

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-18-0008
ARIZONA RULES OF EVIDENCE 1001,)
1002, 1004, 1006, 1007, 1008;)
ARIZONA RULES OF CRIMINAL) **FILED 8/28/2018**
PROCEDURE 15.1, 15.2, 15.3;)
ARIZONA RULES OF PROCEDURE FOR)
THE JUVENILE COURT 16, 44, 73;)
and ARIZONA RULE OF PROCEDURE)
FOR EVICTION ACTIONS 10)
)
)
)
_____)

ORDER

AMENDING ARIZONA RULES OF EVIDENCE 1001, 1002, 1004, 1006, 1007, 1008; ARIZONA RULES OF CRIMINAL PROCEDURE 15.1, 15.2, 15.3; ARIZONA RULES OF PROCEDURE FOR THE JUVENILE COURT 16, 44, 73; and ARIZONA RULE OF PROCEDURE FOR EVICTION ACTIONS 10

A petition having been filed proposing to amend Arizona Rules of Evidence 1001, 1002, 1004, 1006, 1007, 1008; Arizona Rules of Criminal Procedure 15.1, 15.2, 15.3; Arizona Rules of Procedure for the Juvenile Court 16, 44, 73; and Arizona Rule of Procedure for Eviction Actions 10, and one comment having been received, upon consideration,

IT IS ORDERED that Arizona Rules of Evidence 1001, 1002, 1004, 1006, 1007, 1008; Arizona Rules of Criminal Procedure 15.1, 15.2, 15.3; Arizona Rules of Procedure for the Juvenile Court 16, 44, 73; and Arizona Rule of Procedure for Eviction Actions 10, be amended in accordance with the attachment hereto, effective January 1, 2019.

DATED this 28th day of August, 2018.

_____/s/_____
SCOTT BALES
Chief Justice

Arizona Supreme Court No. R-18-0008

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TO:

Rule 28 Distribution

Hon. Samuel A Thumma

ATTACHMENT¹

Arizona Rules of Evidence

Rule 1001. Definitions That Apply to This Article

In this article:

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

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

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

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

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

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

Rule 1002. Requirement of the Original

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

Rule 1004. Admissibility of Other Evidence of Contents

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

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

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

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
(d) the writing, recording, ~~or~~ photograph, or video is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, ~~or~~ photographs, or 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, ~~or~~ photograph, or video by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

Rule 1008. Functions of the Court and Jury

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

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

Arizona Rules of Criminal Procedure

Rule 15.1. The State's Disclosures

(a) [no change]

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

(1) – (4) [no change]

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

(6) – (11) [no change]

(c) – (h) [no change]

(i) Additional Disclosures in a Capital Case.

(1) - (2) [no change]

(3) Initial Disclosures.

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

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

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

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

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

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

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

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

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

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

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

(j) [no change].

Rule 15.2. The Defendant's Disclosures

(a) – (b) [no change]

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

(1) – (2) [no change]

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

(d) - (g) [no change]

(h) Additional Disclosures in a Capital Case.

(1) *Initial Disclosures.*

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

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

(ii) the name and address of each person, other than the defendant, the defendant intends to call as a witness during the aggravation and penalty hearings, and any written or recorded statement of the witness;

(iii) the name and address of each expert the defendant intends to call during the aggravation and penalty hearings, and any written or recorded statements of the expert or other disclosure as required in (c)(2), excluding any portions containing statements by the defendant; and

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

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

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

Rule 15.3. Depositions

(a) – (b) [no change]

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

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

(A) state the name and address of the person to be deposed;

(B) show that a deposition may be ordered under (a) or (b);

(C) specify the time and place for taking the deposition; and

(D) designate any nonprivileged documents, photographs, ~~or~~ other tangible objects, or electronically stored information that the person must produce at the deposition.

(2) – (3) [no change]

(d) – (f) [no change]

Arizona Rules of Procedure for the Juvenile Court

Rule 16. Discovery

A. [no change]

B. Disclosure by the State.

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

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

2. - 3. [no change]

C. Disclosure by Juvenile.

1. - 2. [no change]

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

- a. The names and addresses of all persons, other than the juvenile, who will be called as witnesses at the adjudication hearing, together with all statements made by them in connection with the particular case;
- b. The names and addresses of experts who will be called at the adjudication hearing, together with the results of physical examinations, scientific tests, experiments or

comparisons, including all written reports and statements made by the expert in connection with the particular case; and

c. A list of all papers, documents, photographs, ~~and~~ other tangible objects, and electronically stored information which the juvenile will use at the adjudication hearing.

4. - 6. [no change]

D. – F. [no change]

Rule 44. Disclosure and Discovery

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

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

B. - G. [no change]

Rule 73. Disclosure and Discovery

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

1. Reports prepared by or at the request of any party;
2. Reports of any social service provider;
3. Foster Care Review Board and Court Appointed Special Advocate reports;
4. Transcripts of interviews and prior testimony;
5. Probation reports;
6. Photographs;
7. Physical evidence;
8. Electronically stored information;

9. ~~8.~~ Records of prior criminal convictions;

10. ~~9.~~ Medical and psychological records and reports;

11. ~~10.~~ Results of medical or other diagnostic tests; and

12. ~~11.~~ Any other information relevant to the proceedings.

B. – D. [no change]

Arizona Rules of Procedure for Eviction Actions

Rule 10. Disclosure

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

b. – d. [no change]