the date of service. **[ARCP 12(a), 4.2(m)]**

**b. Time to respond after service of a counterclaim or cross-claim.** A party who is served with a counterclaim or a cross-claim must file a written answer or response with the court within twenty (20) days after service. **[ARCP 12(a)]**

**c. Time to respond after service of a third-party complaint.** A defendant who is served with a third-party complaint must file a written answer or response with the court within the time provided in Rule 114(a). **[ARCP 12(a), 14(a)]**

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

**e. Appearance.** A party's appearance occurs when the party or the party's attorney first files a pleading or other document in the case. After a party has made an appearance, all documents filed by any other party in the case must be served under Rule 120 on all parties that have appeared in the case.

## Rule 115. How to Calculate Time

### **a. Basic rules.**

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

(2) *If the time period is less than eleven (11) days.* When the period of time specified or allowed is less than eleven (11) days before including any additional time allowed under section (b) of this rule, then intermediate Saturdays, Sundays and legal holidays are not included in the calculation of time. When the period of time is eleven (11) days or more, intermediate Saturdays, Sundays and legal holidays are included in the calculation.

(3) *Last day.* The last day of the period is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. **[ARCP 6(a)]**

**b. Additional time for mailing or e-mailing.** Except as provided in Rule 114(a), if a party is required to do something within a specified period of time after service of a document, and the document is served by first class postal mail, or by e-mail, then five (5) calendar days are added after the specified period would otherwise expire under Rule 115(a). The term "mail" used in this rule includes every type of professional delivery service except same day hand-delivery. This paragraph does not apply to the distribution of a notice of entry of judgment as provided by Rule 139(f). **[ARCP 6(e)]**

**c. Extension of time.** When these rules or a court order require that a party do something by a specified time, including but not limited to filing a document, the court may extend that time period. The court may grant an extension on motion of a party or, if the extension is granted before expiration of the specified time period, on its own and without notice to the parties. After the expiration of the specified time period, the court may grant an extension only if a party files a motion showing that the party's failure to act before expiration of the time period resulted from the party's excusable neglect. However, the court may extend the time limits for a motion for judgment as a matter of law under Rule 134(b), a motion for new trial under Rule 138(b), or a motion requesting relief from a judgment or an order under Rule 141(c), only if the court finds that a party entitled to notice of the entry of a judgment or an order did not receive notice from the clerk or from another party within twenty-one (21) days of the date of entry, and that no party would be prejudiced if the court allowed an extension. **[ARCP 6(b)]**

## Rule 116. Filing a Response to a Complaint

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

(1) *An answer.* An answer must include short and clear statements that either admit or deny specific allegations in a complaint, or state that the defendant does not have enough knowledge to admit or deny them. An answer must also state a party's factual and legal defenses to the complaint. **[ARCP 8(b), (c)]**

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

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

(ii) A motion to dismiss for improper venue (“venue”) is the location of the court in which the lawsuit was filed);

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

(iv) A motion to dismiss because the complaint does not state a valid claim, even if the facts alleged in the complaint are assumed to be true. **[ARCP 12(b)]**

(3) *A motion for a more definite statement.* This motion must allege that the complaint is unclear. A motion for a more definite statement must point out the defects that make the complaint unclear, and the types of details that should have been provided. **[ARCP 12(e)]**

(4) *A motion to strike the complaint.* This motion must allege that the complaint contains immaterial, impertinent, or scandalous allegations, and that it should be stricken partially or entirely. **[ARCP 12(f)]**

**b. Proceedings after a motion is made under this rule.**

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

(2) If the court grants a motion for a more definite statement or a motion to strike the complaint, the plaintiff has twenty (20) days after the motion is granted to file an amended complaint, and the defendant has twenty (20) days after service of the amended complaint to file a response to the amended pleading.

(3) If the court denies a motion under this rule, the defendant must file an answer to the complaint within twenty (20) days after the motion has been denied.

**c. Waiver of defenses.** Except for a lack of jurisdiction over the subject matter or discharge in bankruptcy, a defense that might have been presented by a motion under paragraphs (a)(2), (3), or (4) of this rule is waived if it is not made before an answer is filed. **[ARCP 12(h)]**

**d. Misidentified defenses and counterclaims.** If a party mischaracterizes a defense as a counterclaim, or if a party mischaracterizes a counterclaim as a defense, the court in the interest of justice may treat it as if it was properly named. **[ARCP 8(c)]**

## Rule 117. Counterclaims and Cross-Claims

**a. Required counterclaim.** A defendant must file a counterclaim for any claim that the defendant has against the plaintiff, if the defendant's claim arises out of same transaction, occurrence, or event that is described in the plaintiff's complaint. **[ARCP 13(a)]**

**b. Permitted counterclaim.** A defendant may file a counterclaim for any claim that the defendant has against the plaintiff but that does not arise out of the transaction, occurrence, or event that is described in the plaintiff's complaint. **[ARCP 13(b)]**

**c. Filing a counterclaim with the answer; failure to file a counterclaim.** A defendant must file a counterclaim at the time the defendant files an answer under Rule 116. If a defendant fails to file a counterclaim with an answer, the defendant may file a motion under Rule 119(a) requesting that the court allow the defendant to file an amended answer with a counterclaim. **[ARCP 13(f)]**

**d. Cross-claim.** In a case where there are two or more defendants, a defendant may state as a cross-claim any claim that the defendant has against another defendant arising out of the same transaction, occurrence, or event that is described in the plaintiff's complaint. The cross-claim must be stated at the time the defendant files an answer or other response to the complaint, unless the court allows an amendment under Rule 119(a). **[ARCP 13(g)]**

**e. Filing a response to a counterclaim or a cross-claim.** A party who is served with a counterclaim or a cross-claim must file a written response with the court pursuant to the provisions of Rule 116 and within the time provided in Rule 114(b). **[ARCP 12(a)]**

**f. Counterclaim or cross-claim exceeding the jurisdiction of the justice court.** If a claim filed pursuant to this rule exceeds the jurisdiction of the justice court, the lawsuit must be transferred as provided by law. **[ARCP 13(c). See also A.R.S. § 22-201(G)]**

## Rule 118. Third-Party Complaint

**a. Reason for a third-party complaint.** If a defendant contends that another person who is not named as a party in the lawsuit is fully or partly responsible for plaintiff's damages, the defendant may file a third-party complaint against that person. **[ARCP 14(a)]**

**b. Service of a third-party complaint.** The defendant who files a third-party complaint must request the clerk to issue a summons as provided in Rule 112. The defendant must serve the third-party defendant with the summons, the third-party complaint, and a copy of pleadings that were previously filed in the lawsuit, in the same manner as an initial summons and complaint, and as provided in Rule 113. The third-party defendant must file a response to the third-party complaint as provided in Rule 116 and within the time provided by Rule 114(c). **[ARCP 14(a)]**

## Rule 119. Amended and Supplemental Pleadings

**a. Amendments to pleadings.** A party may amend a pleading one time within twenty-one (21) days after service of a responsive pleading. If no response is required, a party

may amend a pleading within twenty-one (21) days after the pleading was filed. If a motion is filed under Rule 116(a)(2)(iv), (a)(3) or (a)(4), a party may amend a pleading one time before the date on which a response to the motion is due. However, the filing of an amended pleading before the response to such a motion is due does not, by itself, relieve a party opposing the motion from filing a timely response to the motion.

Thereafter, and upon a party's motion, the court may permit the filing of an amended pleading at any stage of the proceeding and on terms that are just. Leave to amend must be freely given when justice requires. A party must file a response to an amended pleading within the time remaining for the party's response to the original pleading, or within twenty (20) days after service of the amended pleading, whichever is greater. **[ARCP 15(a)]**

**b. Amendments to conform to the evidence.** When a party raises issues at trial that were not stated in the pleadings, the court may rule that the pleadings are conformed to the evidence and decide the matter based on the facts presented at trial. If a party objects to the introduction of evidence at trial on the ground that the evidence is not relevant to the pleadings, and the objecting party would be prejudiced by going forward, the court may grant a continuance to enable the objecting party to conduct discovery concerning the evidence, or the court may decline to admit the evidence. **[ARCP 15(b)]**

**c. Relation back of amendments.** An amended pleading may relate back to the original filing date if the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence that is described in the original pleading. An amended pleading changing the party against whom a claim is made relates back if: the previous requirement is met; if the new party received notice of the action within the time required by law for bringing the action and will not be prejudiced by the belated filing; and if the new party knew or should have known of a mistake concerning the identity of the proper party in the original pleading. **[ARCP 15(c)]**

**d. Supplemental pleadings.** Upon motion, the court may permit a party to file a supplemental pleading that contains claims or defenses that have arisen since the date of the original pleading. If the court decides that the filing of a supplemental pleading is appropriate, it may also order the opposing party to file a response to the supplemental pleading, and set a time for the opposing party to file a response. **[ARCP 15(d)]**

## Rule 120. Providing Documents to Other Parties (“Serving Documents”) After the Summons and Complaint

**a. Application of this rule.** There are two types of service under these rules. Service of a summons and complaint, or service of a summons and a third-party complaint, must be completed as required by Rule 113. The other type of service concerns documents filed with the court after service of the summons and complaint or a third-party complaint; this type of service requires that documents be provided to the other parties as stated in this Rule 120. **[ARCP 5(a)]**

**b. General rule.** A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit (“served”) before or promptly after the document is filed, by one of the following methods:

- (1) Hand-delivery to the other party;
- (2) Hand-delivery to the other party's place of business and leaving the document with an individual in charge, or if no one is in charge, by leaving the document in a conspicuous place at the other party's business;
- (3) If the other party has no place of business, hand-delivery to the other party's residence, by leaving the document with someone of suitable age and discretion who lives there;
- (4) Mailing the document via first-class U.S. mail to the other party's last known address; or by using any type of professional delivery service that produces a written confirmation of delivery;
- (5) Delivering the document by any other means, including electronic means other than that described in Rule 120(b)(6), if the party who is receiving the document consents in writing, electronically, or through a court's electronic filing system to that method of service, or if the court orders service by that method; or
- (6) Transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts as provided in ACJA § 1-901.

Copies of documents to parties in default, as defined in Rule 140, must be provided as required by Rule 140. **[ARCP 5(a), 5(c)(2)]**

**c. Party represented by an attorney.** If an attorney represents the other party, service under this rule must be made on the attorney unless the court orders service on the party. **[ARCP 5(c)(1)]**

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

*"A copy has been or will be mailed/e-mailed/hand-delivered [select one]*

*"on [insert date] to:*

*"Name of opposing party or attorney*

*"Address of opposing party or attorney" [ARCP 5(c)(3)]*

**e. Service of a motion after entry of judgment.** Service of a motion that requests that a judgment be modified, vacated, or enforced must be served on the other party as if serving a summons and complaint under Rule 113. **[ARCP 5(c)(4)]**

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

- (1) Subpoenas;
- (2) Discovery requests and responses, including notices of depositions, interrogatories, requests for production, and requests for admissions, and responses to these requests;
- (3) Disclosure statements. **[ARCP 5(g)(2)]**

**g. Notices.** Rules 123(c), 124(b), 125(b), 126(b), 126(c), 128(c), and 129(c), specify certain notices with mandatory language, including language that describes limits on the length of depositions, the number of discovery requests allowed, and other requirements. The limits and the other requirements contained in these notices are mandatory and binding absent a court order modifying them.

## Part VI: Disclosure Statements and Discovery

### Rule 121. Disclosure Statements

**a. Disclosure of information.** Within forty (40) days after the defendant has filed an answer, or at a time set by the court, each party must provide to the other parties a written disclosure statement. Every party's disclosure statement must include the following information:

(1) *A list of trial witnesses.* This list must include the names, addresses, and telephone numbers of the witnesses the party will call if the lawsuit goes to trial, and a brief description of what the party expects the witness will say. "Witness" is defined in Rule 137(a) as "a person, including a party, who provides sworn testimony during a lawsuit." If a witness is going to offer expert testimony, the list must include the expert's qualifications, and a summary of the opinions of the expert.

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

(3) *Copies of exhibits and information.*

(A) A party must provide copies of any documents or exhibits the party will use to support a claim or defense, including copies of electronically stored documents;

(B) In a contested case based upon the collection of a consumer debt (a debt entered into for personal, family, or household purposes), the plaintiff must disclose all available evidence related to the allegations contained in the complaint. These include:

(i) The agreement between the creditor and consumer, if available, upon which the complaint is based;

(ii) Any available billing statement to the consumer;

(iii) If the debt has been assigned, evidence that the plaintiff is the owner of the debt;

(iv) Information concerning the date of the last payment made by the consumer, if available;

(C) If the party intends to use at trial any document, object, or exhibit that cannot be easily copied, the party must make the item reasonably available for inspection by the other parties at the pretrial conference or as otherwise agreed to by the parties.

(4) *Statements.* A party must provide a copy of any written or recorded statements that are within the party's possession or control and that were given by any person. If a party is aware of such a statement that is not within the party's possession or control, the party must identify the name and address of the person who gave the statement and the custodian of the copy of the statement, if known.

(5) *A list of other documents.* This list must include all other relevant documents that are known to exist, whether these other documents are favorable or not and whether they exist in paper or electronic formats, and their location, if known. The list must include any insurance agreements that may satisfy all or part of a judgment that may be entered in the lawsuit. A party may provide copies of these documents rather than a list of documents.

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

A party is not required to disclose information that is legally privileged or that has been prepared specifically for litigation, except as stated in Rule 122(f)(3) of these rules. However, the party withholding this information must provide a general description of the documents or matters not disclosed that is sufficient for another party to challenge the non-disclosure. **[ARCP 26.1(a), (b), (d), (f)]**

**b. Disclosure of new information.** If a party discovers new or different witnesses, documents, or other information that will be used at trial, the party has a duty to promptly provide to the other parties: (1) a statement containing the additional information or witness information, or (2) copies of the new documents. The duty to make the disclosures required by this rule is a duty that continues until the lawsuit is over. **[ARCP 26.1(b)]**

**c. Penalties for failure to disclose.** Disclosures by a party must include enough information that a witness who is called or an exhibit that is presented at trial will not surprise the other parties. The court may penalize any party who fails to disclose or who fails to timely disclose witnesses, exhibits, or information, or who discloses inaccurate information. Penalties that the judge may impose are provided in Rule 127(d). **[ARCP 37(a), (c), (d)]**

## Rule 122. General Provisions Regarding Discovery

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

A party may obtain discovery concerning the existence, description, nature, custody, condition and location of any records, documents, or other things, and the identity and location of persons having knowledge of any discoverable matter. A party may not object to a request for discovery on the grounds that the information sought will be not be admissible at trial if the requested information appears reasonably calculated to lead to the discovery of admissible evidence. **[ARCP 26(b)]**

**b. Discovery methods.** A party may request discovery from another party by one or more of the following methods: depositions upon oral examination (Rule 123); written interrogatories (Rule 124); requests for production of documents or things, or for permission to enter upon land or other property for inspection and other purposes (Rule 125); requests for admissions (Rule 126); and requests for physical and mental examinations (Rule 122(f)(6)). **[ARCP 26(a)]**

**c. Timing of discovery.** Methods of discovery may be used in any sequence unless otherwise ordered by the court. A party may file a motion requesting the court to enter an order concerning the sequence of discovery by explaining how it would be for the benefit or convenience of parties or witnesses, or why it would be in the interests of justice. Discovery must be completed thirty (30) days before the trial date, unless the court sets or the parties agree to a different date for completion of discovery. A party must serve interrogatories, requests for production, and requests for admissions, and

must notice depositions, to allow discovery responses to be provided or a deposition to be concluded within this time. **[ARCP 26(d)]**

**d. Protective orders and limitations on discovery.** If a motion of a party or of a person from whom discovery is sought shows good reasons, the court may in the interests of justice enter an order to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense in connection with a discovery request. The judge may order, among other things, that discovery not take place, or that it take place under certain terms or conditions; that only certain methods of discovery be used; that inquiry not be made into certain matters; that certain persons not be present during discovery; that items of discovery be sealed, or not disclosed, or disclosed only in a certain way; or that information be exchanged simultaneously. A person who requests that information remain confidential has the burden of showing reasons why the judge should order confidentiality. **[ARCP 26(c)]**

**e. Supplementation of discovery responses.** A party is required to amend a prior discovery response if the party knows that the response was incorrect when it was provided, or if the party knows that the response, although correct when it was provided, is no longer true and a failure to amend the response is in substance a knowing concealment. **[ARCP 26(e)]**

**f. Specific discovery issues.**

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

(2) *Insurance agreements.* A party may obtain discovery of any insurance agreement that may satisfy all or part of a judgment that may be entered in a lawsuit. However, the mere disclosure or discovery of an insurance agreement, or information concerning insurance, does not automatically make that insurance agreement, or information concerning insurance, admissible in evidence at trial. For purposes of this paragraph, an application for insurance is not treated as part of an insurance agreement.

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

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

(5) *Non-party at fault.* A party alleging that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury or property damage for which damages are sought in the lawsuit pursuant to A.R.S. § 12-2506(B), must provide the identity, location, and facts supporting the claimed liability of the non-party within sixty (60) days from the filing of the answer. No allocation of liability

to any non-party whose identity has not been disclosed as required by this paragraph will be permitted, except as the parties may agree or as the court may allow upon motion showing good cause, reasonable diligence, and lack of unfair prejudice to the parties.

(6) *Court-ordered medical examination of a party.* When the mental or physical condition of a party, or of an individual under the legal control of a party, is at issue in a lawsuit, a party may file a motion requesting an order that the party or individual submit to a physical or mental examination by a licensed physician or a licensed psychologist. The motion must provide good reasons why a court-ordered examination is necessary. If the court orders an examination, the examination must be at a reasonable time and place. The order must provide that the person to be examined has a right to have a representative present during the examination, and has a right to make an audio record of the examination, unless the court specifically finds reasons that the presence of a representative or making of an audio recording may adversely affect the outcome of the examination. The examining physician or psychologist must provide a written report of the examination to the requesting party, and the requesting party must provide the report to the party or individual who was examined, within twenty (20) days of the date of the examination. **[ARCP 26(b), 35]**

**g. Agreements among parties.** The parties may agree to modify discovery procedures, including but not limited to how a deposition may be taken, the length of a deposition, or extending or shortening the time allowed for responding to interrogatories or other discovery requests. **[ARCP 29]**

## Rule 123. Depositions

**a. Definition; before whom a deposition may be taken.** A deposition is an opportunity to question another party or a witness while the other party or witness is under oath. A deposition is taken out of court before an officer authorized to administer oaths, without a judge present. A court clerk or a certified reporter in Arizona may administer oaths. An out-of-state deposition may be taken before an officer who is authorized to administer an oath by the law or by a court of that state. A deposition may be taken in a foreign country before an officer authorized to administer an oath by the law of the place where the examination is held.

Questions and answers at a deposition are recorded by a certified reporter, or by another method that is agreed to by the parties. A deposition may not be recorded by a party, by a person who is a relative, a friend, or an employee of a party, by an attorney for a party or an employee or relative of an attorney for a party, or by a person who is financially interested in the lawsuit. **[ARCP 28(a)-(c)]**

**b. When a deposition may be taken.** A party may take a deposition of another party thirty (30) days after the party being deposed was served under Rule 113. A party may take a deposition of a witness sixty (60) days after an opposing party has appeared in the lawsuit pursuant to Rule 114(e). A party may take no more than five (5) total hours of depositions of all fact witnesses. **[ARCP 26.2(f), 30(a)]**

**c. Notice of deposition; deposition of a representative of a public or private entity.** At least ten (10) days before the date of the deposition, a notice of deposition must be provided to (“served on”) (1) the person who will be deposed and (2) the other parties to the lawsuit. The notice of deposition must state the name of the person who

will be deposed; the location of the deposition; the date and starting time of the deposition; and the name of the person who will record the deposition and the method of recording. When a party deposes another party, a notice of deposition must also include the following language:

*“The Justice Court Rules of Civil Procedure allow a party to take the deposition of another party. A deposition is an opportunity to ask questions to another person while the person who is deposed is under oath. A deposition takes place out of court and a judge is not present. A deposition is recorded by a certified reporter or by another method agreed to by the parties. A deposition may not take longer than four (4) hours, unless agreed to by the parties or unless ordered by the court.*

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

A notice of deposition may be served on a public or private entity, such as a governmental body or agency, a corporation, or a partnership, whether or not the entity is a party to the lawsuit, and the notice may describe with reasonable specificity the topics that will be asked about during the deposition. The entity must then designate one or more of its officers, directors, or employees who have knowledge of the specified topics and who will appear at the deposition and testify concerning those subjects. **[ARCP 30(b), (d)]**

**d. Procedure.** The attendance of a witness who is not a party at a deposition may be required by serving the witness with a subpoena, as provided in Rule 137(b). A party may be required to produce documents at a deposition pursuant to Rule 125. The party requesting the deposition must pay the cost of recording, unless the court orders or the parties agree otherwise.

The deposition must start within thirty (30) minutes of the time provided in the notice, and any party not present within thirty (30) minutes of the time provided in the notice of deposition waives any objection to the deposition starting without the party's presence. The officer specified in section (a) of this rule must administer the oath to the person who is deposed before the start of testimony. If a deposition is recorded by means other than a certified reporter, the person operating the recording equipment must be sworn to fully and fairly record the proceeding. The person or persons recording the deposition will note the starting and ending times of the deposition, and the times of any breaks during the deposition.

Any objections at a deposition, including objections to a specific question, will also be recorded, and evidence is taken subject to the objections. Objections to the form of a question, or to the responsiveness of an answer, must be concise, and must not suggest answers to the person being deposed. Continuous or unwarranted off-the-record conferences with the person being deposed, following questions and before answers, are not permitted, and this conduct is subject to penalties under Rule 127(d).

The certified reporter or other person recording the deposition must identify and maintain any exhibits used at the deposition, although copies of original exhibits may be substituted by agreement of the parties. Before concluding the deposition, the certified reporter or other recorder must ask the witness if the witness would like an opportunity to review the transcript or recording to affirm its accuracy, or if the witness waives that right. A witness who asks to review the transcript or recording will have thirty (30) days after notification that the transcript or recording is available to review and to submit a statement concerning any inaccuracy of the transcript or recording, and a statement submitted by the witness to the certified reporter or other recorder within that time must be included with the transcript or recording of the deposition.

Upon motion, the court may impose an appropriate penalty under Rule 127(d) against any party, attorney, or witness who engages in unreasonable, groundless, abusive or obstructionist conduct at a deposition, or against a party or attorney who takes a deposition in bad faith, or to annoy or embarrass the person being deposed. **[ARCP 30(b)-(d), 32(d)]**

**e. Use of depositions in court proceedings.** Testimony given at a deposition may be used in court proceedings as far as the testimony is admissible under the rules of evidence (see Rule 137(a)) and as though the witness was present and testifying in court. The evidence may be used against any party who appeared at the deposition, or who had reasonable notice of the deposition, or who had an opportunity and similar motive to develop testimony as a party who was present. Substitution of a party under Rule 105 does not affect the right to use a deposition that was previously taken. A party may object to the admission of deposition testimony for any reason that would require the exclusion of evidence if the witness was present and testifying in court. If only part of a deposition is offered as evidence, the judge may require other portions to be introduced that in fairness should also be considered at the trial or hearing. The use of a deposition transcript may be supplemented with audio or video files that were recorded at the same time as the transcript. A deposition may be used in court proceedings even if the person who was deposed is available to testify in court; but this rule does not limit the right of a party to call the deposed individual to testify in the courtroom in person. **[ARCP 32(a)-(c)]**

## Rule 124. Interrogatories to Parties

**a. Definition; scope.** “Interrogatories” are written questions that are sent by a party to another party, and which must be answered in writing and under oath by the party to whom the interrogatories are sent. Following each interrogatory there must be a space that is large enough for the party to whom it is sent to provide an answer or an objection. An interrogatory may inquire about any matter permitted under Rule 122(a). An interrogatory is not necessarily objectionable because it asks for an opinion, or because it presents a contention that relates to a fact or that involves the application of law to facts, but an answer to such an interrogatory need not be provided until discovery has been completed. Interrogatories may not be sent by a party to a witness. **[ARCP 33(a), (b)]**

**b. Notice of service of interrogatories.** Interrogatories may be served with the summons and complaint, or at any time thereafter unless otherwise ordered by the court. Interrogatories must be provided to (“served on”) (1) the party who is required to

answer them, and (2) the other parties to the lawsuit. The interrogatories must be served with a notice of service of interrogatories. The notice must state the specific calendar date when the answers are due based on these rules, or as ordered by the court. The notice must also include the following language:

*“The Justice Court Rules of Civil Procedure allow a party to send up to five (5) interrogatories to another party, unless the party asks the court for permission to serve more and the court gives permission because the party showed good cause for serving more. An interrogatory is a written question that is sent by a party to another party that must be answered in writing and under oath by the party to whom the interrogatory is sent. If you do not answer an interrogatory because you object to the interrogatory, you must state a reason for your objection.*

*“Provide your answers in the space directly below each question. If there is not enough space for your answer to a particular question, you may continue on a blank page by including the question above your answer. After you have completed your response to the interrogatories, you must sign on the last page to affirm that you have truthfully answered the questions and that you have a good faith basis for any objections that you may have made. You must provide your original answers to interrogatories to the party who sent them to you, and you must provide a copy to every other party in the lawsuit.*

*“Your response to these interrogatories is due forty (40) days after they have been served on you, unless the interrogatories were served with the summons and complaint, in which case your response is due within sixty (60) days after the date of service, or unless otherwise ordered by the court. If you do not answer these interrogatories by the date provided in this notice, the party who served them may file a motion asking that the court order you to answer them. If the court enters that order, the court may also require you to pay expenses, including attorneys' fees incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional penalties against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff, that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default.” [ARCP 33(a), (b)]*

**c. Uniform interrogatories.** The court has standard interrogatories (also known as “uniform interrogatories”) that are available for contract and personal injury cases. A party may request another party to answer one or more uniform interrogatories; each uniform interrogatory and its sub-parts counts as one interrogatory. Uniform interrogatories may be found on the website referred to in Rule 148(a). **[ARCP 33(a)]**

**d. Use of interrogatories in court proceedings.** An answer to an interrogatory may be used in court to the extent permitted under the rules of evidence; see Rule 137(a). **[ARCP 33(c)]**

## Rule 125. Request for Production of Documents, Electronically Stored Information, and Things; Request for Entry Upon Land for Inspection and Other Purposes

**a. Definition and scope.** A party may provide to (“serve on”) any other party a request to produce or to permit the party making the request to inspect or to copy designated documents or electronically stored information. The request may ask for the production

or inspection of written documents, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained when provided in a reasonably usable format. A request under this rule may also ask to inspect, test, or sample designated tangible things. Items may be requested under this rule that are within the scope of Rule 122(a) and that are in the possession or control of the party upon whom the request is served. A party may also request that they be allowed to enter upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the land or property, provided that the request is within the scope of Rule 122(a).

Documents or things made available or produced under this rule may be used in court to the extent permitted under the rules of evidence; see Rule 137(a). **[ARCP 34(a), (b)]**  
**b. Notice of request.** A request under this rule may be served with the summons and complaint, or at any time thereafter unless otherwise ordered by the court. A request under this rule must include a notice that provides the specific calendar date that the response is due based on these rules, or as ordered by the court. The notice must be provided to (“served on”) (1) the party who is required to respond, and (2) the other parties to the lawsuit. A notice of a request made under this rule must contain the following language:

*“The Justice Court Rules of Civil Procedure allow a party to request from another party up to five (5) documents or items, or up to five (5) categories of documents or items, unless the requesting party asks the court for permission to request more documents, items, or categories of documents or items, and the court gives permission because the requesting party showed good cause for requesting more. If you do not produce a document or a category of documents or items because you object to a specific request, you must state a reason for your objection. A party may also request to enter on to designated land or other property to inspect it, or to take measurements, photographs, or samples.*

*“A party who produces documents must provide them as they are kept in the usual course of business, or they must organize and label them in response to the requests. Electronic documents or electronic records must be produced in the format that has been requested or in the format that the electronic documents or records are usually kept.*

*“You must provide your original response to requests under this rule to the party who sent them to you, and you must provide a copy to every other party in the lawsuit. Your response to requests made under this rule is due forty (40) days after the requests have been served on you, unless the requests were served with the summons and complaint, in which case your response is due within sixty (60) days after the date of service, or unless otherwise ordered by the court. If you do not comply with the requests that have been made in this notice, the party who served them may file a motion asking that the court order you to comply. If the court enters that order, the court may also require you to pay expenses, including reasonable attorneys' fees, incurred by the other party in obtaining the order. If you fail to comply with the order, the other party may ask the court to impose additional penalties against you, including: that you may not introduce evidence of some or all of your claims or defenses in this lawsuit; if you are a plaintiff,*

*that your lawsuit be dismissed; or if you are a defendant, that judgment be entered against you by default.” [ARCP 26.2(f), 34(a), (b)]*

## Rule 126. Request for Admissions

**a. Definition; time; scope.** A party may provide to (“serve on”) any other party written requests to admit the truth of specific facts in the lawsuit. Requests under this rule may be served with the summons and complaint, or at any time thereafter unless otherwise ordered by the court. A request for admissions may concern any matter permitted under Rule 122(a). A request for admissions is not necessarily objectionable because it asks for an opinion, or because it presents a contention that relates to a fact, or that involves the application of law to facts, but a response to such a request need not be provided until discovery has been completed. **[ARCP 36(a)]**

**b. Notice of requests.** Following each request there must be a space that is large enough for the party to whom it is sent to state whether the request is admitted or denied, or to provide an objection. Requests for admissions must include a notice that provides the specific calendar date that the responses are due based on these rules. The notice must be provided to (“served on”) (1) the party who is required to respond, and (2) the other parties to the lawsuit. The notice must also include the following language:

*“The Justice Court Rules of Civil Procedure allow a party to send up to ten (10) requests for admissions to another party, unless the sending party asks the court for permission to send more and the court gives permission because the sending party showed good cause for sending more. Each request must contain only one fact or one contention to admit or deny. A request may inquire about whether a document is genuine or accurate. You must admit or deny each of these requests, unless you object to a request, in which case you must state a reason for your objection. You may not object on the basis that you do not have knowledge or information concerning the request unless you have first made a reasonable inquiry to obtain knowledge or information.*

*“You must provide your original response to requests under this rule to the party who sent them to you, and you must provide a copy to every other party in the lawsuit. Responses to requests for admissions are due forty (40) days from the date they are served, unless the requests were served with the summons and complaint, in which case your response is due within sixty (60) days after the date of service, or as ordered by the court.*

*“If you do not respond to these requests for admissions by the date provided in this notice, your failure to respond may be considered as an admission of the requests.” [ARCP 26.2(f), 36(a)-(b)]*

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

*“[Case Caption][Notice]*

*“To: \_\_\_\_\_:*

*“Do not ignore this notice.*

*“You were served with requests for admissions on \_\_\_\_\_ [insert date.] The rules of procedure required you to respond to these requests no later than \_\_\_\_\_ [insert date.] You have failed to respond to some or all of the requests.*

*“The rules will still allow you to respond to the requests for admissions by \_\_\_\_\_ [insert date that is fifteen (15) days after the date of this notice]. Each request that you do not respond to by that date will be admitted and taken as true in this lawsuit.*

*“Date and signature: \_\_\_\_\_”*

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

Any matter admitted under this rule is conclusively established in the pending lawsuit unless the court permits an admission to be withdrawn or amended. The court may permit an admission to be withdrawn or amended only when it serves the interests of justice and when it furthers a decision of the lawsuit on its merits. **[ARCP 36(c)]**

**d. Penalty for groundless denial.** If a party fails to admit the genuineness of a document or the truthfulness of a matter as provided in a request under this rule, and the requesting party thereafter proves at a hearing or at trial that a document is genuine or that a matter is true, the court may consider whether there was any reasonable basis for the denial, and if there is none, the court may impose a penalty under Rule 127(d) against the party who denied the request. **[ARCP 37(e)]**

## Rule 127. Discovery Violations

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

(1) If a party fails to disclose information that is required under Rule 121; to appear at a deposition under Rule 123; to answer a question at a deposition, or to designate a knowledgeable representative under Rule 123(c); to answer an interrogatory under Rule 124; to respond to a request for production or to permit entry upon property under Rule 125; or to appear for a medical examination under Rule 122(f)(6).

(2) If a person who is not a party fails to obey a subpoena that requires the non-party to appear as a witness at a deposition under Rule 123, or to answer a question at a deposition, or to designate a knowledgeable representative under Rule 123(c).

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

If a party or person fails to comply with an order that requires disclosure of information or providing discovery responses, upon motion the court may impose against that party or person a penalty specified in Rule 127(d). The court may also assess an appropriate penalty against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct during a deposition, as provided in Rule 123(d); or against a party or attorney who has denied requests for admissions without a reasonable basis, as provided by Rule 126(d). **[ARCP 37(a), (b)]**

**b. Discovery motion filed by an attorney.** An attorney who files a motion under this rule against a party must certify in the motion that he or she has been unable to satisfactorily resolve the matter after a good faith attempt to personally consult with the opposing party. **[ARCP 26(g), 37(a)]**

**c. Failure to provide electronically stored information.** Absent exceptional circumstances, a court may not impose sanctions under this rule on a party or a person for failing to provide electronically stored information that has been lost as a result of the routine, good-faith operation of an electronic information system. **[ARCP 37(g)]**

**d. Penalties.** The penalties that a court may impose include ordering that certain witnesses or exhibits may not be used at trial; that a particular fact is deemed established; that a pleading or a claim or defense in a pleading be stricken; or that the party be assessed the reasonable attorneys' fees, costs, and expenses of a party who was harmed by inaccurate, untimely, or lack of disclosure or discovery. The court may also impose any other reasonable civil penalty, including a monetary penalty, which is appropriate under the circumstances. **[ARCP 37(a), (b)]**

## Part VII: Motions

### Rule 128. Motions

**a. Defined.** A motion is a request made by a party (the “moving party”) that the judge take certain action or enter a particular order. **[ARCP 7.1(a)]**

**b. Application of this rule.** This rule applies to motions made under these rules, including but not limited to: motions under Rule 116 (a motion in response to a complaint), Rule 119 (a motion to amend or to supplement a pleading), Rule 127 (a motion concerning a discovery violation), Rule 128(g) (a motion for judgment on the pleadings), Rule 138 (a motion for new trial), and Rule 141 (a motion for relief from a judgment or an order). This rule also applies to motions that may not be provided for in these rules. This rule does not apply to motions that are made in open court during a conference, hearing, or trial, or to motions brought under Rule 129 (a motion for summary judgment).

**c. Form of a motion; service; required notice.** A motion must be in writing and must comply with the format required by Rule 108. The original motion must be filed with the court and served on all other parties as provided in Rule 120. The moving party must include the following notice at the beginning of the motion:

*“You have a right to file a written response to this motion within ten (10) days from the date this motion was served. Your response must be filed with the court, and copies of your response must be served on the other parties as provided by Rule 120 of the Justice Court Rules of Civil Procedure. The court may treat your failure to respond to a motion as your consent that the motion be granted.”* **[ARCP 7.1(a)]**

**d. Content of a motion.** A motion must state the specific action that the moving party is requesting the court to take, or the specific order that the moving party is requesting the court to enter. A motion must include the facts and reasons that support the request. A motion that is made pursuant to one of these rules must identify that rule. A motion must identify any statute, case, or other rules or legal authority that supports the request made by the moving party. **[ARCP 7.1(a)]**

**e. Proceedings on a motion.** Any party opposing a motion has ten (10) days after the motion is served to file a response to the motion with the court. The time to respond to a motion remains in effect even if the court has set a pretrial conference. The court may

treat a party's failure to respond to a motion as the party's consent that the motion be granted. Within five (5) days after a response is served, the moving party may file with the court a reply to the response, but a reply is not required. A response and a reply, if any, must be provided to ("served on") the other parties as required by Rule 120. **[ARCP 7.1(a)]**

**f. Hearing on a motion.** The court may rule on motions brought under this rule with or without a hearing. The court will provide the parties with at least five (5) days notice if a hearing is set on a motion. The court may treat a moving party's failure to attend a hearing on a motion as consent by that party that the motion be denied; and it may treat a responding party's failure to attend a hearing as consent that the motion be granted. **[ARCP 7.1(b)-(d)]**

**g. Motion for judgment on the pleadings.** After the pleadings have been filed, any party may file a motion for judgment on the pleadings. The motion will be granted if, for purposes of the motion only, all of the allegations in the opposing party's pleadings are considered to be true, and the party who filed the motion would be entitled to judgment on the pleadings in their favor as a matter of law. If matters outside the pleadings are presented to the court, the court will treat the motion as a motion for summary judgment under Rule 129. **[ARCP 12(c)]**

### Rule 129. Motion for Summary Judgment

**a. Parties who may file a motion for summary judgment.** Any party who has filed a claim, counterclaim, cross-claim, or third-party complaint, or any party against whom such a claim has been made, may file a motion requesting the court to enter judgment in the party's favor without a trial. **[ARCP 56(a), (b)]**

**b. Time for filing a summary judgment motion, response, and reply.** A party may file a motion for summary judgment no sooner than the date that the answer is filed or is due, and no later than ninety (90) days before the date set for trial. A party's response to the motion must be filed within thirty (30) days after the motion has been served. The moving party may file a reply to the response within fifteen (15) days after the response is served, but a reply is not required. **[ARCP 56(c)]**

**c. Content of a summary judgment motion or a response; required notice.** A summary judgment motion must include:

(1) A statement of facts, with each of the facts stated separately in numbered paragraphs or numbered sentences. A statement of facts must be supported by affidavits, exhibits, or other material that establishes each fact by admissible evidence.

(2) A memorandum of law that summarizes the issues, provides legal authority in support of the motion, and describes why the judge should grant the motion.

A party who files a motion for summary judgment must include the following notice at the beginning of the motion:

*"This motion asks the judge to rule against you without holding a trial. You have a right to file a written response to this motion. Your response must be filed within thirty (30) days from the date this motion was served. Your response to the motion must include:*

*"(1) A statement of facts, with each of the facts stated separately in numbered paragraphs or numbered sentences. A statement of facts must be supported by affidavits, exhibits, or other material that establishes each fact by admissible evidence.*

*It is not enough for you to simply deny facts. You must present evidence that shows a genuine dispute of the facts.*

*“(2) A memorandum of law that summarizes the issues, provides legal authority in support of your position, and describes why the judge should deny the motion.”*

Notwithstanding Rule 128(e), the failure to file a response by a party who does not have the burden of proof on a claim or defense is not a sufficient basis for granting a summary judgment motion. **[ARCP 56(c), (e)]**

**d. Summary judgment proceedings.** The judge may rule on a motion for summary judgment with or without a hearing. The court will set a time for hearing if a party makes a timely request for a hearing; however, the court does not need to set a hearing if the judge determines that the motion should be denied, or if the motion is uncontested. The court may also set a hearing even if no party requests one. The judge may grant a summary judgment motion if the record before the court shows that there is no genuine issue as to a material fact, and that the moving party is entitled to judgment as a matter of law. The judge may grant the motion completely or partially. If the motion is partially granted, the judge will advise the parties of the issues that remain undecided, and it will set those issues for trial. The judge may grant a summary judgment motion on the issue of liability only if there is a genuine issue regarding the amount of damages. **[ARCP 56(c), (d)]**

**e. Affidavits.** Affidavits must meet the requirements of Rule 109(d). Affidavits in support of or opposing a summary judgment motion must be based on personal knowledge and must contain only facts that would be admissible as evidence at trial under the Arizona Rules of Evidence. If a party opposing a summary judgment motion cannot obtain affidavits or exhibits within the time allowed for filing a response to the motion, the opposing party may ask the court for more time to respond by stating the reasons why additional time is required. The judge may impose a penalty on a party who submits an affidavit in bad faith, or who files an affidavit only to delay the lawsuit. **[ARCP 56(e)-(g)]**

## Part VIII: Mediation Conference and Pretrial Conference

### Rule 130. Mediation Conference

**a. Purpose and definitions.** Each precinct individually or in cooperation with the presiding judge or justice of the peace for the county may establish a program through which a neutral, trained individual (a “mediator”), with the authorization of the court, can confer with the parties to assist them in attempting to reach a voluntary settlement of their lawsuit. This process is called “mediation.” The provisions of this rule apply to those justice courts that have established such a program. **[ARCP 16(g)]**

**b. Notice of a mediation conference.** Within a reasonable time after a response to a complaint has been filed, the court or the mediator will give the parties written notice of a date, time, and place for a mediation conference. The date and time of the mediation conference may be rescheduled by the court or by the mediator for a good reason.

**c. Appearance at the mediation conference; providing documents.** Every party must participate in the mediation conference in good faith. A party may appear and participate in person, or a party may participate by telephone with the prior approval of

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

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

**e. Notice to the court.** The mediator will notify the court whether the mediation conference resulted in a settlement agreement. If an agreement was reached, the court will vacate any pending court dates. If an agreement was not reached, the mediator will advise the court, and the court will set the lawsuit for a pretrial conference or a trial. If a settlement was not reached because a party failed to participate in good faith, the mediator will inform the court of the manner in which the party failed to show good faith; and the court may order an appropriate penalty provided under Rule 127(d) against that party. Not appearing at a mediation conference without a good reason is a failure to participate in good faith.

**f. Court action after settlement at a mediation conference.** If the court was notified by the mediator that a lawsuit was settled, the court may dismiss the lawsuit, with notice to the parties, thirty (30) days after the date of the mediation conference. If during that thirty (30) day period a party notifies the court that the terms of the settlement agreement have not been fulfilled, the court may set the lawsuit for a pretrial conference or a trial.

## Rule 131. Pretrial Conference; Settlement Conference

**a. Scheduling a pretrial conference; required appearance; penalties.** The court may set a pretrial conference at any time after the parties have had an adequate opportunity to exchange disclosure statements.

The parties must attend a pretrial conference in person, unless the court for a good reason allows a party to appear by telephone. The court may impose a penalty provided under Rule 127(d) against a party for a failure to appear at the pretrial conference or for other violations of this rule.

The court may rule on a pending motion before the pretrial conference, and the court will vacate the pretrial conference if the result of the court's ruling on the motion is either a judgment or a dismissal. Otherwise, a pending motion will not vacate a pretrial conference. **[ARCP 16(a), (f)]**

**b. Purpose of a pretrial conference.** At a pretrial conference, the parties and the court may discuss (1) the status of the lawsuit, including whether the parties served disclosure statements; (2) whether there is any further possibility of settlement; (3) whether the parties are engaging or intend to engage in the use of discovery under Rules 123 through 126; and (4) a date for trial. If discovery is complete or nearly

complete, the parties should be prepared to advise the court if they intend to file any motions; the number of witnesses they will call at trial; and how much time they will need for presenting their case at trial. In addition to setting a lawsuit for trial, the court may enter orders at the pretrial conference that will promote an efficient resolution of the lawsuit, including matters concerning electronically stored information and limitations on discovery. **[ARCP 16(b)]**

**c. Settlement conference with the trial judge.** A judge who will hear the lawsuit may conduct a settlement conference, but if appropriate, the judge must advise the parties that during a settlement conference, the judge may meet with the parties separately, or the judge may receive information from a party that would not be admissible at a subsequent trial. If the parties then agree, the judge may proceed to conduct the settlement conference. **[ARCP 16.1]**

**d. Good faith settlement hearing.** In a case where it is alleged that two or more parties are joint tortfeasors, a judge upon motion of a party must determine whether a settlement was entered into in good faith. The motion must advise the judge of the terms of the settlement, and set forth the reasons why the settlement is or is not entered into in good faith. A party may respond to the motion within the time provided by Rule 128. The judge may conduct an evidentiary hearing on the motion. **[ARCP 16.2]**

## Part IX: Trial

### Rule 132. Pre-Trial Matters

**a. Preparation of a pretrial statement.** When the court sets a trial date, or at any time thereafter, the court may order that the parties jointly or individually prepare and file a pretrial statement by a specified date before the trial. The pretrial statement must include a summary of facts that are not in dispute; a statement of the factual and legal issues to be determined at trial; a list of each party's witnesses; if deposition testimony is going to be presented, a list of deposition page and line reference numbers that will be offered at trial; a list of each party's exhibits, and the basis of any party's objection to an exhibit. The court may impose any penalty permitted under Rule 127(d) for a violation of these requirements. **[ARCP 16(d)]**

**b. Motion to postpone a trial date.** After a trial date has been scheduled, the court may grant a motion to postpone the trial only if there are good reasons, or if the parties agree to a postponement. The mere filing of a motion or an agreement to postpone a trial does not vacate the trial date. The failure of a plaintiff to appear at the time set for trial may result in dismissal of the lawsuit, and the failure of a defendant to appear at the time set for trial may result in a judgment for the plaintiff. **[ARCP 38.1(i)]**

**c. Pretrial motions regarding the admissibility of evidence.** No later than forty (40) days before trial, the parties must discuss the admissibility of evidence. If the parties cannot agree on the admissibility of particular evidence at a trial, a party may file a written motion at least thirty (30) days before trial regarding admission or exclusion of that evidence. A party may file a response to a pretrial motion regarding evidence within ten (10) days after the motion has been served, but the moving party may not file a reply. The judge will rule on pretrial motions concerning evidence that are submitted in

accordance with this rule before the start of the trial, unless the judge determines the issue of admissibility is better considered at trial. The failure to file a motion in compliance with this rule is not a waiver of the right to object to evidence at trial. **[ARCP 7.2]**

### Rule 133. Getting a Trial Date; Trial By Jury or to a Judge; Change of Precinct or Judge; Disability of a Judge During Trial; Verdict or Decision

**a. Setting a lawsuit for trial.** The court may set a date for trial once an answer has been filed, or a party may request the court to set a trial date after the parties have had an adequate opportunity to serve disclosure statements. Unless the parties agree or the court has good reasons, a trial may not be set to begin less than one hundred twenty (120) days after an answer was filed. **[ARCP 38.1]**

**b. Trial by jury or to a judge.** A party may demand a trial by jury of any issue for which a right to a jury trial exists. The trial of the issues so demanded will be by a jury, unless all of the parties agree to a trial by a judge without a jury; or unless the court finds that there is not a right to a trial by jury as to some or all of the issues. A party must demand a jury trial at least ten (10) days before the start of trial. If a demand for trial by jury has not been timely made, the trial will be before the judge without a jury; but even if no party has demanded a jury, the court may order a trial by jury of any or all of the issues. **[ARCP 39(a), (j); see A.R.S. § 22-220]**

**c. Change of precinct (“change of venue”).** Even though a plaintiff does not file a lawsuit in the correct precinct, the judge in that precinct may still hear the lawsuit unless the defendant, within ten days of filing an answer, files a request to transfer the venue of the lawsuit to the correct precinct. The request must include an affidavit by the defendant or by the defendant's attorney stating the precinct where defendant resides or does business, and any other reasons that the lawsuit is not in the correct precinct. The judge may grant the request and transfer the lawsuit to the correct precinct for further proceedings unless the plaintiff disputes the request within the time allowed by Rule 128(e), in which case the judge may hold a hearing on the request. Alternatively, if all parties in a lawsuit agree to change the venue as provided by Arizona Revised Statutes § 22-204(D), they may file a written agreement in the precinct where the lawsuit is pending specifying the precinct to which venue will be changed. If a party believes that the party will not have a fair and impartial trial in the precinct where the lawsuit was filed, that a change of venue would benefit the convenience of witnesses and promote the ends of justice, or that there is other good and sufficient cause for a change of venue, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A). A party loses the opportunity to change venue if the judge in the precinct where the lawsuit was filed has heard an issue in the case on its merits. **[see A.R.S. §§ 12-404, 22-204]**

**d. Change of judge.** For purposes of this section, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right. The party or side must file a notice of change of judge as a matter of right in the precinct where the lawsuit is pending and provide a copy of the notice to the other parties as required by Rule 120. The notice must state

that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to a change of judge, and that the notice is timely. A notice is not timely if it is filed less than sixty (60) days before the trial date, or if it is filed more than ten (10) days after the court provided the parties with notice of the assignment of a new judge for trial. A party waives a right to a change of judge if the judge has conducted a conference in the lawsuit, if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely notice of change of judge as a matter of right is filed, the court must transfer the lawsuit to a new judge within the county for further proceedings. If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204(A). **[ARCP 42(f); see A.R.S. § 22-204]**

**e. Disability of a judge.** If a judge who starts a trial or a hearing becomes unable to proceed, the trial or hearing may continue with another judge who has certified that he or she is familiar with the record of proceedings, and that the matter may be completed without prejudice to the parties. At the request of a party or at the successor judge's initiative, a witness whose testimony is material and disputed and who is available to testify without undue burden may be recalled. **[ARCP 63]**

**f. Verdict or decision.** Judgment will be entered on the jury's verdict or the decision of the judge sitting without a jury as provided by law. **[see A.R.S. § 22-241]**

## Rule 134. Trials

**a. Trial procedures.** The court may impose reasonable time limits for a trial or for any portion of a trial. The order of proceedings in a trial by jury, so far as applicable, also governs a trial to a judge without a jury. A jury will be summoned, and a trial to a jury will proceed, as provided by Title 22, Chapter 2 of the Arizona Revised Statutes, and as provided by this rule. Unless the parties agree otherwise, the number of individuals selected as trial jurors, and the number of jurors needed to render a verdict, shall be as provided by Title 21, Chapter 1, of the Arizona Revised Statutes, or as otherwise provided by law. The order of trial is as follows:

(1) Potential jurors are summoned to the court and are given an oath to truthfully answer questions about their qualifications to serve as trial jurors. The court may conduct an initial examination of prospective jurors by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Either after prospective jurors complete a case-specific written questionnaire or during an initial oral examination, the judge, and the parties, as the judge may allow, then ask questions to prospective jurors concerning their qualifications and fitness to serve as jurors. Potential jurors may be challenged for cause based on answers on a case-specific written questionnaire or during the course of questioning. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. Upon request, the judge may allow the parties

to make brief opening statements to the prospective jurors before the questioning process. The jurors then selected to hear the case are sworn, and the judge gives the jury preliminary instructions concerning the jury's duties, its conduct, the order of proceeding, and elementary legal principles that govern the trial. The judge will instruct the jurors that each of them may take handwritten notes during the trial, which the jurors can take to the jury room, and the court will provide jurors with note-taking materials.

(2) The plaintiff or plaintiff's counsel may make an opening statement. Opening statements of every party must be brief and must be limited to facts that the party expects the evidence will establish.

(3) The defendant or defendant's counsel may make an opening statement, or may defer making an opening statement until the close of plaintiff's evidence.

(4) Other parties, if any, may make opening statements in the order directed by the judge.

(5) The plaintiff will introduce evidence.

(6) The defendant will introduce evidence.

(7) Other parties, if any, may introduce evidence in the order directed by the judge.

(8) The plaintiff may then introduce evidence in rebuttal.

(9) Before a time set by the judge, a party may request that the judge give certain instructions to the jury. The judge will determine the final instructions after consultation with the parties, and the judge will then give the jury its concluding instructions of law. The instructions will be available in writing for the jury during its deliberations.

(10) Each party, in the order set forth above, may provide a summation to the jury. The party having the burden of proof on the case as a whole is entitled to provide a rebuttal.

(11) The jury will retire with trial exhibits and the jurors' notes to a private and convenient place for its deliberations in the charge of a proper officer of the court, who will not allow any communication to be made to them, except to ask if they have agreed upon a verdict, or as ordered by the judge. If the jury wishes to communicate with the judge, it shall make the desire known to the officer orally or in writing, who will then inform the court.

(12) A verdict reached by a jury will be announced in open court in the presence of the jurors and the parties, and noted in the court's records, and the jurors may then be discharged. Judgment will be given on the verdict.

(13) If it appears after a reasonable time that it is unlikely that the jury will reach a verdict, the jury may be discharged, and the matter may be tried again. **[ARCP 16(h), 38, 39, 47, 48, 49, 51]**

**b. Motion for judgment as a matter of law.** Motions for judgment as a matter of law during a jury trial must be made before the jury retires for deliberations. The motion contends that there is no legally sufficient evidence for a reasonable jury to find for a party on a contested issue. **[ARCP 50]**

## Rule 135. Findings in a Trial Without a Jury

**a. General rule.** In a trial without a jury, the judge, if requested before trial, must make specific findings concerning the facts and conclusions of law based upon those findings. Findings of fact will not be set aside on appeal unless they are clearly erroneous, and

due regard will be given to the opportunity of the trial judge to determine the credibility of a witness. Findings of fact and conclusions of law may be stated orally by the judge and recorded in open court following the close of the evidence, or may be set forth in an order or memorandum that is filed by the judge. A request for findings is not required for purposes of appeal. **[ARCP 52(a)]**

**b. Agreed statement of facts.** The parties to a lawsuit may submit any contested issue to a judge upon an agreed statement of facts that has been signed by the parties and filed with the court. The judge will render conclusions of law based on the agreed statement of facts. **[ARCP 52(d)]**

## Rule 136. Consolidated and Separate Trials

**a. Consolidation.** When lawsuits involving a common question of law or fact are pending before the court, the court may order a joint hearing or trial of any or all of the matters at issue in the lawsuits, or it may order all the lawsuits consolidated, and it may make appropriate orders concerning proceedings to avoid unnecessary costs or delay. **[ARCP 42(a)]**

**b. Separate trials.** In furtherance of convenience or to avoid prejudice, or when separate trials will further judicial economy, the court may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury. **[ARCP 42(b)]**

## Rule 137. Evidence, Witnesses, Subpoenas, and Interpreters

**a. Evidence and witnesses.** The Arizona Rules of Evidence will determine the admissibility of a witness's testimony and the admissibility of other evidence. A witness is a person, including a party, who provides sworn testimony during a lawsuit. A witness may be sworn with a solemn affirmation rather than an oath. The testimony of a witness at trial must be presented in person or by deposition, unless the parties agree otherwise or as the judge allows for a good reason. **[ARCP 43(a), (b), (f)]**

**b. Subpoena (“requiring a witness to appear”).** A party may obtain a subpoena from the court where the lawsuit is pending that requires a witness to appear and to testify at a trial or at a deposition, or to produce documents at a designated time and place. A subpoena must be the same as the form that is available under Rule 148(b). Procedures concerning subpoenas, including objections to a subpoena, are specified in that form and those procedures are included in this rule by reference. A subpoena must be served on the person named in the subpoena. A party may request the court to issue a blank subpoena, and the party must complete the subpoena before serving it. The subpoena may be served by anyone who is not a party and who is at least eighteen years old. The person who serves a subpoena that requires a person to appear at a trial or at a deposition must also give to the person who is served a fee for one day's attendance at the trial or deposition, and for mileage expense as allowed by law. A

person served with a subpoena that requires the person to produce documents does not need to appear and testify if the documents identified in the subpoena are provided to the requesting party on or before the date specified in the subpoena. **[ARCP 45]**

**c. Interpreters.** Interpreters are available under the particular court's language access plan, and as provided by law. **[ARCP 43(c)]**

## Rule 138. New Trial; Amendment of Judgment

**a. Grounds and procedure.** A party may file a motion asking the judge to vacate a verdict, decision, or judgment, and to grant a new trial for any of the following reasons and if the reason has materially affected a party's rights:

(1) There has been an irregularity in the proceedings of the court, of the jury, or of the prevailing party, or there has been an order or an abuse of discretion, which has deprived the party of a fair trial.

(2) There has been misconduct of the jury or of the prevailing party.

(3) An accident or a surprise occurred that a reasonable person could not have foreseen.

(4) Newly discovered and material evidence exists that a reasonable person could not have discovered before trial.

(5) The jury has awarded excessive or inadequate damages.

(6) There has been an error in the admission or rejection of evidence, or in the jury instructions, or there have been other errors of law during trial or during the lawsuit.

(7) The jury's verdict was the result of passion or prejudice.

(8) The jury's verdict, or the court's decision, findings of fact, or judgment is not justified by the evidence or is contrary to the law.

A new trial may be granted as to all issues or only as to issues specified by the judge. A motion for a new trial may be granted on the judge's initiative, or on a ground not specified by a party, within the time provided in section (b) of this rule. **[ARCP 59(a)-(c), (f)-(i), (m)]**

**b. Time for filing.** A motion for new trial must be filed within fifteen (15) days after entry of judgment. A motion for new trial after service by publication and default must be filed within one (1) year after the entry of judgment. **[ARCP 59(d), (j)]**

**c. Motion to alter or to amend a judgment.** A party may file a motion to alter or to amend a judgment if there has been a change in applicable law, or to correct a clear legal error or to prevent a manifest injustice. A motion to alter or to amend a judgment must be filed within fifteen (15) days after entry of judgment. **[ARCP 59(l)]**

## Part X: Judgment

### Rule 139. Judgment

**a. Definition and requirements.** A “judgment” is a final written order of the court that decides all of the claims in the lawsuit, and that can be appealed. A judgment must be signed by the judge, and filed and entered by the court. **[ARCP 54(a), 58(a)]**

**b. Judgments involving multiple claims or multiple parties.** An order that decides some but not all of the claims, or that concludes the lawsuit as to some but not all of the parties, is not a judgment that can be appealed, unless the order states that there is no just reason for delay and it specifically directs entry of the judgment. **[ARCP 54(b)]**

**c. Judgment prepared by a party.** A judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A copy of a proposed judgment prepared by a party must be served on the other parties as provided by Rule 120. Except for proposed judgments that are submitted electronically, a party who prepares a judgment and submits it to the court must also provide the court with stamped envelopes addressed to each party who has appeared in the lawsuit. The court will not approve or sign a judgment prepared by a party until the expiration of five (5) days after the proposed judgment has been served upon the opposing parties. An opposing party may file a written objection to the proposed judgment within that time. The requirements of this paragraph do not apply to parties in default under Rule 140. If a party who prepares a judgment also claims court costs under section (d), or attorneys' fees under section (e), those claims must be submitted to the court at the same time as the judgment that the party prepared. **[ARCP 58(a), (d)]**

**d. Court costs.** The prevailing party may request that the party's costs of the lawsuit, to the extent allowed by law, be included in the amount of the judgment. The party claiming costs must submit a statement of costs, which has been verified under Rule 109(c), to the court and to the other parties not later than twenty (20) days after the court has made a decision that entitles a party to a judgment. The party against whom costs are claimed may file an objection to those costs within five (5) days after receipt, and the court will then rule upon the objections and enter the approved amount, if any, in the judgment. **[ARCP 54(f)]**

**e. Attorneys' fees.** If a party has made a claim for attorneys' fees in a pleading, the party may request that attorneys' fees be included in the amount of the judgment. The party must file a motion with the court stating the legal basis of the claim for fees, with an affidavit and supporting exhibits, including any contract that provides for attorneys' fees. If a contract is longer than three (3) pages, then at a minimum the first page, the relevant provision for fees, and the signature page, if any, must be attached to the affidavit. The motion must be filed no later than twenty (20) days after the court has made a decision that entitles the party to judgment. The opposing party may file a response to the motion within the time allowed by Rule 128(e). The court may set a hearing on the motion, but the court may not enter judgment until the issue of attorneys' fees has been resolved. **[ARCP 54(g), 58(g)]**

**f. Notice of entry of judgment.** The court will provide every party who is not in default with a copy of the judgment entered by the court. A failure of the court to provide this copy does not affect the time to appeal or authorize the court to relieve a party's failure to appeal within the time allowed. **[ARCP 58(e)]**

**g. Voluntary reduction.** A party in whose favor a verdict or a judgment has been rendered may voluntarily reduce the amount by filing an amended judgment for the judge to sign. **[ARCP 58(b)]**

**h. Entry of judgment after death of a party.** Judgment may be entered after the death of a party upon a verdict or decision on an issue of fact that was rendered during the party's life. **[ARCP 54(e)]**

## Rule 140. Entry of Default Judgment

**a. When a default judgment may be entered.** A default judgment may be entered against a party who was served with a complaint, counterclaim, cross-claim, or third-party complaint, and who failed to file an answer or otherwise respond within the time allowed by these rules. **[ARCP 55(a), (d)]**

**b. Application for entry of default.** A party seeking a default judgment must first file an application that the court enter a default against the party who failed to answer. The application must inform the party against whom default is sought of the party's failure to file an answer or otherwise respond within the time allowed by these rules. The application must further inform the party against whom default is sought, with either bold or enlarged font, that unless an answer or response is filed within ten (10) days from the filing of the application, the default will become effective and the entry of a default judgment will be requested. A default is entered against the party who has failed to respond when the application for entry of default is filed with the court. **[ARCP 55(a)]**

**c. Serving the application.** The party who files an application for entry of default with the court must serve a copy of the application on the party claimed to be in default, as follows:

(1) If the address of the party claimed to be in default is known, the application must be mailed to that address.

(2) If the current address of the party claimed to be in default is unknown, the application must be mailed to the party's last known address.

(3) If the party claimed to be in default has no known address, or the party has been served by alternative service or by publication, the party requesting the entry of default must state this in the application.

(4) If the party who files the application knows that the party claimed to be in default is represented by an attorney concerning this lawsuit, the application must also be mailed to that attorney, whether or not the attorney has formally appeared in the lawsuit.

A party filing an application for entry of default must also serve the application on the other parties in the lawsuit as provided by Rule 120. **[ARCP 55(a)]**

**d. Answer or response.** If the party claimed to be in default files with the court a written answer or other response within ten (10) days after the application was filed pursuant to section (b) of this rule, the default does not become effective, and the court may not enter a default judgment against that party. The ten (10) day period begins the day after the application is filed with the court; the ten (10) day period does not include Saturdays, Sundays, or holidays, and no additional time is added for service by mail. **[ARCP 55(a)]**

**e. Request for entry of a default judgment without a hearing.** After the ten (10) day period described above, the party who filed the application for entry of default may file a request for entry of a default judgment without a hearing. A party may request the entry of a default judgment without a hearing if the party's claim is for a specific amount, or if the claim is for an amount that can be determined by a mathematical calculation. The party requesting the entry of a default judgment without a hearing must attach to the

request for entry of a default judgment without a hearing a supporting affidavit concerning the claimed amount, along with attachments that prove the amount of the claim.

A request for entry of a default judgment without a hearing may include a request for an award of reasonable attorneys' fees if: (i) the complaint requested attorneys' fees; (ii) an award of attorneys' fees is allowed by law and the legal basis is specified in the request; (iii) the request includes a separate affidavit with supporting exhibits concerning the amount of the fees; and (iv) if the fee request is based on a written contract, the contract is submitted with the request. A request for the entry of a default judgment without a hearing may also include a request for an award of court costs by attaching to the request a verified statement of costs. Any requests for attorneys' fees or costs must be filed at the same time as the request for entry of a default judgment.

A request for entry of a default judgment, with all of the attachments to the request, must be served upon the party claimed to be in default as provided in section (c) of this rule. A party filing a request for entry of a default judgment must also serve the request and attachments on the other parties in the lawsuit as provided by Rule 120.

Even though the requirements of this paragraph may be met, the court may decline a request for entry of a default judgment and may instead set the matter for a default hearing. The court will not enter a default judgment against a minor child or an incompetent person, or against a party who was served by publication, without a hearing. **[ARCP 55(b)(1)]**

**f. Default judgment hearing.** If the party who filed an application for entry of default has a claim that is not for a specific amount, or if the amount of the claim cannot be determined by a mathematical calculation, then ten (10) days after the application for entry of default was filed, the party may file a request that the court set a default hearing to determine the terms of the judgment. The court may also set a matter for a default hearing on its own initiative following proper notice to the parties.

The party requesting the hearing must serve the party against whom judgment will be entered, if that party has a known address, and the party's attorney, if any, with a written notice of the hearing at least three (3) days before the default hearing date. The party against whom judgment will be entered or that party's attorney may participate if that party or that party's attorney appears at the default hearing. A notice of hearing must also be served on other parties in the lawsuit as provided by Rule 120.

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

A default judgment entered at a hearing may include an award of attorneys' fees and costs when established in the manner provided in section (e) of this rule. Any request for attorneys' fees or costs must be filed at the same time as the request for a default hearing. **[ARCP 55(b)(2)]**

**g. Form of default judgment.** A default judgment may be prepared by the court or it may be prepared by a party and submitted to the court for signature. A party may submit a proposed default judgment at the time a request for entry of a default judgment without a hearing is filed, or at the time of a default hearing. A party who prepares and submits a proposed default judgment must also provide the court with stamped

envelopes addressed to each party who has appeared in the lawsuit and to the party or parties in default, in order for the court to mail copies of the default judgment after it is signed by the judge. **[ARCP 58(a), (d)]**

**h. Default judgment against the State.** A default judgment will be entered against the State or an officer or agency of the State only if the party requesting the default judgment proves the party's claim by satisfactory evidence. **[ARCP 55(e)]**

**i. Default judgment after service by publication.** A default judgment may be entered against a party who was served by publication only if a verbatim record of the default proceeding is made and maintained by the court. **[ARCP 55(f)]**

**j. Setting aside a default or a default judgment.** If the party claimed to be in default files a written answer after the ten (10) day period described in section (d), but before the filing of a request for entry of a default judgment without a hearing or a request for default judgment hearing, the court for a good reason provided by the answering party, or the court on its own initiative, may set aside the default and allow the lawsuit to proceed as if the answer was timely, subject to an opportunity of the plaintiff to object. If the default is not set aside as provided in this section, judgment may only be entered after a default judgment hearing. A default judgment that has been entered may be set aside by a motion as provided in Rule 141(c). **[ARCP 55(c)]**

## Rule 141. Correcting or Setting Aside a Judgment or an Order

**a. Correction of a clerical mistake.** The court at any time may correct a clerical mistake in a judgment, in an order, or in another part of the court's record that occurred as a result of an oversight or omission of the court, and it may do so on its own motion or on motion of a party, and after such notice, if any, that the court requires. **[ARCP 60(a)]**

**b. Misstatement or miscalculation.** When a judgment misstates the name of a party, or when a sum of money has been miscalculated or misstated, and in the court's record there is a verdict or other document that shows the correct name or the correct calculation, then the court may correct the judgment after notice to the parties. If the correction affects the amount of a judgment, a party may collect only the corrected amount. **[ARCP 60(b)]**

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

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

A motion under Rule 141(c) must be filed within a reasonable time, and for reasons (1), (2), and (3), within six (6) months after the judgment or order was entered or after the proceeding occurred. The filing of a motion under this section does not affect the finality of a judgment, nor does it suspend the operation of a judgment. This rule does not limit the power of the court to relieve a party from a judgment, order, or proceeding if a fraud was committed upon the court; and this rule does not limit the power of the court to grant relief to a defendant served by publication, as provided by Rule 140(j). **[ARCP 60(c)]**

### Rule 142. Stay of Proceedings to Enforce a Judgment

**a. Pending motion under Rule 138 or Rule 141.** The court may stay proceedings for enforcing a judgment while a motion under Rule 138 or Rule 141 is pending. The court may impose conditions as may be proper for the security of the affected parties. **[ARCP 62(b)]**

**b. Conveyances, instruments, or perishable property.** A judgment directing the execution of a conveyance or instrument, or directing the sale of perishable property, may be stayed by the court with conditions for deposits or security as may be proper. **[ARCP 62(f)]**

**c. Judgment against the State or a political subdivision.** Money judgments against the State or any political subdivision are automatically stayed when an appeal is filed. **[ARCP 62(g)]**

**d. Judgments entered under Rule 139(b).** A judgment entered by the court pursuant to Rule 139(b) may be stayed until the entry of subsequent judgments or upon conditions as may be appropriate to protect the rights of the parties. **[ARCP 62(i)]**

### Rule 143. Harmless Error

**Harmless error.** An error by the trial court is not a good reason for setting aside a verdict, order, or judgment, or for granting a new trial, unless the error has affected a substantial right of a party, or the error has resulted in a substantial injustice. **[ARCP 61]**

### Rule 144. Dismissal of Lawsuits

**a. Application of this rule.** This rule applies to a complaint, a counterclaim, a cross-claim, and a third-party complaint. **[ARCP 41(a), (c)]**

**b. Voluntary dismissal before a response has been filed.** A complaint or a third-party complaint may be dismissed by a notice that is filed by the plaintiff or by the third-party plaintiff at any time before a response has been filed under Rule 116. A counterclaim or a cross-claim may be dismissed before a response has been filed under Rule 117(e) by a notice filed by the claimant. **[ARCP 41(a)]**

**c. Voluntary dismissal by agreement of the parties.** A lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by all of the parties who have appeared in the lawsuit. A particular claim or claims in a lawsuit may be dismissed upon the filing of a written agreement to dismiss that has been signed by the parties to that claim or claims. **[ARCP 41(a)]**

**d. Dismissal in other circumstances.** Except as provided in sections (b), (c), and (e), a lawsuit or claim shall be dismissed only upon motion and by court order, and only on terms and conditions that the court determines are fair and proper. Dismissal of a complaint will not result in dismissal of a counterclaim unless agreed to by the parties. **[ARCP 41(a)-(b)]**

**e. Dismissal for failure to conclude a lawsuit within nine months.** If a final judgment has not been entered within nine (9) months from the date a lawsuit is filed, or if a party has not filed a written motion to extend the time for entry of judgment to a particular date, the court will mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that unless this requirement is met within two (2) months from the date of mailing, the court will dismiss the lawsuit for failure to have judgment timely entered. If the requirement has not been met within two (2) months from the mailing of the court's notice, the court may dismiss the lawsuit without further notice to the parties. **[ARCP 38.1(d), 41(b)]**

**f. Dismissal without prejudice.** A dismissal without prejudice means that a claim may be refiled if all other legal requirements, including statutes of limitation, have been met. A dismissal under Rule 113(i) or under sections (b), (c), or (e) of this rule is “without prejudice” unless the notice, agreement, or order to dismiss states that the dismissal is “with prejudice,” in which event the lawsuit or claim may not be re-filed. **[ARCP 41(a)]**

## Part XII: Special Proceedings

### Rule 145. Civil Arrest Warrant

**a. Definition.** A “civil arrest warrant” is an order issued in a non-criminal lawsuit, which is directed to any peace officer in the state, including a constable, to arrest the person named in the warrant and to bring that person before the court. **[ARCP 64.1(a)]**

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

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

(2) Has been personally served with a subpoena to appear in person at a specific time and location that includes a warning that failure to appear may result in the issuance of a civil arrest warrant, and has failed to appear as the subpoena commanded. **[ARCP 64.1(b)]**

**c. Procedures.** The content of a civil arrest warrant, the time and manner of execution of a warrant, the duty of the court after execution of a warrant, and procedures for

forfeiture of bond, are as provided in Rule 64.1(c), (d), (e), and (f) of the Arizona Rules of Civil Procedure, which are included in the appendix to the JCRCP. **[ARCP 64.1(c)-(f)]**

## Rule 146. Deposits with the Court; Proceedings Against Sureties

**a. Voluntary deposit of money or thing.** In a lawsuit where some or the entire claim is for the disposition of money, or the disposition of something that is capable of being delivered, a party, after giving notice to the other parties and after obtaining the permission of the court, may deposit the money or thing with the court. Money or things deposited with the court under paragraph (a) or (b) of this rule must be kept in a marked and sealed envelope in the court's safe, in a bank, or as directed by the court, and must be subject to the control of the court. **[ARCP 67(a)]**

**b. Deposit or delivery of money or thing by court order.** If a party has in its possession money or something that is capable of being delivered, and the money or thing is the subject of the lawsuit and is held by the party as trustee for another party or that belongs or is due to another party, the court may order that the money or thing be deposited with the court, or otherwise delivered to a party, on conditions that are just and subject to further order of the court. **[ARCP 67(b)]**

**c. Proceedings against sureties.** A surety who gives security in the form of a bond or similar undertaking submits to the jurisdiction of the court where it is filed. The surety's liability may be enforced on motion without the necessity of an independent action. **[ARCP 65.1]**

## Rule 147. Enforcement of a Judgment or Order

**a. Writs of execution or garnishment.** The process to enforce a judgment for the payment of money will be a writ of execution or a writ of garnishment, unless the court directs otherwise. The procedures for these writs will be as provided by law. **[ARCP 69]**

**b. Supplemental proceedings to enforce a judgment (“judgment debtor exams”).** To enforce the judgment or a writ upon the judgment, the judgment creditor or a successor in interest when a successor has been shown to the satisfaction of the court, may obtain discovery from any person, including the judgment debtor, concerning the debtor's income, expenses, and assets, as provided by law. **[ARCP 69]**

**c. Enforcement of an order concerning non-parties.** Orders in favor of a person not a party to a lawsuit, or requiring obedience by a person not a party to a lawsuit, may be enforced by the same manner as orders concerning a party. **[ARCP 71]**

**d. Service of an order to show cause.** An order to show cause must be served by the party requesting the order in the manner required by Rule 113, unless it will be served on a party who has already appeared in the lawsuit, in which case the party requesting the order must serve it as required by Rule 120. **[ARCP 6(d)]**

## Rule 148. Forms

**a. Forms.** Parties may use forms for civil cases in justice court that are maintained and made available on the website of the Administrative Office of the Courts, at [www.azcourts.gov](http://www.azcourts.gov). The Administrative Director of the Administrative Office of the Courts is authorized to modify these forms and the forms listed in Rule 148(b) in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as may be appropriate. **[ARCP 84]**

**b. Forms included in the appendix to these rules.**

- (1) Summons, as provided by Rule 112(b);
- (2) Notice to defendant, as provided by Rule 112(d);
- (3) Subpoena, as provided by Rule 137(b).



**Let's check your knowledge!**



<https://quizlet.com/991667768/arizona-justice-court-rules-of-civil-procedure-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Rules of Procedure for Eviction Actions



# Rules of Procedure for Eviction Actions

## **Rule 1. Title and Scope of Rules**

These rules shall be known and cited as the Rules of Procedure for Eviction Actions (“RPEA”). These rules shall govern the procedure in the superior courts and justice courts involving forcible and special detainer actions, which are jointly referred to in these rules as “eviction actions.” For purposes of these rules, there shall be only one form of action known as an “eviction action.” The Arizona Rules of Civil Procedure apply only when incorporated by reference in these rules, except that Rule 80(c) shall apply in all courts and Rules 42.1 and 42.2 shall apply in the superior courts. Arizona Code of Judicial Administration (ACJA) § 1-901 applies to documents filed through an electronic filing service provider. “Electronic filing service provider” as used in these rules has the same meaning as provided in ACJA § 1-901.

## **Rule 2. Construction of Rules**

These rules shall be construed in accordance with statutory provisions related to forcible entry and detainer actions and special detainer actions. All eviction actions are statutory summary proceedings and the statutes establishing them govern their scope and procedure.

## **Rule 3. Computation of Time; Shortening or Extension of Time**

**a. Computation of Time.** Unless otherwise stated in these Rules, or unless an applicable statute provides otherwise, the time limitations prescribed in these rules shall mean calendar days.

**b. Shortening or Extension of Time.** Except as specifically provided for by statute or these rules, the time for doing any of the acts provided for in these rules or by order of the court may be shortened or extended by the court upon stipulation or upon motion for good cause shown.

**c. How to Calculate Time: Day of the Act or Default.** In calculating any period of time specified or allowed by these rules, by any local rules, by order of a court, or by any applicable statute, the day of the act or default from which the designated period of time begins to run is not included.

**d. How to Calculate Time: Last Day.** The last day of the period is included, unless the last day is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or a legal holiday.

## **Rule 4. Duties of Parties and Attorneys**

**a. Due Diligence.** Each party and attorney filing or appearing in an eviction action or defense shall exercise due diligence to ensure that the action has a good faith basis; that the relief sought is consistent with the applicable rental agreement or applicable law; and that all required notices have been properly served. Attorneys must exercise reasonable care to ensure that their pleadings are accurate and well-grounded in fact and law.

**b. Good Faith.** Every action taken in an eviction proceeding and every motion or other pleading filed shall be taken or filed in good faith by the party or attorney responsible for filing it.

**c. Sanctions.** The court may impose sanctions against a party or attorney found to have violated these duties after notice and opportunity to be heard.

**d. Satisfaction of Judgments.** Once a judgment has been satisfied by the payment of the monetary award, or the parties have entered into a new rental agreement or created a novation of the prior rental agreement, the party in whose favor the judgment was entered must file a Satisfaction of Judgment with the court that entered it within thirty days after the judgment has been paid in full and serve a copy on the judgment debtor. The duty to file the satisfaction of judgment is on the prevailing party and not on the attorney who represented the party. In the event that a prevailing party fails to satisfy a judgment rendered the judgment debtor may file a motion to compel satisfaction of judgment. The court may, after an opportunity for a hearing, order that the judgment be deemed satisfied.

**e. Entry of Appearance.** No attorney shall appear in any eviction action or file a pleading or any other document in any eviction action without first appearing as counsel of record and entering a notice of appearance, substitution or association as counsel. A notice of appearance, substitution or association of counsel may be written and filed with the court, or, if permitted by law, may be made orally on the record. Counsel may make an oral association limited solely to the scheduled hearing at which counsel appears, and responsibility for the matter shall remain with counsel of record.

(1) An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal from a judgment has expired or a judgment has become final after appeal or until there has been a formal withdrawal from or substitution of counsel in the case.

(2) An attorney of record shall be deemed responsible for the acceptance of post judgment pleadings and motions until the expiration of thirty days after the time for appeal has expired.

**f. Compliance with Laws and Regulations Governing Subsidized Rent.** The parties shall comply with all federal and state laws and regulations governing subsidized rent.

## **Rule 5. Summons and Complaint; Issuance, Content and Service of Process**

**a. Summons.** The summons in an eviction action shall be a document separate from the complaint, shall be issued in accordance with applicable statutory provisions, and shall identify the defendants to the action. If the name of a defendant is unknown, the summons and complaint may name a fictitious defendant and any occupants of the property. The court shall liberally grant leave to amend the complaint and summons to reflect the true names of defendants if they become known to the plaintiff. The summons shall also include the following:

(1) Name of the court and its street address, city, telephone number, facsimile number, email address, and website address;

(2) Date and time set for the trial of the matter; and that a landlord, tenant, attorney, or witness may participate at the initial hearing through telephone or video conference by contacting the court for directions at least two hours before the hearing, to ensure the court has time to make necessary arrangements;

(3) Notice that if the tenant fails to appear, a default judgment will likely be entered against the tenant, granting the relief specifically requested in the complaint, including removing the tenant from the property; and

(4) A disclosure in substantially the following form: "Requests for reasonable accommodation for persons with disabilities should be made to the court as soon as possible."

(5) In residential property actions only, on a separate page served upon the tenant, the information contained in the Residential Eviction Information Sheet substantially in the form included as Appendix A to these Rules.

**b. Complaint.** The complaint shall:

(1) Be brought in the legal name of the party claiming entitlement to possession of the property.

(2) Include the business name, if any, and address of the property;

(3) If an attorney represents the plaintiff, state the name, address, telephone number, and Bar number of the attorney in the upper left hand corner;

(4) If the plaintiff is unrepresented, state the plaintiff's address, name and telephone number in the upper left hand corner;

(5) State that the property in question is located within the judicial precinct where the complaint is filed;

(6) State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, “**YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY**”;

(7) State the specific reason for the eviction; that the defendant was served a proper notice to vacate, if applicable; the date the notice was served; and what manner of service was used. A copy of the notice shall be attached as an exhibit to the complaint.

(8) State that the action involves a subsidized rental property if the action involves a subsidized rental property.

(9) Be verified. This means that the attorney signing the complaint shall verify that the attorney believes the assertions in the complaint to be true on the basis of a reasonably diligent inquiry.

**c. Complaint for Monetary Damages.** If the complaint seeks a money judgment for rent, late charges, or other fees, charges or damages permitted by law, the complaint shall also state:

(1) The frequency with which the rent is to be paid;

(2) The due date for each payment;

(3) The amount of rent due on each date;

(4) The method of calculating late fees;

(5) The total amount of rents, late fees, and other fees, charges or damages permitted by law that are due on the date of filing;

(6) The nature and amount of any rent concessions that the plaintiff contends must be reimbursed; and

(7) The amount of attorney fees, if permitted by law or contract, that would be due to plaintiff in the event of a default by the defendant.

(8) If the rental property is a subsidized housing unit, the landlord must state the total amount of the rent per month, the tenant's portion of the monthly rent, and the total amount of the tenant's portion of the rent that the tenant owes.

**d. Additional Requirements for Complaint.**

(1) If the action is based solely on non-payment of rent, contains a request for monetary damages and involves a residential property or mobile home space, the complaint must also state that the defendant may contact the plaintiff or plaintiff's attorney and may reinstate the lease agreement and cause the eviction action to be dismissed if, prior to the entry of judgment, the defendant pays all rents due, any reasonable late fees due that are provided for under a written lease agreement, and any court costs and attorney fees the plaintiff has incurred as of the date the payment is made.

(2) If the complaint seeks a judgment for reasons permitted by law other than the non payment of rent, the complaint shall state the reason for the termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to prepare a defense.

(3) A copy of the provisions of any lease agreement and any addendums related to the underlying basis of the eviction action must be served with the complaint.

(4) If the action is based on non-payment of rent, a copy of the accounting of charges and payments for the preceding six months must be served with the complaint.

**e Service of Process.** Service of the summons and complaint shall be accomplished by either personal service or post and mail service for a special detainer action, and for a forcible detainer action, as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure. Service of process shall only be performed by a person authorized to do so under Rule 4(D) of the Arizona Rules of Civil Procedure. Return of service and proof thereof shall be made by affidavit.

**f. Failure to Obtain Service.** A complaint that is not served within the time required by applicable statute may be dismissed at the initial appearance date unless the defendant waives service in writing, or the initial appearance may be continued upon a showing of good cause to allow additional time for service. If the defendant appears at the initial appearance, the appearance shall constitute a waiver of any objections to the form or manner of service unless the defendant asserts those grounds at the initial appearance or in a previously filed written answer.

## **Rule 6. Service of Pleadings, Other Papers and Orders After Complaint**

**a. General Requirement of Service.** Except as otherwise provided in these Rules or ordered by the court, every pleading subsequent to the original complaint, every written motion, every written notice, appearance, demand and similar paper and any attachments, and every order shall be served upon each of the parties to the action. A written motion or request that is filed with the court, but not served as required by this rule, shall be considered an impermissible ex parte communication.

(1) Filing of documents may be made by delivering the documents to the appropriate justice court or superior court file counter for date stamping.

(2) The court may permit a party to file documents directly with the judge in open court.

(3) Filing may also be accomplished by prepaid, first class mail to the court, whereupon the date of receipt by the file counter shall be considered the date of filing.

(4) Each court shall permit any party, attorney, or witness to submit notice via email, facsimile, telephone, or other electronic process, that the party, attorney or witness will participate at the initial appearance remotely. Such notice is a means of exercising the option of appearing remotely. Failure to provide such notice to each of the other parties to the action shall not be a basis for denying a remote appearance that can be provided or challenging the validity of a remote appearance that occurred.

**b. Service on Parties in Default.** No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided in Rule 5(e) of these Rules.

**c. How Service Made.** Service required by this rule may be accomplished by personal service as defined in Rule 18(f) of these Rules or after a party has appeared by mailing the document to be served to the last known address of the person to be served or transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts as

provided in ACJA § 1-901. Service by facsimile transmission or other method may be used where agreed to by the parties. The date and manner of service shall be noted on the original of the document served or in a separate certificate filed with the court.

**d. Service upon Attorney.** When an attorney has entered an appearance in an action for a party, service upon that party shall be accomplished by service upon that attorney, unless the court directs that service be made upon the party. Service upon the attorney may be accomplished by any of the methods authorized by subsection (c) of this rule.

**e. Service After Judgment.** Thirty days after the time for appeal from a judgment has expired, or a judgment has become final after appeal, the service of a motion, petition, complaint or other pleading required to be served and requesting modification, vacation or enforcement of that judgment, shall be served as provided by Rule 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

### **Rule 6.1. Electronic Signatures and Electronic Notarizations**

The clerk must accept for filing any document that purports to have a signature, including documents that appear to be electronically signed or electronically notarized in accordance with applicable law. If the authenticity or sufficiency of an electronic signature or electronic notarization is disputed, a judicial officer will make a determination under applicable substantive law.

### **Rule 7. Answers**

On or before the initial return date, the defendant shall answer, indicating whether the defendant admits or denies the allegations of the complaint. If the defendant does not have sufficient information to determine whether or not an allegation of the complaint is true, the defendant shall so state. The defendant's answer shall also state in short and plain terms any defenses the defendant wishes to assert to the plaintiff's claims. No fee may be imposed for filing an answer.

### **Rule 8. Counterclaims and Consolidation**

**a. Basis.** Unless specifically provided for by statute, no counterclaims, cross claims, or third party claims may be filed in eviction actions. Any counterclaim filed without a statutory basis shall be stricken and dismissed without prejudice. All counterclaims must be filed in writing and served upon the opposing party. A counterclaim shall:

(1) State specific facts claiming that the landlord has violated the rental agreement or an applicable statute so that the landlord has an opportunity to prepare a defense; and

(2) If any notices were required, state the approximate date and manner those notices were sent to the plaintiff and summarize the content of those notices.

**b. Impact on Justice Court Jurisdiction.** The filing of a counterclaim shall not defeat jurisdiction of a justice court in an eviction action, and no eviction action shall be transferred to the superior court solely because a counterclaim was filed unless it is permitted by statute and is not within the statutory jurisdiction of the justice court. The justice court shall review such claims to determine whether they have a statutory basis and whether the prayer for relief is within or exceeds the jurisdiction of the justice court. If a counterclaim has a statutory basis and the prayer for relief is not within the jurisdiction of the justice court, the court shall transfer the matter to the superior court. Where the counterclaim filed includes one or more aspects that are

defective or impermissible, the court may permit the defendant to restate it in a proper fashion, or order the counterclaim dismissed without prejudice.

**c. Consolidation.** An eviction action may be consolidated only with one or more eviction actions but shall not be consolidated with any other type of action.

**d.** If a residential landlord is not in compliance with the rental agreement or statute, the tenant may counterclaim for any amount the tenant is entitled to recover under the rental agreement or statute.

## **Rule 9. Motions**

**a.** Motions may be made orally in open court or by filing and serving the opposing party with a copy of a written motion. Pretrial motions shall be ruled on before trial. A court shall not rule on any motion until the opposing party has had a reasonable opportunity to respond.

**b. Responses and Replies.** Responses and replies to any motion may be made orally in open court or by filing and serving the opposing party with a copy of the written response or reply. The filing of motions, responses and replies shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.

**c. Motion for Change of Judge.** For purposes of this subsection, a lawsuit has only two sides. A party or a side, if there is more than one plaintiff or one defendant in a lawsuit, may request a change of judge as a matter of right orally or in writing. The party or side must request a change of judge as a matter of right in the precinct where the lawsuit is pending. The request must state that the party or side has not previously requested a change of judge in this lawsuit, that the party or side has not waived the party's right to change of judge, and that the request is timely. A request is timely if it is made prior to or at the time of the first court appearance or upon reassignment of the matter to a new judge for trial. A party waives a right to a change of judge if the judge has ruled on any contested motion or issue, or if the trial has started. When a proper and timely request for a change of judge as a matter of right is orally requested or filed, the court must transfer the lawsuit to a new judge within the county for further proceedings.

If a party believes that the party will not have a fair and impartial trial before a justice of the peace, then the party must proceed as provided in Arizona Revised Statutes § 22-204, except that any request must be made by the date of the first court appearance and five days' notice is not required.

**d. Motions to Amend.** The court may grant motions to amend pleadings for good cause shown.

**e. Motions for Judgment on the Pleadings.** At any time after an answer to either a complaint or a counterclaim has been filed, a party may move for a judgment on the pleadings. The court shall not consider matters outside the pleadings when ruling on a motion for judgment on the pleadings.

**f. Motions to Dismiss.** In response to either a complaint or a counterclaim, a party may make a motion to dismiss some or all of the claims.

**g. Motions for Reconsideration.** A party seeking reconsideration of a ruling of the court may file a motion for reconsideration. Unless the court otherwise directs, all motions for reconsideration, however denominated, shall be submitted without oral argument and without response or reply. No motion for reconsideration shall be granted, however, without the court providing an opportunity for response.

**h. Other motions.** Other appropriate motions may be made by either party.

- i. Failure to timely respond to a written motion filed by an opposing party, or failure to appear at the time and date set for an oral argument on a filed motion may be deemed to be consent to the denial or granting of the motion, and the court may dispose of the motion summarily.
- j. All written motions shall be considered without oral argument unless ordered by the court upon request of a party or the court's own motion. All motions requesting an order for relief filed with the superior court shall be copied to the assigned judge, accompanied by a proposed order, which shall comply with the formatting requirements of Rule 5.1(d) of the Arizona Rules of Civil Procedure.

#### **Rule 10. Disclosure**

- a. Upon request, a party must provide to the other party prior to the hearing or trial: 1) a complete copy of any lease agreement and any addendums; 2) a list of witnesses and exhibits; and 3) copies of any documents the party intends to introduce as an exhibit at trial.
- b. Upon good cause shown, the court may order the taking of depositions, inspection of the premises, or the production of other pertinent documents in a manner that will not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties.
- c. If a party fails to comply with this rule or Rule 5(d)(3) or (4) without good cause, the court may take appropriate action, including granting a continuance, excluding evidence not disclosed, and sanctioning the offending party or parties, up to and including dismissing the complaint or counterclaim.
- d. Any party may request the issuance of a subpoena by the court to compel testimony and/or the production of documents. The person subpoenaed may object to the subpoena. The court may quash a subpoena upon good cause shown. Failure to comply with a subpoena may constitute contempt of court. Subpoenas shall be served upon the subject person pursuant to Rule 4.1 and 4.2 of the Arizona Rules of Civil Procedure.

#### **Rule 11. Initial Appearance and Trial Procedures**

- a. **In General.** All proceedings in eviction actions shall be recorded, either through a recording device or by a certified reporter. Each court shall provide the option for landlords, tenants, attorneys, and witnesses to participate at an initial appearance by telephone or video conference. A court may require participants to provide notice of their intent to participate by telephone or video conference up to two hours before the hearing as is necessary to avoid delaying hearings. A participant may submit such notice via email, facsimile, telephone, or other electronic process. If one participant appears remotely, all other participants must also be permitted to appear remotely. Each court may provide this option routinely to all participants in all initial appearances.
- b. **Preliminary Procedures.** On the date and at the time set for the initial appearance, and after announcing the name of the plaintiff and the defendant, the court shall:
  - (1) Call the case, identify the parties and any attorneys or representatives present and ascertain that they are properly authorized to represent the parties to the action. As provided by Arizona Supreme Court Rule 31, no property manager or other agent shall be allowed to represent a party unless he or she is the property owner, a sub lessor entitled to possession, or an attorney licensed to practice law and in good standing in Arizona.

- (2) State or summarize the material allegations contained in the complaint.
- (3) Ask the defendant whether the defendant contests the allegations contained in the complaint.

**c. Defendant's Plea.**

(1) If the defendant appears and contests any of the factual or legal allegations in the complaint or desires to offer an explanation, the judge should determine whether there is a basis for a legal defense to the complaint either by reviewing a written answer filed pursuant to Rule 7 or by questioning the defendant in open court. If the court determines that a defense or proper counterclaim may exist, the court shall order a trial on the merits. If the trial is to be continued to a later date, the court may require the defendant to file a written answer. No fee may be imposed for filing an answer.

(2) The defendant shall not be required to answer until the initial appearance. At the initial appearance, if the trial is not continued, the defendant may file an oral answer on the record. No answer fee shall be required for an oral answer.

**d. Continuances.** Whenever possible, the trial should be held on the initial return date. The court may order the continuance of a trial date by up to three court days in justice court or ten days in superior court on the request of a party for good cause shown or to accommodate the demands of the court's calendar, but the court nevertheless shall give priority to hearing and resolving alleged "immediate and irreparable" evictions. No continuance of more than three court days in justice courts or ten days in superior courts may be ordered unless both parties are in agreement.

**e. Trial Settings.** Contested detainer matters shall be set for a trial by a judge alone unless a jury trial is demanded by the plaintiff in the complaint or by the defendant at or before the initial appearance. Failure to request a jury trial at or before the initial appearance shall be deemed a waiver of that party's right to a jury trial. At the initial appearance, if a jury trial has been demanded, the court shall inquire and determine the factual issues to be determined by the jury. If no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues or may be disposed of by motion or in accordance with these rules, as appropriate.

(1) Witnesses at trial shall testify under oath or affirmation. Witness testimony may be oral or may be provided by transcript of a deposition if the witness is unavailable.

(2) All evidence taken at trial, or which is attached as an exhibit to a motion, shall be subject to the Arizona Rules of Evidence.

**f. Pleading Requirement.** Except for those additional damage items contemplated by Rule 13(c)(2), the plaintiff shall not be permitted to advance allegations at the initial appearance or any subsequent trial unless those allegations were properly stated in the complaint. The defendant shall not be permitted to advance allegations at a continued trial that were not included in a written answer or counterclaim or in an oral answer made at the initial appearance.

## **Rule 12. Trial by Jury**

**a.** When an action is called for trial by jury, the jury panel shall be assembled. Voir dire may be conducted by the court and the parties as the judge may allow, by case-specific written questionnaire, orally, or by both methods. Case-specific written questionnaires may be administered before potential jurors are summoned to the court. If used, case-specific written questionnaires shall be administered in a manner and form used by the court in compliance with Arizona Rules of Civil Procedure 47(c)(3). Failure to submit written voir dire questions a day before the panel is assembled, or by a date ordered by the court, waives the right to submit

questions. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. After challenges for cause are exercised, a panel of seven jurors in justice court or nine jurors in superior court shall be assembled. One of the jurors shall be selected as the alternate after the evidence is presented and before deliberations.

**b.** Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, and the elementary legal principles that will govern the proceeding. At least one day prior to the commencement of a jury trial, any party may file written requests that the court instruct the jury on the law as set forth in the requests. A party shall be deemed to have waived request for other instructions except those that could not reasonably have been anticipated prior to trial.

**c.** The order of trial shall be as follows: The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case; the defendant or the defendant's counsel may read the answer and counterclaim, if any, and may make a statement of the case to the jury, but may defer making such statement until after the close of the evidence on behalf of the plaintiff; the plaintiff shall then introduce evidence; the defendant shall then introduce evidence; the plaintiff may then introduce rebutting evidence; the defendant may then introduce rebutting evidence in support of any counterclaim(s). The parties then may make closing arguments in the same order.

**d.** If the jurors are permitted to separate during the trial, they shall be admonished by the court that it is their duty not to converse with or permit themselves to be addressed by any person on any subject connected with the trial. When the jurors retire to deliberate, they shall be kept together in a convenient place, in the charge of a proper officer who shall not allow any communication to be made to them, or make any, except to ask them if they have agreed upon their verdict.

### **Rule 13. Entry of Judgment and Relief Granted**

**a. Items to Review.** Except for stipulated judgments entered pursuant to Rule 13(b)(4), in each eviction action the court shall:

- (1) Determine whether the service of the summons and complaint was proper and timely, and whether the summons and complaint included all the information and notice(s) required under Rule 5.
- (2) Determine whether the tenant or occupant of the premises received proper termination notice if one was necessary, and was afforded any applicable opportunity to cure. If the notice does not comply with the statute or is not properly served, the court shall dismiss the action.
- (3) Determine whether the facts alleged, if proven, would be sufficient to determine that plaintiff has a right of superior possession due to a material breach of the lease agreement or for any other basis in law.
- (4) If it appears that a landlord has accepted a partial payment in a case claiming nonpayment of rent under the Arizona Residential Landlord and Tenant Act, the court shall inquire whether the landlord accepted the partial payment, and if so, can produce a partial payment agreement and waiver signed by the defendant as required by the statute. If the landlord is unable to prove that the waiver was signed, the court shall dismiss the action.
- (5) If the court determines that the rental property is subsidized, determine whether there is unpaid rent that the tenant is obligated to pay as the tenant's portion of the rent.

## **b. Forms of Judgment.**

(1) *Guilty Plea.* If the defendant appears at the initial appearance and enters a plea of “guilty” or “responsible,” the court shall, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, enter judgment in favor of the plaintiff.

(2) *Verdict.* At the conclusion of a trial, and after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, the court shall either announce its decision or take the matter under advisement. If the court takes the matter under advisement, it shall issue a decision promptly.

(3) *Default Judgment.*

A. If the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted, the court, after determining that the conditions of Rule 13(a)(1)-(4) are satisfied, shall enter a default judgment against the defendant.

B. In an action alleging an immediate and irreparable breach, the court shall hear evidence establishing such a breach before ordering a writ of restitution in not less than 12 nor more than 24 hours.

C. Mailing Default Judgments. The plaintiff shall promptly mail or deliver a copy of the default judgment to the defendant.

(4) *Stipulated Judgments.* The court may accept a stipulated judgment only when the court finds one of the following:

A. Both parties or their attorneys personally appear before the court;

B. The plaintiff's attorney asserts to the court that the defendant was informed of the right to appear and declined;

C. The court determines that, because of distance or other circumstances, the defendant cannot personally appear, that good cause exists and it is in the interest of justice to proceed; or

D. An attorney for the defendant has signed the stipulation.

Prior to accepting the stipulated judgment, the court must determine that the conditions of Rule 13(a)(1)-(2) and (b)(4) have been satisfied, and that defendant has signed the warning language on the judgment form to which the defendant stipulated that reads as follows:

### **WARNING!**

**1. The plaintiff's representative is not a court employee.**

**2. By signing below, you are consenting to the terms of a judgment against you and the plaintiff will now be able to evict you.**

**3. You may have your wages garnished and the judgment may appear on your credit report.**

**4. You may lose your right to subsidized housing.**

**5. You may NOT stay at the property, even if the amount of the judgment is paid in full, unless you get the agreement in writing or get a new written rental agreement.**

## **c. Relief Granted.**

(1) *Possession of the premises.*

A. Except as provided in subsection (2) of this section, if the judgment is for the plaintiff, possession of the premises shall be awarded to the plaintiff. No writ of restitution shall be issued until five calendar days after the judgment is signed.

B. When an immediate termination has been obtained due to a breach of a residential lease agreement that qualifies as “material and irreparable” under the applicable statute, the judgment shall provide for the writ of restitution to issue between 12 and 24 hours after entry of judgment, or longer if the plaintiff so requests.

C. If the defendant is found not guilty, judgment shall be entered in favor of the defendant. If the judgment is for the defendant and the plaintiff has possession of the premises, possession of the premises shall, at the request of the defendant, be awarded to the defendant with a writ of restitution to issue after five calendar days.

D. The date for the issuance for a writ of restitution shall not be delayed or extended beyond the date provided by statute, unless the parties stipulate otherwise.

(2) *Damages*. In addition to determining the right to actual possession, and if either party seeks a money judgment, the court may award damages to the party entitled to possession if the party seeking money damages provided proof to the court of a factual and legal basis for an award of rent or any reasonable late fees, attorney fees or other requested fees, charges or damages. If a written rental agreement exists, the party seeking money damages shall have a copy of the written rental agreement available for the court to review at the initial appearance or subsequent hearing at which the judgment is rendered.

The court shall not award any amount for damages or categories of relief not specifically stated in the complaint or counterclaim. The amounts awarded in the judgment must be consistent with the amounts sought in the complaint or counterclaim, although the judgment may also include additional rent, late charges, fees and other amounts that have accrued since the filing of the complaint, if appropriate.

A. *Rent*. If appropriate, rent shall be awarded to a prevailing plaintiff together with any additional rent that has accrued since the complaint was filed. If the plaintiff is entitled to rent incurred after the judgment has been entered, then the plaintiff may seek that amount in a separate civil action.

B. *Utilities*. If the landlord charged utilities to the tenant under a written or oral rental agreement, unpaid amounts may be awarded to the prevailing plaintiff.

C. *Late Charges*. If the written rental agreement provided for periodic late charges in the event of a rent default, the court shall award the prevailing plaintiff reasonable late charges. No late charges shall be awarded unless the court is presented with evidence that they are specified in a written rental agreement.

D. *Additional fees*. Other fees such as extra person fees, pet fees, storage fees, signage fees, common area assessments, and other charges that were specified in a written rental agreement and were to be collected periodically together with other rental charges may be awarded to the prevailing plaintiff in accordance with the terms of the agreements. Charges sought that were not contained in a written rental agreement shall not be awarded in an eviction action, but may be separately sought in a civil action.

E. *Plaintiff's Damages*. If the plaintiff prevails, in addition to rent and late fees, when appropriate, the court may award to the plaintiff other damages for breach of the rental agreement, including property damages, when properly pled in the complaint and when such damages resulted from the breach giving rise to the eviction. When such claims for other damages are substantial and disputed such that a fair trial of the claims would likely delay the prompt determination of the eviction action, the court may sever those claims and dismiss them without prejudice, permitting the plaintiff to reassert the claims in a separate civil proceeding.

F. *Defendant's Damages*. Damages and/or offsets shall be awarded by the court if a defendant prevails on a counterclaim or defense. In such event, the court shall determine the prevailing party for purposes of awarding costs and reasonable attorney fees.

G. If undisputed rent has been deposited with the court in connection with a defendant's counterclaim, it shall be distributed in accordance with the judgment without undue delay after

the time for appeal has expired. If no rent remains due after such proceedings or the tenant is found to have acted in good faith and satisfies a judgment for rent entered for the landlord, judgment shall be entered for the tenant in the action for possession.

H. Court costs shall be awarded as required by A.R.S. § 12-341.

**d. Rent Concessions.** If the court finds that a rental agreement or lease provided a rent concession such as “free rent” for a period, a budget for tenant improvements, or a cash move in allowance, and the rental agreement provides that in the event of a default the concession becomes due and payable, the amount of the concession may be included as additional damages in the judgment to a prevailing plaintiff if pleaded in the complaint. Alternatively, at the plaintiff's option, such amounts may be sought in a separate civil action.

**e. Late Fees in Mobile Home Park and Recreational Vehicle Park Evictions.** In cases involving mobile home parks and recreational vehicle parks, the court shall limit the award of periodic late charges in an eviction action arising out of such a tenancy to the statutory amount, and the court shall not reduce late charges calculated in accord with that limitation unless the plaintiff fails to establish the existence of a written agreement regarding such late charges.

**f. Attorney Fees.** Reasonable attorney fees shall be awarded to the prevailing party if the court determines that such fees are provided for by statute or in a written contract. Any such award may not exceed the amount the client has paid or agreed to pay.

**g.** Where permitted by law, the court may provide injunctive relief in addition to the remedies set forth above.

#### **Rule 14. Writs of Restitution**

The court shall promptly issue a writ of restitution upon timely application of a party entitled to it if the application is accompanied by the appropriate fee and deposits. The writ of restitution shall direct the constable or the sheriff, as appropriate, to return possession of the premises to the party entitled to possession under the judgment. A judge, justice of the peace, court commissioner, or the clerk of the superior court may issue the writ of restitution if it appears that a judgment granting possession has been entered in favor of the party filing the writ and the action has not been stayed.

**a. Delays in Issuance.** Neither the issuance nor the enforcement of a writ of restitution will be suspended, delayed, or otherwise affected by the filing of a motion to set aside or vacate the judgment or similar motion unless the court finds good cause.

**b. Time Standards for Writs of Restitution.**

(1) *Application for Writ.* A party who obtains a judgment for possession in an eviction action shall have up to 45 days to apply for a writ of restitution.

(2) *Writ Applications after 45 Days.* If a party applies for a writ of restitution more than 45 days after the judgment, the party must also explain the reasons for the delay in making the application and shall certify that the tenancy has not been reinstated since the date of the judgment. If it is clear that the tenancy has not been reinstated, the court shall issue the writ. If it appears to the court that the tenancy has or may have been reinstated, the court shall schedule a hearing before granting the application. This hearing shall be scheduled no more than three business days after the application. The court shall attempt to contact the party in possession by telephone to provide notice of the hearing, and the applicant for the writ shall cause a notice of the date, time, place and purpose of the hearing to be delivered to the party in possession either personally or by posting the notice on the main entrance to the premises.

**c. Quashing a Writ of Restitution.** After a judgment for possession has been issued, a party may file a motion to stay the issuance of a writ or quash a writ already issued. The court shall promptly review the motion. If the court finds good cause to believe that the writ was improperly or prematurely issued, it may stay the issuance or enforcement and schedule a hearing on the motion. Any such hearing shall be conducted as soon as possible but in no event later than three court days after the filing of the motion.

#### **Rule 15. Relief from Judgment or Order**

**a. Motions to Set Aside Judgments, Orders, or Proceedings.** Either party may file a motion to set aside a judgment, order or proceeding on any of the following grounds:

- (1) The court did not have jurisdiction to hear the case;
- (2) The defendant tendered all amounts due under the lease agreement prior to a judgment being entered or made a partial payment under the Arizona Residential Landlord Tenant Act, A.R.S. §§ 33-1301 to -1381, which was accepted by the landlord;
- (3) A party did not receive proper notice or was not properly served;
- (4) Mistake, inadvertence, surprise, or excusable neglect;
- (5) Newly discovered material facts exist that could establish a defense to an allegation;
- (6) A party is subject to protection under bankruptcy laws;
- (7) A party is requesting relief under the Servicemembers' Civil Relief Act;
- (8) The parties have stipulated to set aside the judgment;
- (9) The judgment is contrary to the law; or
- (10) Fraud, misrepresentation, or other misconduct of an adverse party.

The motion shall be filed within a reasonable time, and, for reasons (2), (4), and (5), not more than 60 days after the judgment or order was entered.

**b.** Clerical errors may be corrected by the court with or without notice to the parties.

**c.** A post judgment motion affecting possession of the property shall be treated as an emergency matter and decided within three court days.

**d.** Where a post judgment motion does not affect possession of property, the other party may file a response within 10 court days of service of the motion. The moving party may then file a reply within 5 court days of service of the response.

#### **Rule 16. Transfer of Cases from Justice to Superior Court**

A justice court must transfer an eviction action to the superior court whenever the amount in controversy in the complaint or in a valid counterclaim exceeds the statutory ceiling for justice courts and whenever title or ownership of the premises becomes an issue. If a justice court transfers an eviction action to the superior court as provided by statute or rule, the procedures set forth in A.R.S. § 22-201 shall be followed. Transfers shall not delay the eviction action, and both the transferring and receiving court shall take reasonable steps to assure that no delays result from the transfer.

#### **Rule 17. Appeals**

**a. General.** Appeals from a lower court to the superior court shall be taken in the manner prescribed by A.R.S. § 12-1179 and by the Superior Court Rules of Appellate Procedure.

Appeals from superior court shall be governed by A.R.S. § 12-1182 and the Rules of Civil Appellate Procedure. Unless otherwise ordered by the court, in all cases in which a party files a cost or supersedeas bond or pays rent to the clerk pending an appeal, the clerk shall return to that party any remaining portion of the bond or rent upon final adjudication of the case.

**b. Justice Court Appeals.**

(1) *Cost bond.* The court shall set a cost bond at the time the notice of appeal is filed. The court may waive the cost bond if the appellant files a satisfactory affidavit of his or her inability to pay. The purpose of this bond shall be to reimburse the appellee's taxable costs if the appellant does not prevail on appeal. Failure to post a cost bond, unless waived based on an affidavit of inability to pay the judgment, is cause to dismiss the appeal. A separate cost bond is not required, however, if the appellant files a supersedeas bond that includes security for the payment of costs on appeal.

(2) *Rent Pending Appeal.* If the appellant wants to remain in possession of the premises while the appeal is pending, the appellant must pay to the clerk of the court any rent due apart from amounts included in the judgment and continue paying to the clerk additional rent as it becomes due during the appeal. Failure of the appellant to pay any rent due as it accrues is cause for the appellee to seek an order allowing it to enforce a writ of restitution, but shall not be cause for the dismissal of the appeal. In this event, the appeal will proceed despite the appellant's loss of possession of the premises while it is pending.

(3) *Supersedeas bond.* If the appellant wants to stop the enforcement of the monetary portion of the judgment while the appeal is pending, he or she shall post a supersedeas bond in an amount equal to the dollar amount of the judgment being appealed. Failure to post a supersedeas bond shall allow the enforcement of the monetary portion of the judgment but shall not be cause for dismissal of the appeal.

**c. Superior Court Appeals.** An appeal from the superior court shall not cause a stay of execution of the judgment unless the superior court so orders. The appellant shall file a bond in an amount fixed and approved by the court, conditioned on the appellant prosecuting the appeal to its conclusion. The bond shall be filed in an amount that provides security for the rental value of the premises pending the appeal and all damages, costs and rent that has been or may be ordered by the superior court.

In the event that a defendant remaining in possession pending appeal subsequently breaches an appeal condition imposed by the court, the plaintiff may file an emergency motion to lift a stay, and the court shall conduct a hearing within three days. If the third day is a Saturday, Sunday or other legal holiday the hearing shall be held on the next court day.

The court's decision denying a stay, conditioning the stay, or subsequently lifting the stay after a breach of an imposed condition may be reviewed by filing a petition for a special action with an appropriate appellate court pursuant to the Rules of Procedure for Special Actions.

**Rule 18. Definitions**

**a.** "Eviction" or "eviction action" as used herein shall mean forcible detainer actions and special detainer actions as defined in this rule.

**b.** "Ex parte communications" are communications between a litigant or its attorney and a judge, without including the opposing party. Ex parte communications are generally prohibited. However, a communication with a judge in open court on a date and at a time when all litigants have been notified that the issue will be addressed is not an ex parte communication.

- c. “Forcible detainer” shall have the same meaning as set forth at A.R.S. §§ 12-1173 and 12-1173.01.
- d. “Good cause” shall mean a stated, substantial reason, the accommodation of which will serve the interests of fairness and justice, without also causing a significant delay or harm to another party. Good cause may include relieving a person from the consequences of a mistake or inadvertence, but not from simple neglect.
- e. “Initial return date” is the date scheduled for the first appearance by the defendant following service of the summons and complaint. This shall also be known as the “initial appearance date,” or the “trial date.”
- f. “Personal service” shall mean person-to-person delivery of any pleading or notice to the intended recipient. If service is made at the residence, delivery of the papers to another person of suitable age and discretion who lives at the residence shall also qualify as “personal service.”
- g. “Pertinent” shall mean anything that relates directly and significantly to the matter in issue.
- h. “Post and mail service” shall have the same meaning as set forth in A.R.S. §§ 33-1377(B) and 33-1485(B).
- i. “Rental agreement” shall include, but not be limited to, oral and written rental agreements and leases.
- j. “Special detainer” refers to the procedures set forth at A.R.S. §§ 33-1377 and 33-1485.

#### **Rule 19. Miscellaneous**

- a. If a plaintiff is entitled to rent, late charges, court costs or attorney fees in a detainer judgment, the court shall not deny the request or delay entry of judgment solely because of a claim that Fair Debt Collection Practices Act notification requirements have not yet been satisfied.
- b. If, after entry of a detainer judgment a plaintiff or attorney concludes, either unilaterally or in response to a dispute by the defendant, that the basis for the detainer action or judgment was not valid, then the plaintiff shall promptly file a motion to set aside the judgment.
- c. No agreement between parties or their attorneys shall be binding if later disputed unless it is in writing and signed by the parties or their attorneys or made orally in open court on the record. This rule shall not prohibit a party who disputes the content of the agreement to move the court to refuse to enforce the agreement if good cause is shown for doing so.

#### **Rule 20. Sealing Records**

- a. **When Required.** The court must enter an order sealing all records related to the case if:
  - (1) the court enters an order that dismisses the case prior to the entry of judgment;
  - (2) the court enters judgment in favor of the defendant; or
  - (3) the parties file a stipulation to set aside the order of eviction and seal the eviction case.
- b. **Access to Sealed Records.** Records sealed under this rule may be made available only as permitted by A.R.S. § 33-1379.



**Let's check your knowledge!**



<https://quizlet.com/992530994/arizona-rules-of-procedure-for-eviction-actions-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Rules of Small Claims Procedure



# Rules of Small Claims Procedure

## Rule 1. Small Claims Lawsuit

**(a) Definition and Jurisdictional Limit.** A small claims lawsuit is a voluntary, simplified procedure for a lawsuit in the small claims division of the justice court. The small claims division may only decide lawsuits in which the debt, damage, tort, injury, or value of the personal property claims by the plaintiff are not more than \$3,500 and counterclaims by the defendant are not more than \$3,500, exclusive of interest and costs. A small claims lawsuit also includes lawsuits where a party asks the court to disaffirm, avoid, or rescind a contract, or seeks equitable relief, and the amount at issue is not more than \$3,500.

**(b) Governing Authorities.**

(1) *Rules and Statutes.* These rules and the Arizona Revised Statutes (“A.R.S.”) Title 22, Chapter 5, govern procedures for small claims lawsuits and provide a process for inexpensive, speedy, and informal resolutions. Courts and parties should interpret these rules liberally and consistently with this purpose.

(2) *Electronically Filed Documents.* Arizona Code of Judicial Administration (ACJA) § 1-901 applies to documents filed through an electronic filing service provider. “Electronic filing service provider” has the same meaning as provided in ACJA § 1-901.

**(c) Representation.** Attorneys may not represent a party in a small claims lawsuit unless all the parties agree in writing. A corporation, partnership, association, or any other business or organization must file a notice stating the name of an authorized person who will file and appear in court on its behalf.

**(d) No Jury and No Appeal.** There is no right to a jury trial or to appeal the judgment in a small claims lawsuit. The decision of the justice of the peace or hearing officer is final and binding on both parties.

**(e) Electronic Signatures and Electronic Notarizations.** The clerk must accept for filing any document that purports to have a signature, including documents that appear to be electronically signed or electronically notarized in accordance with applicable law. If the authenticity or sufficiency of an electronic signature or electronic notarization is disputed, a judicial officer will make a determination under applicable substantive law.

## Rule 2. Parties to a Lawsuit

**(a) Parties.** The parties to a small claims lawsuit are the plaintiff and the defendant. A party can be an individual, a marital community, a corporation, a partnership, an association, or other organization.

(1) *Plaintiff.* A plaintiff is the party who files a small claims lawsuit by filing a complaint. The plaintiff must be a real party to the original transaction that forms the basis of the lawsuit, unless the person is commencing a lawsuit as a personal representative duly appointed pursuant to a proceeding as provided in Title 14 of the Arizona Revised Statutes.

(2) *Defendant.* A defendant is the party who is sued by being named in the complaint.

**(b) Use of Correct Legal Name.** A plaintiff must use the party's correct legal name when filing a lawsuit. Each defendant must be sued by the correct legal name.

**(c) Contact Information.** All parties must provide the court with a mailing address, email address, and phone number, if available. The court may use this information to communicate with the parties about their case by mail, email, text message, or phone.

### **Rule 3. Computing Time**

These rules may require a party to take action within a specified number of days from an event. The day of the event is not counted. A party must include Saturdays, Sundays, and holidays when counting days, but if the last day to take action falls on a Saturday, Sunday, or holiday, the party has until the next business day to take that action. Unless otherwise specified, all time periods referenced in these rules are calendar days.

### **Rule 4. Plaintiff Must File a Complaint in Justice Court**

**(a) Filing the Complaint.** A small claims lawsuit starts when a plaintiff files a small claims complaint. The plaintiff must file a complaint in the justice court precinct (“venue”) where the defendant resides or as permitted by A.R.S. § 22-202. The claim may be heard in a different justice court precinct if the court has jurisdiction and the defendant fails to object.

#### **(b) Requirements.**

(1) *Statement of the Claim or Claims.* The complaint must be legible and must briefly state the plaintiff’s reasons for the claims against the defendant.

(2) *Amount of Claims.* The amount of all claims in the complaint cannot exceed the jurisdictional limit for a small claims lawsuit. A plaintiff cannot avoid this requirement by splitting the claim amount into several smaller claim amounts.

(3) *Filing Fee.* The plaintiff must pay a fee to the court to file a complaint, although the plaintiff may request a deferral or waiver of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206.

**(c) No Amendments.** Amended complaints are not allowed but a plaintiff may dismiss the complaint and file a new lawsuit.

**(d) Settlement.** If the lawsuit settles before the hearing date the plaintiff must notify the court by filing a Notice of Settlement.

### **Rule 5. Service**

**(a) When to Serve the Defendant.** Not later than 45 days after the filing date of the complaint, the plaintiff must file proof of service of process on each defendant, or the plaintiff must transfer the matter out of the small claims division. As to any defendant for whom proof of service of process is not timely filed, the court shall dismiss without prejudice the complaint against them.

**(b) How to Serve the Defendant.** The plaintiff must serve each defendant with the complaint, and the summons and Notice to the Plaintiff and Defendant provided by the court by either:

(1) *Registered or Certified Mail.* The plaintiff may serve the defendant by registered or certified mail, with a “return receipt requested.” The plaintiff must file the return receipt with the court within 45 days of the complaint filing date to establish that the defendant was served. The return receipt can be the card returned to the plaintiff by the postal or delivery service or the return receipt printed from the postal or delivery service’s website; or

(2) *Constable, Sheriff, or Private Process Server.* The plaintiff may arrange for personal service on the defendant by a constable, sheriff, or private process server. If personal service is used, an affidavit of service must be filed with the court within 45 days of the complaint filing date.

**(c) Court’s Notice to the Parties.** Upon receipt of the proof of service of process, the court will send a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that the court may dismiss the case 65 days after service of process was completed unless a hearing has been scheduled, or the plaintiff has applied for the entry of a default judgment as described in Rule 140 of the Justice Court Rules of Civil Procedure.

## **Rule 6. Providing Additional Documents to the Other Party**

**(a) Serving the Other Party with Filed Documents.** A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit before or promptly after the document is filed, by:

- (1) hand-delivery to the other party;
- (2) mailing the document via first-class U.S. mail to the other party's last known address, or by using any type of professional delivery service that produces written confirmation of delivery; or
- (3) transmitting the document through an electronic filing service provider as provided in ACJA § 1-901 or delivering the document by other electronic means.

**(b) Notifying the Court of the Date and Method of Service.** The last page of any document that is filed with the court must state the date and method used to provide the document to the other party. For first class mailing, the document must state the date that it was deposited in the mail with first class postage.

## **Rule 7. Defendant's Answer**

A defendant must file a written answer within 20 days of service and provide a copy to the plaintiff as provided by Rule 6. The defendant must pay a fee to the court to file an answer, although the defendant may request a waiver or deferral of this fee as provided by A.R.S. § 12-302 and ACJA § 5-206. If a defendant fails to file an answer or otherwise respond within 20 days of service, the plaintiff must initiate default proceedings as described in Rule 140 of the Justice Court Rules of Civil Procedure.

## **Rule 8. Setting the Hearing**

The court will set a hearing date and hold a hearing within 60 days after the defendant files an answer. All parties must appear at the scheduled hearing.

## **Rule 9. Defendant's Counterclaim**

**(a) Definition.** A counterclaim asserts that the plaintiff owes something to the defendant. The defendant may file a counterclaim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event.

**(b) Filing a Counterclaim.** A counterclaim must be filed within 20 days of service of the summons, complaint, and notice. The amount of the counterclaim must be \$3,500 or less. If the counterclaim exceeds the jurisdictional limit the court must transfer the case to the civil division of the justice court. A counterclaim that is more than \$10,000 will result in a transfer of the case to the superior court.

**(c) No Amendments.** Amended counterclaims are not allowed.

## **Rule 10. Defendant Can File a Motion to Change Venue**

If the lawsuit is not filed in the correct justice court precinct, the defendant may file a motion to change the venue of the lawsuit. The plaintiff has 10 days to file a response. If the justice of the peace grants the motion, the court will transfer the lawsuit to the proper precinct. The parties must continue to appear at any scheduled court dates until they receive notice that the court has granted the motion.

## **Rule 11. Transferring the Lawsuit to the Justice Court Civil Division**

**(a) Requesting Transfer.** Either party can file a request to transfer the lawsuit to the civil division of the justice court no later than 10 business days before the hearing date.

**(b) Voluntary Dismissal After Transfer.** If a defendant requests transfer but has not filed an answer or counterclaim, a plaintiff who does not want the lawsuit to proceed in the civil division has 15 days after the transfer request to voluntarily dismiss the lawsuit.

## **Rule 12. Hearing**

**(a) Hearing Officer.** A party may request that a justice of the peace, rather than a hearing officer, decide the lawsuit. A party must make this request in writing at least 15 days before the hearing date.

**(b) Rescheduling a Hearing.** As soon as possible, but at least 15 days before the hearing date, a party may file a request in writing to reschedule the hearing and deliver a copy to the other party. The request must include a good reason for rescheduling and, if possible, provide supporting documentation. The court may deny the request if a party does not provide a good reason for rescheduling, does not provide documentation for the request, or if the party has made previous requests to reschedule the hearing. The court will consider emergency requests (a request received less than 15 days before the hearing) only if the request also shows a good reason for not filing it earlier.

### **(c) Failure to Appear for the Hearing.**

(1) *Both Parties Fail to Appear.* If both parties fail to appear at the hearing, the court will dismiss the complaint and any counterclaims without prejudice, meaning the claims may be refiled if all other legal requirements have been met.

(2) *Defendant Fails to Appear.* If the plaintiff appears and has properly served the defendant, but the defendant does not appear, the court will consider the plaintiff's evidence and, if substantiated by the evidence, the court may award judgment for the plaintiff. However, if the defendant is on active military duty and (1) fails to appear at the hearing, and (2) has not made an appearance in the case, the court cannot award judgment for the plaintiff at that time and must transfer the case to the justice court civil division for further proceedings.

(3) *Plaintiff Fails to Appear.* If the plaintiff fails to appear, but the defendant appears, the court may dismiss the lawsuit with or without prejudice, or it may award judgment for the defendant.

**(d) Request to Appear by Telephone.** If needed, the court may permit a party to appear by telephone at a hearing. The party must file a request to appear by telephone in writing at least 15 days before the hearing date. The request must contain that party's telephone number and the party must attach any documents, photographs, or other evidence the party wants to submit at the hearing. If the request is granted, the court will provide a phone number the party must call to appear telephonically at the hearing.

**(e) Evidence at the Hearing.** The justice of the peace or hearing officer will consider testimony from the parties and witnesses, and documents, and will decide the claims and any counterclaims. The justice of the peace or hearing officer may ask questions and permit the parties to ask questions of each other and witnesses. Formal rules of evidence do not apply. Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the justice of the peace or the hearing officer determines the evidence lacks reliability, or will cause unfair prejudice or confusion, or waste time.

**(f) Continuance.** If a party believes the date set for the hearing does not allow adequate time to prepare or properly exercise other rights under these rules, such as filing a counterclaim or requesting transfer to the civil division, the party may ask the court for a continuance. If the justice of the peace or hearing officer finds that the party's rights have been harmed by the

amount of time to prepare or properly exercise other rights under these rules, a continuance will be granted.

### **Rule 13. Alternative Dispute Resolution**

The court may refer the case to an Alternative Dispute Resolution program, including Online Dispute Resolution, at any time before the hearing date.

### **Rule 14. Requesting an Interpreter or Special Accommodations**

Parties should request an interpreter or special accommodations at least 15 days before a court date.

### **Rule 15. Judgment**

**(a) Final Signed Judgment.** A judgment is a final written order of the court that decides the claims in the lawsuit and is binding on all parties. A final judgment must be signed by a justice of the peace or hearing officer and filed with the court.

**(b) Rendering and Providing a Judgment.** A justice of the peace or hearing officer may render a judgment at the end of the hearing or within 10 days after the hearing. The court must provide a copy of the judgment to all parties within 5 days. Payment of the judgment is due when the judgment is rendered.

**(c) Correcting a Judgment.** On the court's own initiative or at either party's request, the court may correct the judgment if there is a misspelled name, a misstatement of fact, or a miscalculation of an amount.

### **Rule 16. Vacating a Judgment**

**(a) Filing a Motion to Vacate Judgment.** Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may relieve a party from a judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) fraud, misrepresentation, or other misconduct of an opposing party;
- (3) the judgment is void;
- (4) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (5) any other reason justifying relief.

**(b) Timing.** A motion to vacate must be filed within a reasonable time. For reasons (1) and (2), the motion must be filed no more than 6 months after the entry of the judgment or date of the proceeding, whichever is later.

**(c) Providing the Motion to the Other Party and Time for Response.** The moving party must deliver a copy of the motion to the other party on the date of filing. The other party has 15 days to file a written response and must deliver a copy of the response to the moving party on the date the response is filed.

**(d) Other Powers to Grant Relief.** This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment; or
- (2) set aside a judgment for fraud on the court.

**(e) Representation.** An attorney may represent a party on a motion to vacate a judgment.

### **Rule 17. Dismissing a Lawsuit**

**(a) Voluntary Dismissal by the Plaintiff.** If the defendant has not filed an answer or counterclaim in the lawsuit, the plaintiff may dismiss the complaint at any time by filing a Notice of Voluntary Dismissal.

**(b) Dismissal by Agreement.** The parties may mutually agree to dismiss the complaint and any counterclaims by filing an agreement to dismiss that is signed by all the parties who have appeared in the case.

### **Rule 18. Enforcing a Judgment**

A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and A.R.S. §§ 22-243 through 22-246. An attorney may represent a party for post-judgment proceedings.

### **Rule 19. Forms**

The Administrative Office of the Courts shall develop and maintain recommended forms for the courts to provide the parties in small claims cases. Courts may modify these forms consistent with local practice or use forms that are substantially similar:

- (1) Complaint;
- (2) Summons;
- (3) Proof of Service by Registered or Certified Mail;
- (4) Answer;
- (5) Counterclaim;
- (6) Application and Affidavit for Entry of Default;
- (7) Request for Default Judgment;
- (8) Motion to Change Venue;
- (9) Motion to Vacate a Judgment;
- (10) Request [for example, a request to transfer a lawsuit to the justice court civil division, request for telephonic hearing, stipulation to dismiss lawsuit; or a request to postpone the hearing];
- (11) Objection to Hearing Officer and Request for Justice of the Peace to Hear Matter;
- (12) Subpoena;
- (13) Notice of Voluntary Dismissal; and
- (14) Notice of Settlement



**Let's check your knowledge!**



<https://quizlet.com/992528359/rules-of-small-claims-procedure-flash-cards/?i=66y8kp&x=1jqt>

# Arizona Rules of Evidence



# Arizona Rules of Evidence

## Article I. General Provisions

### Rule 101. Scope; Definitions

**(a) Scope.** These rules apply to proceedings in courts in the State of Arizona. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.

**(b) Definitions.** In these rules:

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Arizona Supreme Court; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

### Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

### Rule 103. Rulings on Evidence

**(a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
  - (A) timely objects or moves to strike; and
  - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

**(b) Not Needing to Renew an Objection or Offer of Proof.** Once the court rules definitively on the record--either before or at trial--a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

**(c) Court's Statement About the Ruling; Directing an Offer of Proof.** The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.

**(d) Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

**(e) Taking Notice of Fundamental Error.** A court may take notice of an error affecting a fundamental right, even if the claim of error was not properly preserved.

## Rule 104. Preliminary Questions

**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

**(c) Conducting a Hearing So That the Jury Cannot Hear It.** The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:

- (1) the hearing involves the admissibility of a confession;
- (2) a defendant in a criminal case is a witness and so requests; or
- (3) justice so requires.

**(d) Cross-Examining a Defendant in a Criminal Case.** By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.

**(e) Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

## Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

If the court admits evidence that is admissible against a party or for a purpose--but not against another party or for another purpose--the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

## Rule 106. Remainder of or Related Statements

If a party introduces all or part of a statement, an adverse party may require the introduction, at that time, of any other part--or any other statement--that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.

## Article II. Judicial Notice

### Rule 201. Judicial Notice of Adjudicative Facts

**(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court's territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

**(c) Taking Notice.** The court:

- (1) may take judicial notice on its own; or
- (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

**(d) Timing.** The court may take judicial notice at any stage of the proceeding.

**(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

**(f) Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

## **Article III. Presumptions in Civil Cases**

### **Rule 301. Presumptions in Civil Cases Generally**

In a civil case, unless a statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

## **Article IV. Relevancy Limits**

### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a)** it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b)** the fact is of consequence in determining the action.

### **Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States or Arizona Constitution;
- an applicable statute;
- these rules; or
- other rules prescribed by the Supreme Court.

Irrelevant evidence is not admissible.

### Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

### Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, Wrongs, or Acts

**(a) Character Evidence Generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) *Character of Accused or Civil Defendant.* Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or evidence of the aberrant sexual propensity of the accused or a civil defendant pursuant to Rule 404(c);

(2) *Character of Victim.* Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) *Character of Witness.* Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

**(b) Other Crimes, Wrongs, or Acts.**

(1) *Prohibited Uses.* Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

(2) *Permitted Uses.* This evidence may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(3) *Notice in a Criminal Case.* In all criminal cases in which the state intends to offer evidence of other crimes, wrongs, or acts under Rule 404(b), the state must:

(A) make disclosure to the defendant as to such acts as required by Rule 15.1, Rules of Criminal Procedure, no later than 45 days before the final trial setting or at such later time as the court may allow for good cause; and

(B) articulate in the disclosure the permitted purpose for which the state intends to offer the evidence and the reasoning that supports the purpose. The defendant must make disclosure as to

rebuttal evidence pertaining to such acts as required by Rule 15.2, no later than 20 days after receipt of the state's disclosure or at such other time as the court may allow for good cause.

**(c) Character Evidence in Sexual Misconduct Cases.**

In a criminal case in which a defendant is charged with having committed a sexual offense, or a civil case in which a claim is predicated on a party's alleged commission of a sexual offense, evidence of other crimes, wrongs, or acts may be admitted by the court if relevant to show that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the offense charged. In such a case, evidence to rebut the proof of other crimes, wrongs, or acts, or an inference therefrom, may also be admitted.

(1) In all such cases, the court shall admit evidence of the other act only if it first finds each of the following:

(A) The evidence is sufficient to permit the trier of fact to find that the defendant committed the other act.

(B) The commission of the other act provides a reasonable basis to infer that the defendant had a character trait giving rise to an aberrant sexual propensity to commit the crime charged.

(C) The evidentiary value of proof of the other act is not substantially outweighed by danger of unfair prejudice, confusion of issues, or other factors mentioned in Rule 403. In making that determination under Rule 403 the court shall also take into consideration the following factors, among others:

(i) remoteness of the other act;

(ii) similarity or dissimilarity of the other act;

(iii) the strength of the evidence that defendant committed the other act;

(iv) frequency of the other acts;

(v) surrounding circumstances;

(vi) relevant intervening events;

(vii) other similarities or differences;

(viii) other relevant factors.

(D) The court shall make specific findings with respect to each of (A), (B), and (C) of Rule 404(c)(1).

(2) In all cases in which evidence of another act is admitted pursuant to this subsection, the court shall instruct the jury as to the proper use of such evidence.

(3) In all criminal cases in which the state intends to offer evidence of other acts pursuant to this subdivision of Rule 404, the state shall make disclosure to the defendant as to such acts as required by Rule 15.1, Rules of Criminal Procedure, no later than 45 days prior to the final trial setting or at such later time as the court may allow for good cause. The defendant shall make disclosure as to rebuttal evidence pertaining to such acts as required by Rule 15.2, no later than 20 days after receipt of the state's disclosure or at such other time as the court may allow for good cause. In all civil cases in which a party intends to offer evidence of other acts pursuant to this subdivision of Rule 404, the parties shall make disclosure as required by Rule 26.1, Rules of Civil Procedure, no later than 60 days prior to trial, or at such later time as the court may allow for good cause shown.

(4) As used in this subsection of Rule 404, the term "sexual offense" is as defined in A.R.S. Sec. 13-1420(C) and, in addition, includes any offense of first-degree murder pursuant to A.R.S. Sec. 13-1105(A)(2) of which the predicate felony is sexual conduct with a minor under Sec. 13-1405, sexual assault under Sec. 13-1406, or molestation of a child under Sec. 13-1410.

## Rule 405. Methods of Proving Character

**(a) By Reputation or Opinion.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

**(b) By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, or pursuant to Rule 404(c), the character or trait may also be proved by relevant specific instances of the person's conduct.

## Rule 406. Habit; Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

## Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or--if disputed--proving ownership, control, or the feasibility of precautionary measures.

## Rule 408. Compromise Offers and Negotiations

**(a) Prohibited Uses.** Evidence of the following is not admissible--on behalf of any party--either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering--or accepting, promising to accept, or offering to accept--a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim.

**(b) Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

## Rule 409. Offers to Pay Medical and Similar Expenses

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

## Rule 410. Pleas, Plea Discussions and Related Statements

**(a) Prohibited Uses.** Except as otherwise provided by statute, in a civil or criminal case, or administrative proceeding, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere or no contest plea;
- (3) a statement made during a proceeding on either of those pleas under Arizona Rule of Criminal Procedure 17.4 or a comparable federal procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

**(b) Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

## Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

## Article V. Privileges

### Rule 501. Privilege in General

The common law--as interpreted by Arizona courts in the light of reason and experience--governs a claim of privilege unless any of the following provides otherwise:

- the United States or Arizona Constitution;
- an applicable statute; or
- rules prescribed by the Supreme Court.

### Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

**(a) Disclosure Made in an Arizona Proceeding; Scope of a Waiver.**

When the disclosure is made in an Arizona proceeding and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in an Arizona proceeding only if:

- (1) the waiver is intentional;
- (2) the disclosed and undisclosed communications or information concern the same subject matter; and
- (3) they ought in fairness to be considered together.

**(b) Inadvertent Disclosure.**

When made in an Arizona proceeding, the disclosure does not operate as a waiver in an Arizona proceeding if:

- (1) the disclosure is inadvertent;
- (2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- (3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Arizona Rule of Civil Procedure 26(b)(6)(B).

**(c) Disclosure Made in a Proceeding in Federal Court or Another State.**

When the disclosure is made in a proceeding in federal court or another state and is not the subject of a court order concerning waiver, the disclosure does not operate as a waiver in an Arizona proceeding if the disclosure:

- (1) would not be a waiver under this rule if it had been made in an Arizona proceeding; or
- (2) is not a waiver under the law governing the federal or state proceeding where the disclosure occurred.

**(d) Controlling Effect of a Court Order.**

An Arizona court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court--in which event the disclosure is also not a waiver in any other proceeding.

**(e) Controlling Effect of a Party Agreement.**

An agreement on the effect of disclosure in an Arizona proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

**(f) Definitions.**

In this rule:

- (1) “attorney-client privilege” means the protection that applicable law provides for confidential attorney-client communications; and
- (2) “work-product protection” means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.

## Rule 503. Legal Paraprofessional

A communication between a legal paraprofessional and a client is privileged if it is made for the purpose of securing or giving legal advice, is made in confidence, and is treated confidentially. This privilege is co-extensive with, and affords the same protection as, the attorney-client privilege.

## Article VI. Witnesses

### Rule 601. Competency to Testify in General

Every person is competent to be a witness unless these rules or an applicable statute provides otherwise.

### Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

### Rule 603. Oath or Affirmation to Testify Truthfully

Before testifying, a witness must give an oath or affirmation to testify truthfully. It must be in a form designed to impress that duty on the witness's conscience.

### Rule 604. Interpreters

An interpreter must be qualified and must give an oath or affirmation to make a true translation.

### Rule 605. Judge's Competency as a Witness

The judge presiding at trial may not testify as a witness at the trial. A party need not object to preserve the issue.

### Rule 606. Juror's Competency as a Witness

**(a) At the Trial.** A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

**(b) During an Inquiry into the Validity of a Verdict in a Civil Case.**

(1) *Prohibited Testimony or Other Evidence.* During an inquiry into the validity of a verdict in a civil case, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) *Exceptions.* A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.

## Rule 607. Who May Impeach a Witness

Any party, including the party that called the witness, may attack the witness's credibility.

## Rule 608. A Witness's Character for Truthfulness or Untruthfulness

**(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

## Rule 609. Impeachment by Evidence of a Criminal Conviction

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving--or the witness's admitting--a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subsection (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

(1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and

(2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

**(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

## Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

## Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence

**(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

**(b) Scope of Cross-examination.** A witness may be cross-examined on any relevant matter.

**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) on cross-examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

### Rule 612. Writing Used to Refresh a Witness's Memory

**(a) Scope.** This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or
- (2) before testifying, if the court decides that justice requires the party to have those options.

**(b) Adverse Party's Options; Deleting Unrelated Matter.** An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

**(c) Failure to Produce or Deliver the Writing.** If a writing is not produced or is not delivered as ordered, the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or--if justice so requires--declare a mistrial.

### Rule 613. Witness's Prior Statements

**(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

### Rule 614. Court's Calling or Examining a Witnesses

**(a) Calling.** The court may call a witness on its own or at a party's request. Each party is entitled to cross-examine the witness.

**(b) Examining.** The court may examine a witness regardless of who calls the witness.

**(c) Objections.** A party may object to the court's calling or examining a witness either at that time or at the next opportunity when the jury is not present.

### Rule 615. Excluding Witnesses

At a party's request, the court must order witnesses excluded from the courtroom and prohibited from receiving trial testimony through any means, so that they cannot hear or review other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

- (a) a party who is a natural person;
- (b) one officer or employee of a party that is not a natural person if that officer or employee has been designated as the party's representative by its attorney;
- (c) any person whose presence a party shows to be essential to presenting the party's claim or defense;
- (d) a person authorized by statute to be present; or
- (e) a victim of crime, as defined by applicable law, who wishes to be present during proceedings against the defendant.

## **Article VII. Opinions and Expert Testimony**

### **Rule 701. Opinion Testimony by Lay Witnesses**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **Rule 702. Testimony by Expert Witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

### **Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds

of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

### Rule 704. Opinion on an Ultimate Issue

**(a) In General--Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

**(b) Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

### Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion

Unless the court orders otherwise, an expert may state an opinion--and give the reasons for it--without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

### Rule 706. Court Appointed Expert Witnesses

**(a) Appointment Process.** On a party's motion or on its own, the court may order the parties to show cause why expert witnesses should not be appointed and may ask the parties to submit nominations. The court may appoint any expert that the parties agree on and any of its own choosing. But the court may only appoint someone who consents to act.

**(b) Expert's Role.** The court must inform the expert of the expert's duties. The court may do so in writing and have a copy filed with the clerk or may do so orally at a conference in which the parties have an opportunity to participate. The expert:

(1) must advise the parties of any findings the expert makes;

(2) may be deposed by any party;

(3) may be called to testify by the court or any party; and

(4) may be cross-examined by any party, including the party that called the expert.

**(c) Compensation.** The expert is entitled to a reasonable compensation, as set by the court. Except as otherwise provided by law, appointment of an expert by the court is subject to the availability of funds or the agreement of the parties concerning compensation.

**(d) Disclosing the Appointment to the Jury.** The court may authorize disclosure to the jury that the court appointed the expert.

**(e) Parties' Choice of Their Own Experts.** This rule does not limit a party in calling its own experts.

## Article VIII. Hearsay

## Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

**(a) Statement.** “Statement” means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

**(b) Declarant.** “Declarant” means the person who made the statement.

**(c) Hearsay.** “Hearsay” means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

**(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) *A Declarant-Witness's Prior Statement.* The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony;

(B) is consistent with the declarant's testimony and is offered:

(i) to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

(2) *An Opposing Party's Statement.* The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

## Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- an applicable constitutional provision or statute;
- these rules; or
- other rules prescribed by the Supreme Court.

## Rule 803. Exceptions to the Rule Against Hearsay--Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

**(1) Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

**(2) Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

**(4) Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for--and is reasonably pertinent to--medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

**(5) Recorded Recollection.** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

**(6) Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by -- or from information transmitted by -- someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

**(7) Absence of a Record of a Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) the opponent does not show that the possible source of the information or other circumstances indicate a lack of trustworthiness.

**(8) Public Records.** A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

**(9) Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

**(10) Absence of a Public Record.** Testimony--or a certification under Rule 902--that a diligent search failed to disclose a public record or statement if

(A) the testimony or certification is admitted to prove that

(i) the record or statement does not exist; or

(ii) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind; and

(B) in a criminal case, a prosecutor who intends to offer a certification provides written notice of that intent at least 20 days before trial, and the defendant does not object in writing within 10 days of receiving the notice--unless the court sets a different time for the notice or the objection.

**(11) Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

**(13) Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

**(14) Records of Documents That Affect an Interest in Property.** The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

**(15) Statements in Documents That Affect an Interest in Property.** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose -- unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**(16) Statements in Ancient Documents.** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

**(17) Market Reports and Similar Commercial Publications.** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

**(18) Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

**(19) Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage--or among a person's associates or in the community--concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

**(20) Reputation Concerning Boundaries or General History.** A reputation in a community--arising before the controversy--concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

**(21) Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

**(22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
- (B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
- (C) the evidence is admitted to prove any fact essential to the judgment; and
- (D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

**(23) Judgments Involving Personal, Family, or General History or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

- (A) was essential to the judgment; and
- (B) could be proved by evidence of reputation.

**(24) [Other exceptions.]** [Transferred to Rule 807.]

**(25) Former testimony (non-criminal action or proceeding).** Except in a criminal action or proceeding, testimony given as a witness at another hearing of the same or different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

## Rule 804. Exceptions to the Rule Against Hearsay--When the Declarant Is Unavailable as a Witness

**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
  - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subsection (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) *Former Testimony in a Criminal Case.* Testimony that:

(A) was made under oath by a party or witness during a previous judicial proceeding or a deposition under Arizona Rule of Criminal Procedure 15.3 shall be admissible in evidence if:

(i) The party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which a statement was made shall be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived) and

(ii) The declarant is unavailable as a witness, or is present and subject to cross-examination.

(B) The admissibility of former testimony under this subsection is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this subsection is not subject to:

(i) Objections to the form of the question which were not made at the time the prior testimony was given.

(ii) Objections based on competency or privilege which did not exist at the time the former testimony was given.

(2) *Statement Under the Belief of Imminent Death.* In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) *Statement of Personal or Family History.* A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) [Formerly (7) *Other exceptions.*] [Transferred to Rule 807.]

(6) *Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.* A statement offered against a party that wrongfully caused--or acquiesced in wrongfully causing--the declarant's unavailability as a witness, and did so intending that result.

## Rule 805. Hearsay Within Hearsay

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

## Rule 806. Attacking and Supporting the Declarant's Credibility

When a hearsay statement--or a statement described in Rule 801(d)(2)(C), (D), or (E)--has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

## Rule 807. Residual Exception

**(a) In General.** Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

(1) the statement is supported by sufficient guarantees of trustworthiness--after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and

(2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

**(b) Notice.** The statement is admissible only if the proponent gives an adverse party reasonable notice of the intent to offer the statement --including its substance and the declarant's name--so that the party has a fair opportunity to meet it. The notice must be provided in a writing filed with the court before the trial or hearing--or in a filing during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

## Article IX. Authentication and Identification

### Rule 901. Authenticating and Identifying Evidence

**(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

**(b) Examples.** The following are examples only--not a complete list--of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion About Handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

- (3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.
- (4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
- (5) *Opinion About a Voice.* An opinion identifying a person's voice--whether heard firsthand or through mechanical or electronic transmission or recording--based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
- (6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:
- (A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or
- (B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
- (7) *Evidence About Public Records.* Evidence that:
- (A) a document was recorded or filed in a public office as authorized by law; or
- (B) a purported public record or statement is from the office where items of this kind are kept.
- (8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:
- (A) is in a condition that creates no suspicion about its authenticity;
- (B) was in a place where, if authentic, it would likely be; and
- (C) is at least 20 years old when offered.
- (9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.
- (10) *Methods Provided by a Statute or Rule.* Any method of authentication or identification allowed by a statute or a rule prescribed by the Supreme Court.

## Rule 902. Evidence that is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

**(1) Domestic Public Documents that are Sealed and Signed.** A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; a Federally Recognized American Indian Tribe or Nation; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

**(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.** A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal--or its equivalent--that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer

or attester--or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

**(4) Certified Copies of Public Records.** A copy of an official record--or a copy of a document that was recorded or filed in a public office as authorized by law--if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed by the Supreme Court.

**(5) Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

**(6) Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

**(7) Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

**(8) Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

**(9) Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

**(10) Presumptions Under a Statute.** A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

**(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a statute or a rule prescribed by the Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record--and must make the record and certification available for inspection--so that the party has a fair opportunity to challenge them.

**(12) Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

**(13) Certified Records Generated by an Electronic Process or System.** A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

**(14) Certified Data Copied from an Electronic Device, Storage Medium, or File.** Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the

certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

### Rule 903. Subscribing Witness's Testimony

A subscribing witness's testimony is necessary to authenticate a writing only if required by the law of the jurisdiction that governs its validity.

## **Rule X. Contents of Writings, Recordings, and Photographs**

### 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, 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 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

### 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;
- (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 1005. Copies of Public Records to Prove Content

The proponent may use a copy to prove the content of an official record--or of a document that was recorded or filed in a public office as authorized by law--if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

### 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 videos 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.

## Article XI. Miscellaneous Rules

### Rule 1101. Applicability of the Rules

**(a) Courts and Magistrates.** These rules apply to all courts of the State and to magistrates, and court commissioners and justices of the peace, masters and referees in actions, cases, and proceedings and to the extent hereinafter set forth. The terms “judge” and “court” in these rules include magistrates, court commissioners and justices of the peace.

**(b) Proceedings Generally.** These rules apply generally to civil actions and proceedings, to contempt proceedings except those in which the court may act summarily, and to criminal cases and proceedings except as otherwise provided in the Arizona Rules of Criminal Procedure.

**(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

**(d) Exceptions.** These rules--except those on privilege--do not apply to grand jury proceedings.

## Rule 1102. Amendments

These rules may be amended as provided in Rule 28, Rules of the Supreme Court.

Arizona Rules of Evidence, Rule 1103

## Rule 1103. Title

These rules may be cited as the Arizona Rules of Evidence.



**Let's check your knowledge!**



<https://quizlet.com/967187700/arizona-rules-of-evidence-flash-cards/?i=66y8kp&x=1jqt>



# Practice Exam



1. In Arizona, if a residential rental property to be inspected is a dwelling unit in a space rental mobile home park or recreational vehicle park and is not owned by the landlord, who is responsible for the costs of the inspection?
  - a. The inspector or inspecting agency.
  - b. The municipality, county, or state that requested the inspection.
  - c. The landlord, regardless of ownership of the dwelling unit.
  - d. The owner of the dwelling unit.
  
2. Under Arizona Rules, a party who obtains a judgment for possession in an eviction action, has up to how many days to apply for writ of restitution?
  - a. 14.
  - b. 30
  - c. 45
  - d. 90
  
3. Under the Arizona State Constitution, a Superior Court has original sole jurisdiction over
  - a. all appeals from lower courts and administrative agencies.
  - b. civil cases involving over \$200.
  - c. all family custody disputes.
  - d. criminal cases.
  
4. If a defendant in a Small Claims case requests a transfer to the civil division of the justice court but has not filed an answer or counterclaim, what action could a plaintiff take if they do not want the suit to proceed in the civil division?
  - a. Allow the suit to proceed in the civil division regardless.
  - b. Voluntarily dismiss the suit within 15 days of the request.
  - c. Compel the defendant to file a counterclaim within 15 days of the request.
  - d. Amend their original lawsuit filing within 15 days of the request.
  
5. A social media influencer posts on a heavily trafficked Internet social media site the names of local business owners with alleged sexual misconduct in the workplace. Some of them file a lawsuit seeking damages and making claims of defamation against the social media influencer. To be successful in their defamation claim, plaintiffs must prove
  - a. that the statements were knowingly false and caused harm to their reputations.
  - b. only that the statements were false.
  - c. only that the statements harmed their reputations
  - d. that the statements, although true, invaded their right of privacy and placed them in a false light.

**Answer Key:**

1. **D** – [A.R.S. 33-1904 Inspections](#).
2. **C** – Rules of Procedure for Eviction Actions, [Rule 14. Writs of Restitution](#).
3. **C** – [Article VI, Section 14](#), 1. Cases and proceedings in which exclusive jurisdiction is not vested by law in another court.
4. **B** – Rules of Small Claims Procedure, [Rule 11. Transferring the Lawsuit to the Justice Court Civil Division](#).
5. **A** -- A Concise Restatement of Torts; Third Edition