Rules of Civil Procedure for the Superior Courts of Arizona

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Rules of Civil Procedure for the Superior Courts of Arizona

Prefatory Comment to the 2017 Amendments

The 2017 amendments make extensive changes to the Arizona Rules of Civil Procedure ("ARCP").

These amendments "restyle" the ARCP in a manner similar to the 2007 restyling of the Federal Rules of Civil Procedure. Informative titles and subheadings are added, which make rules and sections easier to locate. By using clearer language and, if possible, plain English, these rules should be easier to understand. The restyled rules avoid long sentences, ambiguous terminology (such as the word "shall"), and legal jargon. These rules also use consistent formatting conventions and terminology.

If no good reason exists to depart from the newly restyled language of a federal rule, these amendments adopt the restyled federal wording verbatim. These amendments also renumber various subdivisions of Arizona rules to be consistent with the numbering of parallel federal subdivisions. If there are sound reasons for an Arizona rule to differ substantively from a corresponding federal rule, the amended Arizona rule maintains those differences. Even in these circumstances, however, and to enhance the clarity of the Arizona rule, wording was revised and structure was reorganized pursuant to restyling conventions.

The amended rules also include substantive changes, *including but not limited to the following.* The amendments eliminate several archaic practices and traps, such as requirements to verify answers for certain pleadings, or if certain defenses are raised. Several amendments are devoted to procedures involving electronic discovery and electronically stored information. Revisions to Rules 26.1 and 37(g) are intended to meet the realities of identifying, handling, and producing electronically stored information in a rational and cost-effective fashion. Other major substantive changes include rules governing document preparation, the deadlines for responding to written discovery, and provisions regarding sanctions, change of judge, and the timing of requests for attorney's fees and costs.

The wording of an amended rule may be very different, or only slightly different, from the rule that it replaces. The intent of these differences is to make the ARCP more functional, and easier to understand and use. Prior case law continues to be authoritative, unless it would be inappropriate because of a new requirement or provision in these amended rules.

The amended rules attempt to incorporate substantive requirements previously contained within comments to the former ARCP. Because of that, these amendments delete most of those comments, along with comments that have long ago outlived their usefulness. Parties may continue to refer to comments to pre-2017 versions of the ARCP to the extent those comments still apply to these amended rules.

I. ~~Scope of Rules—One Form of Action~~ SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope ~~of rules~~and Purpose

These rules govern the procedure in all civil actions and proceedings in the superior court~~s~~ of Arizona ~~in all suits of a civil nature whether cognizable as cases at law or in equity. They shall~~. They should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 2. One ~~f~~Form of ~~action~~Action

There ~~shall be~~is one form of action ~~to be known as "~~—the civil action.~~"~~

II. ~~Commencement of Action; Service of Process, Pleadings, Motions and Orders; Duties of Counsel~~ COMMENCEMENT OF THE ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS; DUTIES OF COUNSEL

Rule 3. ~~Commencement of action~~ Commencing an Action

A civil action is commenced by filing a complaint with the court.

Rule 4. ~~Process~~ Summons

~~**Rule 4(a). Summons; issuance**~~

(a) Issuance; Service.

(1) *Pleading Defined*. As used in Rules 4, 4.1 and 4.2, "pleading" means any of the pleadings authorized by Rule 7 that brings a party into an action.

~~When the complaint or any other pleading which requires service of a summons is filed, the clerk shall endorse thereon the day and hour on which it was filed and the number of the action, and shall forthwith issue a summons. The party filing the~~

(2) *Issuance.* On or after filing a pleading, the filing party may present a summons to the clerk for signature and seal. If ~~in proper form~~the summons is properly completed, the clerk ~~shall~~must sign ~~and~~, seal ~~the summons~~ and issue it to the filing party for service ~~or for delivery to a person authorized by Rule 4(d) to serve it~~. A summons~~,~~ — or a copy of the summons if addressed to multiple ~~persons, shall~~parties—must be issued for each ~~person~~party to be served.

(3) *Service.* A summons must be served with a copy of the pleading. Service must be completed as required by this rule, Rule 4.1, or Rule 4.2, as applicable.

~~**Rule 4(b).**~~ **Contents; Replacement Summons~~; form; replacement summons~~.**

(1) *Contents.* A summons must:

~~The summons shall be signed by the clerk, be under the seal of the court, contain the name of~~**(A)** name the court and the ~~names of the~~ parties~~,~~;

(B) be directed to the ~~person~~party to be served~~,~~;

(C) state the name and address of the attorney~~, if any, for the party on whose behalf service is being made, and otherwise that party's~~ of the party serving the summons or—if unrepresented—the name and address~~. The summons shall~~ of the party;

(D) state the time within which ~~these Rules require the person being served to~~the defendant must appear and defend~~, and shall~~;

(E) notify the party to be served that ~~person that in case of~~ a failure to ~~do so~~appear and defend will result in a default judgment ~~by default will be rendered~~ against that ~~person~~party for the relief demanded in the pleading ~~served. A summons, or a copy of the summons in the case of multiple persons to be served, shall be served together with a copy of the pleading to be served.~~;

(F) state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding";

(G) be signed by the clerk; and

(H) bear the court's seal.

(2) *Replacement Summons.* If a summons is returned without being served, or if it has been lost, a party may ask the clerk ~~may upon request~~to issue a replacement

summons in the same form as the original. A replacement summons ~~shall~~must be issued and served within the time prescribed by ~~Rule 4(i) of these Rules~~Rule 4(i) for service of the original summons. ~~The summons shall state that "requests for reasonable accommodation for persons with disabilities must be made to the court by parties at least 3 working days in advance of a scheduled court proceeding."~~

~~**Rule 4(c). Summons; parties named fictitiously; return**~~

~~When~~**(c) Fictitiously Named Parties; Return.** If a pleading ~~which requires service of a summons designates~~identifies a party ~~whose true name is unknown~~ by a fictitious name ~~pursuant to Rule 10(f) of these Rules~~under Rule 10(d), the summons may issue and be directed to a person with the fictitious name ~~employed for that purpose~~. The return of service of process ~~upon~~on a person ~~designated therein~~identified by a fictitious name ~~shall~~must state the true name of the person ~~or party upon whom it~~who was served with the process.

~~**Rule 4**~~**(d)**~~.~~ **Who May Serve Process**~~**; by whom served.**~~

(1) ***Generally.*** Service of process ~~shall~~must be made by a sheriff, a sheriff~~'~~'s deputy, a constable, a constable~~'~~'s deputy, a private process server certified ~~pursuant to the Arizona Code of Judicial Administration § 7-204: Private Process Server and subpart (e) of this~~under to the Arizona Code of Judicial Administration § 7-204 and Rule 4(e), or any other person specially appointed by the court~~, except that a subpoena may be served as provided in Rule 45.~~. Service of process may also be made by a party or that party~~'~~'s attorney ~~where~~if expressly authorized by these ~~R~~rules.

(2) ***Special Appointment.***

(A) *Qualifications.* A specially appointed person ~~shall~~must be not less than ~~twenty-one (~~21~~)~~ years of age and ~~shall~~must not be a party, an attorney, or ~~the~~an employee of an attorney in the action ~~whose~~in which process is ~~being served. Special appointments~~to be served.

(B) *Procedure for Appointment.* A party may request a special appointment to serve process ~~shall be requested~~ by filing a motion ~~to~~with the presiding ~~Superior Court judge and the~~superior court judge in the county where the action is pending. The motion ~~shall~~must be accompanied by a proposed ~~form of order. The party submitting the proposed form of order shall comply with Rule 5(j)(2) under which the filing party includes the appropriate number of copies to be addressed~~

~~to each party who has entered an appearance in the case and stamped, addressed envelopes for distribution of the resulting order, unless otherwise provided by the Presiding Judge. If the proposed form of~~order. If the proposed order is signed, no minute entry ~~shall~~will issue. Special appointments sh~~a~~oul~~l~~d be granted freely, are valid only for the cause specified in the motion, and do not constitute an appointment as a certified private process server.

~~**Rule 4(e). State-wide**~~**(e) Statewide Certification of Private Process Servers.** A person seeking certification ~~**of**~~as a private process ~~**servers**~~~~A person who files~~server must file with the clerk~~ of the court~~ an application ~~for certification as a private process server, pursuant to the~~under Arizona Code of Judicial Administration § 7-~~204, as adopted by the Supreme Court, shall, upon~~204. Upon approval of the court or presiding judge ~~thereof, in~~of the ~~County where~~county in which the application is filed, ~~be registered with~~ the clerk will register the person as a certified private process server, which will remain in effect unless and until the ~~such~~certification is withdrawn by the court. The clerk ~~shall~~must maintain a register for this purpose. ~~Such~~A certified private process server ~~shall~~will be entitled to serve in that ~~such~~capacity for any ~~court of the~~ state court anywhere within ~~the State~~Arizona.

~~**Rule 4(f). Service; acceptance or waiver; voluntary appearance**~~

(f) Acceptance or Waiver of Service; Voluntary Appearance. There are two ways to accomplish service with the assent of the served party—waiver and acceptance. A party also may voluntarily appear without being served.

(1) ***Waiver of Service.*** ~~The person to whom a summons or other process is directed may accept service, or~~ A party subject to service under this rule, Rule 4.1 or Rule 4.2 may waive issuance or service ~~thereof,~~of process. The waiver of service must be in writing, signed by that ~~person or by that person'~~party or their authorized agent or attorney, and the waiver must be filed in the action. A party who waives service receives additional time to serve a responsive pleading, as provided in Rule 12(a)(1)(A)(ii).

(2) ***Acceptance of Service.*** A party subject to service under this rule, Rule 4.1 or Rule 4.2 may accept service. The acceptance of service must be in writing, signed by that party or by that party's authorized agent or attorney, and the acceptance ~~or waiver shall~~must be filed in the action. A ~~person upon~~party who accepts service does not receive the additional time to serve a responsive pleading under Rule 12(a)(1)(A)(ii).

(3) *Voluntary Appearance.*

(A) *In Open Court.* A party on whom service is required may, in person or by attorney or by an authorized agent, enter an appearance in open court, and the appearance shallmust be noted by the clerk upon the docket and entered in the minutes. Such waiver, acceptance or

(B) *By Responsive Pleading.* The filing of a pleading responsive to a pleading allowed under Rule 7 constitutes an appearance by the party.

(4) *Effect.* Waiver, acceptance, and appearance shallunder (f)(1), (f)(2), and (f)(3) have the same force and effect as if a summons had been issued and served. The filing of a pleading responsive to a pleading allowed under Rule 7(a) of these Rules shall constitute an appearance.

Rule 4(g). Return; Proof of serviceService.

(1) *Timing.* If service is not accepted or waived, and no voluntary appearance is made, then the person effecting service shall makemust file proof thereof to the court. When theof service with the court. Return of service should be made by no later than when the served party must respond to process.

(2) *Service by the Sheriff.* If process is served by a sheriff or a sheriff's deputy, the return shallmust be officially endorsedmarked on or attached thereto and returned to the courtproof of service and promptly filed with the court.

(3) *Service by Others.* If served by a person other than the sheriff or a deputy sheriff, the return andmust be promptly filed with the court and be accompanied by an affidavit establishing proof of service shall be made promptly by affidavit thereof. Each such affidavit of. If the server is a registered private process server shall include clear reference to, the affidavit must clearly identify the county where that private processin which the server is registered. When

(4) *Service by Publication.* If the summons is served by publication, the return of the person making such service shallmust be made in the manner specifiedas provided in Rules 4.1(*l*) and 4.2(f), of these Rules. Proof of service in a place not within any judicial district of.

(5) *Service Outside the United States.* Service in a place outside the United States shall, must be proved as follows:

(A) if effected under ~~paragraph (1) of~~ Rule 4.2(i)~~, be made pursuant to~~(1), as provided in the applicable treaty or convention; and ~~shall,~~

(B) if effected under ~~paragraph~~ Rule 4.2(i)(2) or (3)~~ thereof~~, ~~include~~by a receipt signed by the addressee, or by other evidence ~~of delivery to the addressee satisfactory to the court. In any event the return shall be made within the time during which the person served must respond to process~~satisfying the court that the summons and complaint were delivered to the addressee.

(6) ***Affidavit, Official Mark of Sheriff as Prima Facie Evidence.*** The affidavit of service or sheriff's official mark is prima facie evidence of service of the summons and the pleading being served.

(7) ***Validity of Service.*** Failure to make proof of service does not affect the validity ~~thereof~~of service.

~~Rule 4~~(h)~~.~~ Amendment of ~~p~~Process or ~~amendment of proof of service~~of Proof of Service. At any time ~~in its discretion~~ and ~~upon~~on such terms as it deems just, the court may allow any process or proof of service ~~thereof~~ to be amended, unless ~~it clearly appears~~the court finds that ~~material prejudice~~it would ~~result to~~materially prejudice the substantial rights of the party ~~against whom the process issued~~subject to service.

~~Rule 4(i). Summons; time limit~~(i) Time Limit for ~~service~~Service. If ~~service of the summons and complaint is not made upon~~ a defendant is not served with process within 120 days after the ~~filing of the~~ complaint is filed, the court~~, upon~~—on motion, or on its own ~~initiative~~ after notice to the plaintiff~~, shall~~—must dismiss the action without prejudice ~~as to~~against that defendant or ~~direct~~order that service be ~~effected~~made within a specified time~~; provided that~~. But if the plaintiff shows good cause for the failure, the court ~~shall~~must extend the time for service for an appropriate period. This ~~subdivision~~Rule 4(i) does not apply to service in a foreign country ~~pursuant to Rule~~under Rules 4.2(i), (j), (k) and (*l*)~~ of these rules~~.

Rule 4.1. Service of Process Within Arizona

~~**Rule 4.1. Service of process within Arizona**~~

(a) Territorial Limits of Effective Service. All process—including a summons—may be served anywhere within ~~the territorial limits of the state~~Arizona.

(b) Serving a Summons~~; Service With~~ and Complaint~~.~~ or Other Pleading. The summons and the pleading being served ~~shall~~must be served together~~. The party procuring service is responsible for service of a summons and the pleading being~~

~~served~~ within the time allowed under Rule 4(i)~~ of these Rules and shall~~. The serving party must furnish the ~~person effecting service with the~~ necessary copies ~~of the pleading to be served~~to the person who makes service. Service is complete when made.

(c)~~ Waiver of~~ Waiving Service~~; Duty to Save Costs of Service; Request to Waive.~~

(1)~~ A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of such defendant.(2)~~ ***Requesting a Waiver.*** An individual~~, governmental entity~~, corporation, ~~partnership or unincorporated~~or association that is subject to service under ~~paragraph~~ Rules 4.1(d), (h)(1)-(3), (h)(4)(A)~~, or (i) of this Rule 4.1 and that receives notice of an action in the manner provided in this paragraph~~ or (i) has a duty to avoid unnecessary ~~costs of~~expense in serving the summons. To avoid costs, the plaintiff may notify ~~such a~~the defendant ~~of the commencement of the~~that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A)~~ shall~~ be in writing and~~ shall~~ be addressed ~~directly to the defendant in accordance with paragraph (d), (h) (1)-(4)(A), or (i) of this Rule 4.1, as applicable~~to the defendant and any other person required in this rule to be served with the summons and the pleading being served;

(B)~~ shall be dispatched through first-class mail or other reliable means;~~ name the court where the pleading being served was filed;

(C)~~ shall~~ be accompanied by a copy of the ~~complaint and shall identify the court in which it has been filed~~pleading being served, two copies of a waiver form prescribed in Rule 84, Form 2, and a prepaid means for returning the completed form;

(D)~~ shall~~ inform the defendant, ~~by means of a~~using text ~~prescribed in an official form promulgated pursuant to~~provided in Rule 84, Form 1, of the consequences of ~~compliance and of a failure to comply with the request~~waiving and not waiving service;

(E)~~ shall set forth~~ state the date ~~on which~~when the request is sent;

(F)~~ shall allow~~ give the defendant a reasonable time to return the waiver, which ~~shall~~must be at least 30 days ~~from~~after the date ~~on which~~when the request ~~is~~was sent; and

(G) ~~shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.~~ be sent by first-class mail or other reliable means.

~~If a defendant fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.~~

2) ***Failure to Waive.*** ~~(3) A defendant that, before being served with process, timely returns~~ If a defendant fails without good cause to sign and return a waiver ~~so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent.~~

~~(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and the complaint had been served at the time of filing the waiver, and no proof of service shall be required.(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under paragraph (d), (h) or (i) of this Rule 4.1, together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.~~requested by a plaintiff, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent.

(4) ***Results of Filing a Waiver.*** When the plaintiff files an executed waiver, proof of service is not required and, except for the additional time in which a defendant may answer or otherwise respond as provided in Rule 4.1(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

(d) Serving an Individual. Unless Rules 4.1(c), (e), (f), or (g) apply, an individual may be served by:

(d) Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by

1) delivering a copy of the summons and of the pleading being served to that individual personally or by ;

(2) leaving copies thereofa copy of each at that individual'''s dwelling house or usual place of abode with some personsomeone of suitable age and discretion then residing therein or by who resides there; or

(3) delivering a copy of the summons and of the pleadingeach to an agent authorized by appointment or by law to receive service of process.

(e) Service of Summons Upon Minors. Service upon **Serving a Minor.** Unless Rule 4.1(f) applies, a minor under the age of sixteenyounger than 16 years shall be effected by serviceold may be served by delivering a copy of the summons and the pleading being served to the minor in the manner set forth in paragraph (d) of this Rule 4.1 upon the minor and upon the minor'Rule 4.1(d) for serving an individual and also delivering a copy of each in the same manner:

(1) to the minor's father, mother or guardian, if any of them reside or may be found within this state,Arizona; or

(2) if none of them resides or is found therein, then uponwithin Arizona, to any personadult having the care and control of suchthe minor, or any person of suitable age and discretion with whom the minor resides.

(f) Service of Summons Upon A Serving a Minor WithWho Has a Guardian or Conservator. Service upon a minor for whom If a court has appointed a guardian or conservator has been appointed in this state shall be effected by servicefor a minor, the minor must be served by serving the guardian or conservator in the manner set forth in paragraph (d) of this Rule 4.1 upon such guardian or conservator andRule 4.1(d) for serving an individual, and separately serving the minor in that same manner.

(g) Serviceng of Summons Upon a Person Adjudicated Incompetent Persons. Service upon**Who Has a Guardian or Conservator.** If a person whocourt has been judicially

declared a person to be insane, gravely disabled, incapacitated or mentally incompetent to manage that person~~'~~'s property and ~~for whom~~has appointed a guardian or conservator ~~has been appointed in this state shall be effected by service~~for the person, the person must be served by serving the guardian or conservator in the manner set forth in ~~paragraph (d) of this Rule 4.1 upon such person and also upon that person's guardian or conservator, or if no guardian or conservator has been appointed, upon such person as the court designates~~Rule 4.1(d) for serving an individual, and separately serving the person in that same manner.

(h)~~ Service of Summons Upon~~ Serving a Governmental Entity. ~~Service upon~~ If a governmental entity ~~subject to suit, and from which a waiver has not been obtained and filed, shall be effected~~has the legal capacity to be sued and if it has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and ~~of~~ the pleading being served to the following individuals:

(1) ~~F~~for service ~~upon~~on the State of Arizona, the Attorney General;

(2) ~~F~~for service ~~upon a County~~on a county within Arizona, the ~~C~~clerk of the Board of Supervisors ~~thereof~~for that county;

(3) ~~F~~for service ~~upon a Municipal Corporation, the Clerk thereof~~on a municipal corporation, the clerk of that municipal corporation; and

(4) ~~F~~for service ~~upon~~on any other governmental entity:

(A) ~~T~~the individual designated by the entity ~~pursuant to~~, as required by statute, to receive service of process; or

(B) ~~If~~ if the entity has not ~~pursuant to statute~~ designated a person to receive service of process, then the entity's chief executive officer(s), or, alternatively, ~~the~~its official secretary, clerk, or recording officer ~~of the entity as established by law~~.

(i)~~ Service of Summons Upon Corporations, Partnerships~~ Serving a Corporation, Partnership or Other Unincorporated ~~Associations.~~ ~~Service upon~~**Association.** If a domestic or foreign corporation ~~or upon a~~, partnership or other unincorporated association ~~which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected~~has the legal capacity to be sued and has not waived service under Rule 4.1(c), it may be served by delivering a copy of the summons and ~~of~~ the pleading being served to a partner, an officer, a managing or general agent, or ~~to~~ any other agent authorized by appointment or by law to receive service of process and~~,~~ if the agent is one authorized by statute ~~to receive service~~ and

the statute so requires~~,~~ by also mailing a copy ~~to the party on whose behalf the agent accepted or received service~~of each to the defendant.

(j)~~ Service of Summons Upon~~ Serving a Domestic Corporation ~~If~~if an Authorized Officer or Agent Is Not Found Within ~~the State.~~ When~~Arizona.~~

(1) *Generally.* If a domestic corporation does not have an officer or an agent ~~in this state upon~~within Arizona on whom ~~legal~~ service of process can be made, ~~service upon such domestic~~the corporation ~~shall~~may be ~~effected~~served by depositing two copies of the summons and ~~of~~ the pleading being served ~~in~~with the ~~office of the~~Arizona Corporation Commission~~, which shall be deemed~~. Following this procedure constitutes personal service on ~~such~~that corporation. ~~The return of~~

(2) *Evidence.* If the sheriff of the county in which the action ~~or proceeding is brought~~is pending states in the return that, after diligent search or inquiry, the sheriff has been unable to find ~~any~~an officer or agent of such corporation ~~upon~~on whom process may be served, ~~shall be~~the statement constitutes prima facie evidence that the corporation does not have such an officer or agent in ~~this state.~~Arizona.

(3) *Commission's Responsibilities.* The Arizona Corporation Commission ~~shall file~~must retain one of the copies ~~in its office~~of the summons and the pleading being served for its records and immediately mail the other copy, postage prepaid, to the ~~office of the~~ corporation~~, or to the president, secretary~~ or any ~~director or officer~~ of ~~such corporation as appears or is ascertained by the Corporation Commission from the~~the corporation's officers or directors, using any address obtained from the corporation's articles of incorporation ~~or other papers on file in its office, or otherwise~~, other Corporation Commission records, or any other source.

(k) Alternative ~~or Substituted~~Means of Service. ~~If service by one of~~

(1) *Generally.* If a party shows that the means ~~set forth in the preceding paragraphs of this~~of service provided in Rule 4.1 ~~proves~~(c) through Rule 4.1(j) are impracticable, ~~then service may be accomplished in such manner, other than by publication, as~~ the court, ~~upon~~on motion and without notice~~, may direct. Whenever~~ to the person to be served, may order that service may be accomplished in another manner.

(2) *Notice and Mailing.* If the court allows an ~~alternate or substitute form~~alternative means of service ~~pursuant to this subpart~~, the serving party must make a reasonable ~~efforts shall be undertaken by the party making service to assure that~~effort to provide the person being served with actual notice of the action's commencement ~~of the action is provided to the person to be served and, in~~. In any event, the serving

party must mail the summons~~ and~~, the pleading ~~to be~~being served, ~~as well as~~and any ~~order of the~~ court order authorizing an alternative ~~method~~means of service~~, shall be mailed~~ to the last known business or residen~~ce~~tial address of the person ~~to be served. Service by publication may be employed only under the circumstances, and in accordance with the procedures, specified in Rules 4.1(l), 4.1(m), 4.2(f) and 4.2(g) of these Rules.~~being served.

(3) ***Service by Publication.*** A party may serve by publication only if the requirements of Rule 4.1(*l*), Rule 4.1(m), Rule 4.2(f), or Rule 4.2(g) are met and the procedures provided in those rules are followed.

(l) Service by Publication~~; Return.~~ ~~Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence~~**.**

(1) ***Generally.*** A party may serve a person by publication only if:

(A) the last known address ~~was within the state, or has~~of the person to be served is within Arizona but:

(i) the serving party, despite reasonably diligent efforts, has not been able to ascertain the person's current address; or

(ii) the person to be served has intentionally avoided service of process~~,~~; and

(B) service by publication is the best means practicable ~~under~~in the circumstances for providing the person with notice of the ~~institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of~~action's commencement.

(2) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons~~,~~ and ~~of~~ a statement ~~as to the manner in which~~describing how a copy of the pleading being served may be obtained~~,~~ at least once a week for ~~four~~4 successive weeks :

(~~1~~i) in a newspaper published in the county where the action is pending~~,~~; and ~~(2) in a newspaper published in the county of~~

(ii) if the last known ~~residence~~address of the person to be served ~~if different from the county where the action is pending.~~is in a different county, in a newspaper in that county.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone authorized under Rule 4(d).

(C) *Alternative Newspapers.* If no newspaper is published in ~~any such county, then the required publications shall be made~~a county where publication is required, the serving party must publish the summons and statement in a newspaper ~~published~~ in an adjoining county. ~~The service shall be~~

(D) *Effective Date of Service.* Service is complete ~~thirty~~30 days after the summons and statement is first published in all newspapers where publication~~. When the residence~~ is required.

(3) ***Mailing.*** If the serving party knows the address of the person ~~to be~~being served ~~is known, the party or officer making service shall also~~, it must, on or before the date of ~~the~~ first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid~~, to that person at that person's place of residence. Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer~~.

(4) ***Return.***

(A) *Required Affidavit.* The party or person making service ~~shall~~must prepare, sign and file an affidavit s~~how~~tating the manner and dates of the publication and mailing, and the circumstances warranting ~~the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith~~service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) *Accompanying Publication.* A printed copy of the publication ~~shall~~must accompany the affidavit. ~~If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.~~

(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.

(m) Service by Publication~~;~~ on an Unknown Heir~~s~~ in a Real Property ~~Actions.~~ ~~When in an action~~**Action.** An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.1(*l*), if:

(1) the action in which the heir will be served is for the foreclosure of a mortgage on real property or ~~in any~~is some other type of action involving title to real property~~, it is necessary for~~; and

(2) the heir must be a party to the action to permit a complete determination of the action~~ that the unknown heirs of a deceased person be made parties, they may be sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (l) of this Rule 4.1.~~.

Rule 4.2. Service of Process Outside ~~the State~~Arizona

~~Rule 4.2~~(a)~~.~~ Extraterritorial ~~jurisdiction; personal service out of~~Jurisdiction; Personal Service Outside Arizona. An Arizona state~~A~~ court ~~of this state~~ may exercise personal jurisdiction over ~~parties~~a person, whether found within or outside ~~the state~~Arizona, to the maximum extent permitted by the Arizona Constitution~~ of this state~~ and~~ the Constitution of~~ the United States~~. Service upon any such~~ Constitution. A party may serve any person located outside ~~the state may be made~~Arizona as provided in this ~~Rule 4.2,~~rule, and, when ~~so~~service is made~~ shall be of~~, it has the same effect as if personal service were accomplished within ~~the state.~~ Arizona.

~~Rule 4.2~~(b)~~.~~ Direct ~~service~~Service ~~of~~.

(1) ***Generally.*** A party may serve process ~~may be made~~ outside ~~the state~~Arizona, but within the United States, in the same manner as provided in Rules 4.1(d)-(i)~~ of these Rules~~.

(2) ***Who May Serve.*** Service must be made by a person who is authorized to serve process under the law of the state where ~~such~~ service is made.~~ Such service shall be~~

(3) ***Effective Date of Service.*** Service is complete when made, and the time ~~for purposes of~~period under Rule 4.2(m) ~~shall begin to run at that time, provided that before any default may be had on such service, there shall be filed an affidavit of service showing the circumstances warranting the utilization of this procedure and attaching an affidavit of the process server showing the fact and circumstances of the service~~starts to run on that date.

~~Rule 4.2~~

(c)~~.~~ Service by ~~mail; return~~Mail.

(1) ***Generally.*** ~~When the whereabouts of a party outside the state is known, service may be made by depositing~~ If a serving party knows the address of the person to be

served and the address is outside Arizona but within the United States, the party (or its counsel) may serve the person by mailing the summons and a copy of the pleading being served ~~in the post office,~~ to the person at that address by registered mail (postage prepaid~~, to be sent to the person to be served by any form of mail~~), requiring a signed and returned receipt.

(2) ***Affidavit of Service*** ~~by mail pursuant to this subpart and the return thereof may be made by the party procuring service or by that party's attorney. Upon return through~~**.** When the post office ~~of~~returns the signed receipt, the serving party ~~shall~~must file an affidavit ~~with the court~~ stating :

(~~1~~A) ~~that~~ the ~~party~~person being served is known to be located outside Arizona but within the ~~state, (2) that the summons and a copy of the pleading were dispatched to the party being served; (3) that such papers were in fact received by the party as evidence by the receipt, a copy of which shall be attached to the affidavit; and (4) the date of receipt by the party being served and the date of the return of the receipt to the sender. This affidavit shall be prima facie evidence of personal service of the summons and the pleading and service shall be deemed complete and time shall begin to run for the purposes of Rule 4.2(m) of these Rules from the date of receipt by the party being served, provided that no default may be had on such service until such an affidavit has been filed.~~United States;

(B) the serving party mailed the summons and a copy of the pleading (or other request for relief) to the person by registered mail;

(C) the serving party received a signed return receipt, which is attached to the affidavit and which indicates that the person received the described documents; and

(D) the date of receipt by the person being served.

~~Rule 4.2~~(d).~~-~~ Waiver of ~~service; duty to save costs of service; request to waive~~Service.

(1) ~~A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of such defendant.(2)~~ ***Requesting a Waiver.*** An individual, corporation, or association that is subject to service under ~~paragraph~~ Rules 4.2(b), (c), (h), (i) or (k)~~ of this Rule 4.2 and that receives notice of an action in the manner provided in this paragraph~~ has a duty to avoid unnecessary ~~costs of~~expense in serving the summons. ~~To avoid costs, the~~The plaintiff may notify ~~such a~~the defendant ~~of the commencement of the~~that an

action has been commenced and request that the defendant waive service of ~~the~~a summons. The notice and request must:

(A) ~~shall~~ be in writing and ~~shall~~ be addressed ~~directly~~ to the defendant in accordance with ~~paragraph~~ Rules 4.2(b), (c), (h), (i), or (k) ~~of this Rule 4.2,~~, as applicable;

(B) ~~shall be dispatched through first-class mail or other reliable means;~~ name the court where the pleading being served was filed;

(C) ~~shall~~ be accompanied by a copy of the ~~complaint and shall identify the court in which it has been filed~~pleading being served, two copies of a waiver form set forth in Rule 84, Form 2, and a prepaid means for returning the completed form;

(D) ~~shall~~ inform the defendant, ~~by means of a~~using the text ~~prescribed in an official form promulgated pursuant to~~provided in Rule 84, Form 1, of the consequences of ~~compliance and of a failure to comply with the request~~waiving and not waiving service;

(E) ~~shall set forth~~ state the date ~~on which~~when the request is sent;

(F) ~~shall allow~~ give the defendant a reasonable time to return the waiver, which ~~shall~~must be at least 30 days ~~from~~after the date when the ~~notice is~~request was sent, or 60 days ~~from that date if the defendant is addressed~~after it was sent if it was sent outside any judicial district of the United States; and

(G) ~~shall provide the defendant with an extra copy of the notice and request, as well as prepaid means of compliance in writing.~~ be sent by first-class mail or other reliable means.

(2) ***Failure to Waive.*** If a defendant located within the United States fails ~~to comply with a request for~~without good cause to sign and return a waiver ~~made~~requested by a plaintiff located within the United States, the court ~~shall~~must impose ~~the costs subsequently incurred in effecting service~~ on the defendant ~~unless good cause for the failure be shown.~~:

~~(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.~~

A) the expenses later incurred in making service; and

~~(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proofs of service shall be required.~~

(~~(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under paragraph (b), (c), (h), (i) or (k) of this Rule 4.2, together with the costs, including reasonable~~

B) the reasonable expenses, including attorney~~'~~'s fees, of any motion required to collect ~~the costs of~~those service expenses.

(3) ***Time to Answer After a Waiver.*** A defendant who, before being served with process, timely returns a waiver need not serve an answer or otherwise respond to the pleading being served until 60 days after the request was sent, or 90 days after it was sent if it was sent outside any judicial district of the United States.

(4) ***Results of Filing a Waiver.*** When the plaintiff files an executed waiver, proof of service is not required and, except for the additional time in which a defendant may answer or otherwise respond as provided in Rule 4.2(c)(3), these rules apply as if a summons and the pleading being served had been served at the time of filing the waiver.

(5) ***Jurisdiction and Venue Not Waived.*** Waiving service of a summons does not waive any objection to personal jurisdiction or venue.

~~Rule 4.2~~(e)~~.~~ Service ~~under~~on a Nonresident Under the Nonresident Motorist Act.

(1) ***Generally.*** In an action involving the operation of a motor vehicle in ~~this state,~~Arizona, a party may serve a nonresident—including a minor, insane or incompetent person~~ may be served in the manner provided by A.R.S. §§ 28-2321 through 28-2327 for service upon a nonresident in such cases as if that person were sui juris. When service of a copy of the summons and complaint~~—as provided in A.R.S. § 28-2327.

(2) ***Effective Date of Service.*** If service is made ~~pursuant to~~under A.R.S. § 28-2327, ~~the~~ service ~~shall be deemed~~is complete ~~thirty~~30 days after:

(A) the filing of the defendant~~'~~'s return receipt and ~~plaintiff'~~the serving party's affidavit of compliance, as ~~required by~~provided in A.R.S. § 28-~~2327, subsection~~

~~A, paragraph 1, or, in case of personal service out of the state under A.R.S. § 28-2327, subsection A, paragraph 2, thirty days after~~2327(A)(1); or

(B) the filing of the officer~~'~~'s return of ~~such~~ personal service~~. The defendant shall appear and answer within thirty~~, as provided in A.R.S. § 28-2327(A)(2).

(3) ***Effect.*** Within 30 days after completion of ~~such~~ service, the defendant must answer in the same manner ~~and under the same penalties~~ as if the defendant had been personally served with a summons ~~within~~in the county in which the action is pending.

(f) Service by Publication. ~~Rule 4.2(f). Service by publication; return~~

(1) ***Generally.*** A party may serve a person by publication only if:

(A) the last known address of the person to be served is outside Arizona but:

(i) the serving party, despite reasonably diligent efforts, has not been able to ascertain the person's current address; or

~~Where~~ **(ii)** the person to be served ~~is one whose present residence is unknown but whose last known residence was outside the state, or~~ has intentionally avoided service of process~~,~~; and

(B) service by publication is the best means practicable ~~under~~in the circumstances for providing notice ~~of institution of the action, then service may be made by publication in accordance with the requirements of this subpart. Such service shall be made by publication of~~to the person of the action's commencement.

(2) ***Procedure.***

(A) *Generally.* Service by publication is accomplished by publishing the summons~~,~~ and ~~of~~ a statement ~~as to the manner in which~~describing how a copy of the pleading being served may be obtained~~,~~ at least once a week for ~~four~~4 successive weeks in a newspaper published in the county where the action is pending.

(B) *Who May Serve.* Service by publication may be made by the serving party, its counsel, or anyone else authorized to serve process under Rule 4(d).

(C) *Alternative Newspapers.* If no newspaper is published in ~~any such county, then the required publications shall be made~~a county where publication is required, the serving party must publish the summons and statement in a newspaper ~~published~~ in an adjoining county. ~~The service shall be~~

(D) *Effective Date of Service.* Service is complete ~~thirty~~30 days after the summons and statement is first published in all newspapers where publication~~. When the residence~~ is required.

(3) ***Mailing.*** If the serving party knows the address of the person ~~to be~~being served ~~is known, the party or officer making service shall also~~, it must, on or before the date of ~~the~~ first publication, mail to the person the summons and a copy of the pleading being served, postage prepaid~~, directed to that person at that person's place of residence~~.

(4) ***Return.***

(A)*Required Affidavit.* ~~Service by publication and the return thereof may be made by the party procuring service or that party's attorney in the same manner as though made by an officer. The party or officer~~ The party or person making service ~~shall~~must prepare, sign and file an affidavit ~~showing~~describing the manner and dates of the publication and mailing, and the circumstances warranting ~~utilization of the procedure authorized by this subpart which shall be prima facie evidence of compliance herewith~~service by publication. If no mailing was made because the serving party did not know the current address of the person being served, the affidavit must state that fact.

(B) *Accompanying Publication.* A printed copy of the publication ~~shall~~must accompany the affidavit.~~ If the residence of the person to be served is unknown, and for that reason no mailing was made, the affidavit shall so state.~~

(C) *Effect.* An affidavit that complies with these requirements constitutes prima facie evidence of compliance with the requirements for service by publication.

(g) Service by Publication on an Unknown Heir in a Real Property Action. ~~**Rule 4.2(g). Service by publication; unknown heirs in real property actions**~~ An unknown heir of a decedent may be sued as an unknown heir and be served by publication in the county where the action is pending, using the procedures provided in Rule 4.2(f), if:

(1) ~~When in an~~ the action in which the heir will be served is for the foreclosure of a mortgage on real property or ~~in any~~is some other type of action involving title to real property~~, it is necessary for~~; and

(2) the heir must be a party to the action to permit a complete determination of the action~~ that the unknown heirs of a deceased person be made parties, they may be~~

~~sued as the unknown heirs of the decedent, and service of a summons may be made on them by publication in the county where the action is pending, as provided in subpart (e) of this Rule~~.

~~**Rule 4.2(h). Service of summons upon corporations, partnerships unincorporated associations**~~

(h) Serving a Corporation, Partnership or Other Unincorporated Association Located Outside Arizona but Within the United States. If a corporation, partnership or other unincorporated association is located outside Arizona but within the United States, it may be served by delivering a copy of the summons and the pleading being served to a partner, an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.

~~In case of a corporation or partnership or unincorporated association located outside the state but within the United States, service under this Rule shall be made on one of the persons specified in Rule 4.1(i).~~

~~**Rule 4.2(i). Service upon individuals in a foreign country**~~

(i) Serving an Individual in a Foreign Country. Unless ~~otherwise provided by~~ federal law provides otherwise, ~~service upon~~ an individual ~~from whom a waiver has not been obtained and filed,~~ —other than ~~an infant or~~a minor, an incompetent person, ~~may be effected in~~or a person whose waiver has been filed under Rule 4.2(d)—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those ~~means~~ authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; ~~or~~

(2) if there is no internationally agreed means ~~of service~~, or ~~the applicable~~if an international agreement allows but does not specify other means ~~of service, provided~~, by a method that ~~service~~ is reasonably calculated to give notice:

(A) ~~in the manner prescribed by the law of~~ as set forth by the foreign country's law for service in that country in an action in ~~any of~~ its courts of general jurisdiction; ~~or~~

(B) as ~~directed by~~ the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law ~~of the foreign country~~, by:

(i) ~~delivery to the party to be served personally of~~ delivering a copy of the summons and of the pleading being served to the individual personally; or

(ii) using any form of mail ~~requiring~~that the clerk addresses and sends to the individual and that requires a signed receipt~~, to be addressed and dispatched by the clerk of the court to the party to be served~~; or

(~~3~~D) by other means not prohibited by international agreement, as ~~may be directed by~~ the court orders.

~~Rule 4.2(j). Service of summons upon minors and incompetent persons in a foreign country~~

(j) Serving a Minor or Incompetent Person in a Foreign Country. ~~Service upon~~ A party may serve a minor, a minor with a guardian or conservator, or an incompetent person who is located in a place not within any judicial district of the United States ~~shall be effected~~ in the manner ~~prescribed by paragraph~~ set forth in Rule 4.2(i)(2)(A) ~~or (2)~~and (B) ~~of subdivision (i) of this Rule 4.2~~ or by such means as the court may ~~direct~~otherwise order.

~~Rule 4.2(k). Service of summons upon corporation and associations in a foreign country~~

(k) Serving a Corporation, Partnership, or Other Incorporated Association in a Foreign Country. Unless ~~otherwise provided by~~ federal law provides otherwise or the defendant's waiver has been filed under Rule 4.2(d), ~~service upon~~ a corporation ~~or upon a~~, partnership, or other unincorporated association that ~~is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected in~~has the legal capacity to be sued may be served at a place not within any judicial district of the United States ~~in any manner prescribed for individuals by subdivision (i) of this Rule 4.2~~by delivering a copy of the summons and pleading being served in the manner set forth in Rule 4.2(i) for serving an individual, except personal delivery ~~as provided in paragraph~~ under Rule 4.2(i)(2)(C)(i) ~~thereof~~.

~~Rule 4.2(l). Service of summons upon a foreign state or political subdivision thereof~~

(l) Serving a Foreign State. ~~Service of a summons upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to~~ A foreign state

or one of its political subdivisions, agencies, or instrumentalities must be served in accordance with 28 U.S.C. § 1608.

~~Rule 4.2(m). Time for appearance after service outside state~~

(m)Time to Serve an Answer After Service Outside Arizona. ~~Where service of the summons and of a copy of a pleading requiring service by summons is made outside the state by any means authorized by this Rule 4.2, other than subsection (d), the person served shall appear and answer within thirty~~ Unless Rule 4.2(d)(3) applies, or the parties agree or the court orders otherwise, a person served outside Arizona under Rule 4.2 must serve a responsive pleading within 30 days after the completion ~~thereof~~of service. Service of a responsive pleading must be made in the same manner, and ~~under~~the served person is subject to the same ~~penalties~~consequences, as if th~~at~~e person had been personally served with a summons ~~within~~in the county in which the action is pending.

Rule 5. Servi~~ce~~ng and Filing ~~of~~ Pleadings and Other ~~Papers~~Documents

~~Rule 5~~(a)~~.~~ Service~~: when required~~ Generally.

(1) ***Scope.*** This rule governs service on other parties after service of the summons and complaint, counterclaim, or third-party complaint.

(2) ***When Required.*** Unless these rules provide otherwise, each of the following documents must be served on every party by a method stated in (c):

~~Except as otherwise provided in these rules, every~~**(A)** an order stating that service is required~~ by its terms to be served, every~~;

(B) a pleading ~~subsequent to~~filed after the original complaint, unless the court orders otherwise ~~orders~~under (d) because ~~of~~there are numerous defendants~~, every paper relating to~~;

(C) a discovery document required to be served ~~upon~~on a party, unless the court orders otherwise~~ orders, every~~;

(D) a written motion~~ other than~~, except one ~~which~~that may be heard ex parte~~,~~; and ~~every~~

(E) a written notice, appearance, demand, or offer of judgment, ~~designation of record on appeal, and similar paper shall be served upon each of the parties~~or any similar document.

(3) ***If a Party Fails to Appear.*** No service ~~need be made on parties~~is required on a party who is in default for fail~~ure~~ing to appear, except ~~that pleadings asserting new or additional claims~~as provided in Rule 55. But a pleading that asserts a new claim for relief against ~~them shall be served upon them in the manner provided for service of summons in Rule 4, Rule~~such a party must be served on that party under Rules 4, 4.1, or ~~Rule 4.2~~4.2, as applicable.

(4) ***Seizing Property.*** If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

~~**Rule 5(b).**~~ **Service; ~~parties served; continuance~~~~When~~Parties Served; Continuance.** If there are several defendants, and some are served with ~~summons~~process and others are not, the plaintiff may proceed against those who have been served or ~~continue the action. The court may order the plaintiff to proceed against those~~move to defer disclosure or other case-related activity until additional parties are served.

~~**Rule 5(c). Service after appearance; service after judgment; how made**~~

(c) Service After Appearance; Service After Judgment; How Made.

(1) ***Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders or a specific rule requires service on the party.

(2) ***Service ~~in General~~Generally.*** A ~~paper~~document is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person~~'~~'s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person~~'~~'s dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) ~~M~~mailing it via U.S. mail to the person~~'~~'s last known address~~--~~in which event service is complete upon mailing;

(D) ~~Delivering the paper~~ delivering it by any other means, including electronic means other than that described in ~~subsection~~ Rule 5(c)(2)(E), if the recipient consents in writing to that method of service or if the court orders service in that manner~~--~~in which event service is complete upon transmission; or

(E) ~~Transmitting the paper~~ transmitting it through an electronic filing service provider approved by the Administrative Office of the Courts, if the recipient is an attorney of record in the action~~--~~in which event service is complete upon transmission.

(3) ***Certificate of Service.*** The date and manner of service ~~shall~~must be noted on the last page of original of the ~~paper~~ served document or in a separate certificate~~.~~, in a form substantially as follows:

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]

If the precise manner in which service has actually been made is not so noted, it will be conclusively presumed that the ~~paper~~document was served by mail. This conclusive presumption ~~shall~~will only apply if service in some form has actually been made.

(4) ***Service After Judgment.*** 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 ~~judgement, shall~~judgment must be served ~~pursuant to~~in the same manner that a summons and pleading are served under Rules 4, ~~4.1~~4.1, or 4.2, as applicable~~, of these rules as if serving a summons and complaint~~.

~~**Rule 5(d). Service; numerous defendants**~~

(d) Serving Numerous Defendants.

(1) ***Generally.*** ~~In any~~ If an action ~~in which there are~~involves an unusually large number~~s~~ of defendants, the court may, ~~upon~~on motion or ~~of~~on its own ~~initiative~~, ~~may~~ order that ~~service of the~~:

(A) defendants' pleadings ~~of the defendants~~ and replies ~~thereto~~to them need not be ~~made as between the~~served on other defendants ~~and that~~ ;

(B) any ~~cross-claim~~crossclaim, counterclaim, ~~or matter constituting an~~ avoidance, or affirmative defense ~~contained therein shall be deemed~~in those pleadings and replies to them will be treated as denied or avoided by all other parties; and ~~that the~~

(C) filing ~~of~~ any such pleading and servi~~ce~~ng ~~thereof upon~~ it on the plaintiff constitutes ~~due~~ notice of ~~it to~~ the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order ~~shall~~must be served ~~upon~~on the parties ~~in such manner and form~~ as the court directs.

~~Rule 5~~(~~f~~e)~~.~~ Sensitive ~~data~~Data.

(1) ***Generally.*** A person ~~making a filing with the court shall~~must refrain from including the following sensitive data in ~~all pleadings or other documents filed~~any document the person files with the court~~, including exhibits thereto~~, whether filed electronically or in paper, unless otherwise ordered by the court or as otherwise provided by law:

(A) *Social Security Numbers*. If an individual~~'~~'s social security number must be included in a ~~pleading or other~~ document, only the last four digits of that number ~~shall~~may be used.

(B) *Financial Account Numbers*. If financial account numbers ~~records~~are relevant or set forth in a ~~pleading or other~~ document, only the last four digits of these numbers ~~shall~~may be used.

(2) ***Responsibility With Filer.*** The responsibility for not including or redacting sensitive data ~~shall rest~~rests solely with ~~a~~the person making a filing with the court. The clerk ~~of~~and the court ~~or the court is~~are not required to review documents for compliance with this rule, or seal or redact documents that contain sensitive data ~~on the clerk's own initiative, or redact pleadings or other documents. However, if~~.

(3) *Request for Relief.* If a document is subject to availability by remote electronic access ~~pursuant to~~under Rule 123, Rules of the Supreme Court of Arizona, any party or ~~their~~the party's attorney may ~~request that~~ask the court to order, or the court may order on its own ~~initiative may order~~, that the document be sealed and/or replaced with an identical document with the sensitive data redacted or removed.

(~~3) For violation of~~4) *Sanctions.* If this rule is violated, the court may impose sanctions against the responsible counsel or ~~the parties~~party to ensure future compliance ~~with this rule~~.

~~Rule 5~~(~~g~~f)~~.~~ Filing; ~~attachments~~Attachments.

(1) ***Filing.*** ~~All papers after the~~ After a complaint~~ required to be served upon a party or to~~'s filing, if a document must be filed ~~with the Court~~ within a specified time~~ shall~~, it must be both filed ~~with the Court~~ and served within that ~~specified~~ time~~;~~ period.

(2) ~~*Papers*~~ ***Documents*** ***Not to Be Filed.*** The following ~~papers shall~~documents may not be filed separately and may be filed as attachments or exhibits to other documents only ~~when~~if relevant to the determination of an issue before the ~~C~~court:

(A) ~~Subpoena Papers~~ *Subpoenas*. Any praecipe used solely for issuance of a subpoena or subpoena duces tecum, any subpoena or subpoena duces tecum, and any affidavit of service of a subpoena, except for post-judgment proceedings;

(B) *Discovery* ~~Papers~~*Documents*. Notices of deposition; ~~depositions,~~deposition transcripts; interrogatories and answers; disclosure statements; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(C) *Proposed Pleadings*. Any proposed pleading, ~~except such pleading may be filed after ruling by the Court if~~unless filing is necessary to preserve the record on appeal;

(D) *Prior Filings*. Any ~~paper which~~document that has been previously~~ has been~~ filed in the ~~case. If a party desires to call~~action, which may be called to the ~~C~~court~~'~~'s attention ~~to anything contained in a previously filed paper, the party shall do so by incorporation~~by incorporating it by reference;

(E) *Authorities Cited* ~~In~~*in Memoranda*. Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(F) *Offers of Judgment*~~ Under Rule 68.~~. Offers of judgment served under Rule 68.

(3) ***Attachments to Judge.*** Except for proposed orders and proposed judgments, a party may attach copies of ~~papers not otherwise to be filed under this rule~~documents described in Rule 5(f)(2) to a copy of a motion~~ or memorandum of points and authorities~~, response or reply delivered to the judge to whom the ~~case~~action has been assigned. Any such ~~papers~~documents provided to the judge must also be provided to all other parties.

(4) ***Sanctions.*** ~~For violation of~~ If this ~~Rule~~rule is violated, the ~~C~~court may order the removal of the offending document from the record and charge the offending party or counsel such costs or fees as may be necessary to cover the ~~C~~clerk~~'~~'s costs of filing, preservation, or storage~~, and the Court~~. It may also impose any additional sanctions provided in ~~Rule 16(i)~~Rule 16(i).

~~**Rule 5(hg).**~~ **Filing ~~w~~With the ~~court defined~~Court Defined.** The filing of ~~pleadings and other papers~~documents with the court ~~as required by these Rules shall be made~~is accomplished by filing them with the clerk ~~of the court, except that the~~. A judge may permit ~~the papers~~a document to be filed with the judge ~~and in that event the judge shall~~, who must note ~~thereon~~ the filing date on the document and ~~forthwith~~then transmit ~~them~~it to the ~~office of~~clerk for inclusion in the clerk's record.

~~**Rule 5(ih).**~~ **Compulsory ~~arbitration~~Arbitration.** A complaint and an answer ~~shall~~must be accompanied by ~~such~~the certificate ~~as may be~~ required by Rule 72(e) ~~of these Rules and such other certificates as may be required by~~and the corresponding local rule.

~~**Rule 5**~~

(~~j~~i). **Proposed ~~o~~Orders ~~and proposed judgments~~; Proposed Judgments.**

(1) ***Required Format.*** A proposed order or proposed judgment ~~shall~~must be prepared and filed as a separate document and ~~shall~~may not be included as an integral part of a motion, stipulation, or other document. The proposed order or proposed judgment ~~shall~~must be prepared in accordance with this ~~subsection and Rule 10(d), and shall contain the following information as single-spaced text on the first page of the document:~~ rule, and must comply with the provisions of Rule 7.1. There must be at least two lines of text on the signature page.

(2) ***Service and Filing.*** Any proposed order or proposed judgment must be served on all parties at the same time it is submitted to the court. The clerk may not file a proposed orders or proposed judgment until the court has signed it and authorized its entry. A party may file an unsigned order or judgment only if necessary to preserve the record on appeal.

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

(A) All written stipulations ~~shall~~must be accompanied by a proposed ~~form of order. The party submitting the stipulation shall include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an appearance in the case, unless otherwise provided for by the presiding judge. If~~

~~the proposed form of~~order. If the proposed order is signed and entered, no minute entry ~~shall~~need issue.

(B) ~~Any~~ If a motion ~~that~~ is accompanied by a proposed ~~form of order shall also include with it copies to be conformed, together with envelopes stamped and addressed to each party who has entered an appearance in the case. If the proposed form of order is signed, no minute entry shall~~order, no minute entry need issue if the order is signed and entered.

[Redlining Note: Portions of the formatting provisions of Rule 5 below have been moved, with some editorial revisions, to Rule 7.1]

~~(A) To the left of the center of the page starting at line one, the filing party's typed or printed name, address, telephone number, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney, e.g., plaintiff, defendant, third party plaintiff, etc. (Note: If the document is being presented by a litigant representing himself or herself, all of this information shall be included except the State Bar of Arizona identification numbers);~~

~~(B) Centered on or below line six (6) of the page, the typed or printed title of the court;~~

~~(C) Below the title of the court and to the left of the center of the paper, the typed or printed title of the action or proceeding;~~

~~(D) Opposite the title, in the space to the right of the center of the page, the typed or printed case number of the action or proceeding; and~~

~~(E) Immediately below the case number, a brief typed or printed description of the nature of the document.There shall be at least two lines of text on the signature page. Any proposed form of order or proposed form of judgment shall be served upon all parties and counsel simultaneous with its submission to the Court for consideration. Proposed orders and proposed judgments shall not be filed or docketed by the Clerk of the Court until after judicial review and decision to sign, modify or reject. A party may file an unsigned order or judgment to preserve the record on appeal.~~

Rule 5.1. Duties of Counsel

~~**Rule 5.1. Duties of counsel**~~

(a) Attorney of Record: Withdrawal and Substitution of Counsel.

(1) ***Attorney of Record: Duties of Counsel.***

(A) *Appearance Required.* An attorney may appear as attorney of record by filing a document—including a notice of appearance, complaint, answer, motion to quash, notice of association of counsel, or notice of substitution of counsel—that identifies the attorney as the attorney of record for a party. No attorney may ~~No attorney shall appear in any action or~~ file anything in any action or act on behalf of a party in open court without ~~first~~ appearing as ~~counsel of record. In any matter, even if it has proceeded to judgment, there must be a formal substitution or association of counsel before any attorney, who is not an attorney of record, may appear. An attorney of record shall~~attorney of record.

(B) *Duties.* Once an attorney has appeared as an attorney of record in an action, the attorney will be deemed responsible as the party's 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 in the case.~~involving the action until the action ends or the attorney withdraws as the party's attorney or is substituted as the party's attorney by another attorney.

(2) ***Withdrawal and Substitution.***

(A) *Court Order Required.* Except ~~where~~as otherwise provided ~~otherwise~~in these rules or in any local rules pertaining to domestic relations ~~cases~~actions, ~~no~~an attorney ~~shall be permitted to~~may not withdraw, or be substituted, as attorney of record in any pending action ~~except by formal written order of the court, supported by written application setting forth the reasons therefor together with the name, residence and telephone number of the client, as follows:~~unless authorized to do so by court order.

(B) *Application to Withdraw or Substitute Counsel.* An application to withdraw or be substituted as attorney of record for a party must be in writing, state the reasons for the withdrawal or substitution and set forth the client's address and telephone number. Additionally:

(~~(A) Where such~~**i)**If the application bears the client's written approval ~~of the client~~, it ~~shall~~must be accompanied by a proposed written order and may be presented to the court *ex parte*. The withdrawing attorney ~~shall~~must give

prompt notice of the entry of such order, together with the client's name and ~~residence of the client~~address, to all other parties~~ or their attorneys~~.

(~~B) Where such~~**ii)** If the application does not bear the written approval of the client, it ~~shall~~must be made by motion and ~~shall~~must be served ~~upon~~on the client and all other parties~~ or their attorneys~~. The motion ~~shall~~must be accompanied by a certificate of the moving attorney ~~making the motion~~ that ~~(i)~~ the client has been notified in writing of the status of the ~~case~~ action (including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders, and the possibility of sanctions~~,~~); or ~~(ii)~~ the client cannot be located or ~~for whatever other reason~~ cannot be notified of the motion's pendency ~~of the motion~~ and ~~the status of~~ the case status.

(C) *Withdrawal After Trial Setting.* No attorney ~~shall~~will be permitted to withdraw as attorney of record after ~~an action has been set for~~a trial date is set, ~~(i)~~ unless ~~there shall be endorsed upon~~ :

(i) the application ~~therefor either~~includes the ~~signature~~signed statement of a substituting attorney stating that ~~such~~the attorney is ~~advised~~aware of the trial date and will be prepared for trial, or the ~~signature~~signed statement of the client stating that the client is ~~advised~~aware of the trial date and has made suitable arrangements to be prepared for trial~~,~~; or

(ii) ~~unless the court is satisfied for~~ the attorney seeking withdrawal shows good cause ~~shown that~~for allowing the attorney ~~should be permitted~~ to withdraw even though the action has been set for trial.

(b) Responsibility to Court. Each attorney ~~shall be~~of record is responsible for keeping advised of the status of ~~cases~~, and the deadlines in, pending actions in which that attorney has appeared~~, or their positions on the calendars of the court and of any assignments for hearing or argument. Upon relocation, each~~. If an attorney ~~shall advise~~changes his or her office address, the attorney must notify the clerk~~ of court~~ and court administrator, in each of the counties in which that attorney has ~~cases~~actions that are pending, of the attorney~~'~~'s current office address and telephone number.

(c) Limited Appearance.

(1) ***Scope.*** In accordance with ~~ER 1.2,~~ER 1.2, Arizona Rules of Professional Conduct, an attorney may undertake limited representation of a person involved in ~~a~~any court proceeding, including vulnerable adult exploitation actions.

(~~1)~~ **2)** ***Notice.*** An attorney may make a limited appearance by filing and serving a Notice of Limited Scope Representation~~. The notice shall:~~ in a form substantially as prescribed in Rule 84, Form 8.

~~(A) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and~~

~~(B) specify the matters, hearings, or issues with regard to which the attorney will represent the party.~~

(~~2)~~3) ***Service.*** Service on an attorney making a limited appearance on behalf of a party ~~shall~~will constitute effective service on that party under ~~Rule 5(c)~~Rule 5(c) with respect to all matters in the action, but ~~shall~~will not extend the attorney~~'~~'s responsibility for representing the party beyond the specific matters, hearings, or issues for which the attorney has appeared.

(~~3)~~ 4) ***Withdrawal.*** Upon an attorney~~'~~'s completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(A) *With Consent*. If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating:

(i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and

(ii) the last known address and telephone number of the party who will no longer be represented.

The attorney ~~shall~~must serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney~~'~~'s withdrawal from the action ~~shall~~will be effective upon the filing and service of the Notice of Withdrawal with Consent.

(B) *Without Consent*. If the client does not consent to withdrawal or to sign a Notice of Withdrawal with Consent, the attorney ~~may~~must file a motion to withdraw, which ~~shall~~must be served ~~upon~~on the client and all other parties, along with a proposed ~~form of~~ order.

(i) If no objection is filed within ~~ten (~~10~~)~~ days ~~from the date~~after the motion is served on the client, the court ~~shall~~must sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney ~~shall~~must serve a copy of the order on the client. The withdrawing attorney also ~~shall~~must promptly serve a written notice of the entry of such order, together with the name, last known address, and telephone number of the client, on all other parties.

(ii) If an objection is filed within ~~ten (~~10~~)~~ days ~~of the service of~~after the motion is served, the court ~~shall~~must conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

(d) Notice of Settlement. It ~~shall be~~is the duty of ~~counsel~~an attorney of record, or any party if unrepresented by counsel, to give prompt notice to the assigned judge or ~~the~~ commissioner ~~assigned the case or matter~~, the clerk ~~of court~~ and court administrator ~~prompt notice~~ of the settlement of any ~~case~~action or matter set for trial, hearing or argument ~~before the trial, hearing, argument or matter awaiting court ruling. In the event of any unreasonable delay in the giving of such notice~~. If prompt notice is not afforded, the court may impose sanctions ~~against counsel~~on the attorneys of record or the parties to ~~insure~~ensure future compliance with this rule. Jury fees may be taxed as costs ~~pursuant to~~as provided in statute and local rule.

~~**Rule 5.2. Limited scope representation in vulnerable adult exploitation actions brought under A.R.S. § 46-451, *et seq.***~~

~~**(a) Limited Appearance.** An attorney may make a limited appearance on behalf of a claimant in a vulnerable adult exploitation action brought under A.R.S. § 46-451, *et seq.*, by filing and serving a Notice of Limited Scope Representation in the form prescribed in Rule 84, Form 8. The notice shall:~~

~~(1) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and~~

~~(2) specify the matters, hearings or issues with regard to which the attorney will represent the party.~~

~~**(b) Service; Limits on Scope of Appearance.** Service on an attorney making a limited appearance on behalf of a party shall constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but shall not extend the attorney's responsibility for representing the party beyond the specific matters, hearings or issues for which the attorney has appeared. Nothing in this Rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.~~

~~**(c) Withdrawal.** Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:~~

~~(1) *With Consent.* If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating: (i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and (ii) the last known address and telephone number of the party who will no longer be represented. The attorney shall serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action shall be effective upon the filing and service of the Notice of Withdrawal with Consent.~~

~~(2) *Without Consent.* If the client does not consent to withdrawal or sign a Notice of Withdrawal with Consent, the attorney may file a motion to withdraw, which shall be served upon the client and all other parties, along with a proposed form of order.~~

~~(i) If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney shall serve a copy of the order on the client. The withdrawing attorney also shall promptly serve a written notice of the entry of such order, together with the name, last known address and telephone number of the client, on all other parties.~~

~~(ii) If an objection is filed within ten (10) days of the service of the motion, the court shall conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.~~

~~**(d) Experimental Rule.** This rule shall be deemed experimental in nature and shall be reviewed in approximately four years by a committee to be appointed by the Supreme Court.~~

~~Rule 6. Time~~

Rule 6. Computing and Extending Time

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

(a) Computing Time. The following rules apply in computing any time period specified in these rules or in any local rule, court order, or statute:

(1) ***Day of the Event Excluded.*** Exclude the day of the act, event, or default that begins the period.

(2) ***Exclusions if the Deadline Is Less Than 11 Days.*** Exclude intermediate Saturdays, Sundays, and legal holidays if the period is less than 11 days.

~~In computing any period of time specified or allowed by these rules, by any local rules, by order of court, or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. When the period of time specified or allowed, exclusive of any additional time allowed under subdivision (e) of this rule, is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When the period of time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included,~~

(3) ***Last Day.*** Include the last day of the period unless it is a Saturday, ~~a~~ Sunday or ~~a~~ legal holiday. When the last day is excluded, ~~in which event~~ the period runs until the ~~end of the~~ next day ~~which~~that is not a Saturday, ~~a~~ Sunday or ~~a~~ legal holiday.

(4) ***Next Day.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

~~Rule 6(b). Enlargement~~(b) Extending Time.

(1) ***Generally.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time:

~~(1~~ **(A)** ~~When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion~~ with or without motion or notice ~~order the period enlarged~~ if the court acts, or the request ~~therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon~~is made, before the original time or its extension expires; or

(B) on motion made after the ~~expiration of the specified period permit the act to be done where the failure to act was the result~~time has expired if the party failed to act because of excusable neglect~~; but it~~.

(2) ***Exceptions.*** A court may not extend the time ~~for taking any action~~to act under Rules 50(b), 52(b), 59(d), (g) and (*l*), and 60(c)~~, except to the extent and under the conditions stated in them, unless the court finds (a)~~ except as those rules allow. Additionally, on motion, a court may extend the time to act under these rules for 10 days after the entry of the order extending the time, if:

(A) the moving party files the motion within 30 days after the specified time to act expires under these rules or within 7 days after the party received notice of the entry of the judgment or order triggering the time to act under these rules, whichever is earlier;

(B) the court finds that ~~a~~the moving party was entitled to notice of the entry of judgment or the order, but did not receive ~~such~~ notice from the clerk or any party within 21 days ~~of~~after its entry~~, and (b) that no party would be prejudiced, in which case the court may, upon motion filed within thirty days after the expiration of the period originally prescribed or within 7 days of receipt of such notice, whichever is earlier, extend the time for taking such action for a period of 10 days from the date of entry of the order extending the time for taking such action.~~; and

(C) the court finds that no party would be unfairly prejudiced by extending the time to act.

~~Rule 6(e). Additional time after service under Rule 5(c)(2)(C), (D), or (E)~~

(c) Additional Time After Service Under Rule 5(c)(2)(C), (D), or (E). ~~Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served by a method authorized by~~When a party may or must act within a specified time after service and service is made under Rule 5(c)(2)(C), (D), or (E), 5 calendar days are added after the ~~prescribed~~specified period would otherwise expire under ~~Rule 6(a)~~Rule 6(a). This rule ~~has no application~~does not apply to the clerk's distribution of notice of entry of judgment ~~required by Rule 58(e)~~under Rule 58(e).

~~**Rule 6(d). Orders to show cause**~~ [Redlining Note: The substance of Rule 6(d) has been moved to Rule 7.4, below.]

~~A judge of the superior court, upon application supported by affidavit showing cause therefor, may issue an order requiring a party to show cause why the party applying for the order should not have the relief therein requested, and may make the order returnable at such time as the judge designates. Any such order to show cause shall be served in accordance with the requirements of Rules 4, 4.1 or 4.2, as applicable, of these rules or, if the party to whom the order is directed has entered an appearance in the action, in accordance with the requirements of Rule 5 of these rules, within such time as the judge shall direct.~~

~~III. Pleadings and Motions; Pretrial Procedures~~III. PLEADINGS AND MOTIONS; PRETRIAL PROCEDURES

Rule 7. ~~Pleadings Allowed~~Pleadings Allowed; Form of Motions and Other Documents

Only these pleadings are allowed: a complaint; an answer to a complaint; an answer to a counterclaim designated as a counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and if the court orders one, a reply to an answer.

~~**Rule 7(a). Pleadings allowed**~~

~~There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be~~

~~allowed, except that the court may order a reply to an answer or a third-party answer.~~

~~**Rule 7(b). Demurrers, pleas, and exceptions for insufficiency abolished.**~~

~~Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.~~

Rule 7.1. Forms of Documents

(a) Caption. Documents filed with the court must contain the following information as single-spaced text on the first page of the document:

(1) To the left of the center of the page starting at line 1, the filing party's typed or printed name, address, telephone number, email address, State Bar of Arizona attorney identification number, and any State Bar of Arizona law firm identification number, along with an identification of the party being represented by the attorney (e.g., plaintiff, defendant, third party plaintiff). If the document is being presented by a litigant representing himself or herself, all of this information must be included except the email address and the State Bar of Arizona identification numbers;

(2) Centered on or below line 6 of the page, the typed or printed title of the court;

(3) Below the title of the court and to the left of the center of the document, the typed or printed title of the action or proceeding;

(4) Opposite the title, in the space to the right of the center of the page, the typed or printed case number of the action or proceeding; and

(5) Immediately below the case number, a brief description of the nature of the document, typed or printed.

(b) Document Format.

(1) ***Generally.*** Unless the court orders otherwise on its own or at the request of a party, all documents filed—other than a document submitted as an exhibit or attachment to a filing—must be prepared as follows:

(A) *Text and Background.* The text of every document must be black on a plain white background. All documents filed must be single-sided and must have line numbers at double-spaced intervals along the left side of the page.

(B) *Font.* Every typed document must use an easily readable 12-point font. The court prefers proportionally spaced serif fonts, such as Times New Roman, Bookman, Century, Garamond, or Book Antiqua, and discourages monospaced

or sans serif fonts such as Arial, Helvetica, Courier, or Calibri. Footnotes must be in 12-point font and must not appear in the space required for the bottom margin.

(C) *Page Size*. Each page of a document must be 8 ½ by 11 inches.

(i) Despite this general requirement, exhibits, attachments to documents, or documents from jurisdictions other than the State of Arizona and larger than the specified size must be folded to the specified size or folded and fastened to pages of the specified size.

(ii) Exhibits or attachments to documents smaller than the specified size must be fastened to pages of the specified size.

(iii) An exhibit, an attachment to a document, or a document from a jurisdiction other than the State of Arizona not in compliance with these provisions may be filed only if it appears that compliance is not reasonably practicable.

(D) *Margins and Page Numbers*. Margins must be set as follows: Margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1-1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of the page of not less than 1/2 inch. Except for the first page, the bottom margin must include a page number.

(E) *Handwritten Documents*. The court strongly encourages the filing of documents that are typed and prepared on a computer. If a document is handwritten, the text must be legible, and be printed and not include cursive writing or script.

(F) *Line Spacing*. Text must be double-spaced and may not exceed 28 lines per page, but headings, quotations, and footnotes may be single-spaced. A single-spaced quotation must be indented on the left and right sides.

(G) *Headings and Emphasis*. Headings must be underlined, or be in italics or bold font. Underlining, italics, or bold font also may be used for emphasis.

(H) *Citations*. Case names and citation signals must be in italics or underlined.

(I) *Originals*. Only originals may be filed, except that if it is necessary to file more than one copy of a document, the additional copies may be photocopies or computer generated duplicates.

(J) *Court Forms*. Printed court forms may be single-spaced except that those requiring the signature of a judge or commissioner must be double-spaced. Printed court forms must be single-sided. All printed court forms must be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming or imaging.

~~**Rule 7.1. Civil motion practice**~~

Rule 7.2. Motions

(a)~~ Formal~~ Requirements.

(1) *Generally.* An application to the court for an order ~~shall~~must be by motion which, unless made during a hearing or trial, ~~shall~~must be in writing,~~ shall~~ state with particularity the grounds ~~therefor~~for granting the motion, and~~ shall~~ set forth the relief or order sought. ~~The requirement of a writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.~~

(2) *Supporting Memorandum.* All motions ~~made before or after trial shall~~must be accompanied by a memorandum ~~indicating, as a minimum, the precise legal points, statutes and authorities relied on, citing~~setting forth the reasons for granting the motion, along with citations to the specific portions or pages ~~thereof, and shall be served on the opposing parties. Unless otherwise ordered by the court, affidavits supporting the motion shall be filed and served together with the motion. Each opposing party shall~~of supporting authorities and evidence.

(3) *Responsive and Reply Memoranda.* Unless a specific rule states otherwise, an opposing party must file any responsive memorandum within ~~ten days thereafter serve and file any answering~~10 days after the motion and supporting memorandum are served; and within ~~five~~5 days ~~thereafter~~after a responsive memorandum is served, the moving party may ~~serve and~~ file a ~~memorandum in~~ reply memorandum, which ~~shall be directed~~may address only ~~to~~those matters raised in the ~~answering~~responsive memorandum.

(4) *Affidavits and Other Evidence.* Affidavits and other evidence submitted in support of any ~~answering memorandum~~motion or memorandum ~~in reply shall~~must be filed ~~and served together~~ with ~~that~~the motion or memorandum, unless the court ~~permits them to be filed and served at some other time~~orders otherwise.

(5) *Motions in Open Court.* The ~~trial~~ court may~~ in its discretion~~ waive any of these requirements ~~as to~~for motions made in open court.

~~The time and manner of service shall be noted on all such filings, and shall be governed by Rule 6 of these Rules. If the precise manner in which service has actually been made is~~

~~not noted on any such filing, it will be conclusively presumed that the filing was served by mail, and the provisions of Rule 6(e) of these Rules shall apply. This conclusive presumption shall only apply if service in some form has actually been made. The time periods specified in this paragraph shall not apply where specific times for motions, affidavits or memoranda are otherwise provided by statute, the Rules of Civil Procedure, or order of court.~~

~~The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by this Rule, and all such motions and other papers shall be signed in accordance with Rule 11.~~

(b) Effect of Non-compliance~~.~~ or Waiver. ~~If a motion does not conform in all substantial respects with the requirements of this rule, or if~~ The court may summarily grant or deny a motion if:

(1) the motion, supporting memorandum, or responsive memorandum does not substantially comply with Rule 7.2(a);

(2) the opposing party does not ~~serve and~~ file ~~the required answering~~a responsive memorandum~~,~~; or ~~if~~

(3) counsel for any moving or opposing party fails to appear at the time and place ~~assigned~~designated for oral argument~~, such non-compliance may be deemed a consent to the denial or granting of the motion, and the court may dispose of the motion summarily~~.

(c)~~ Law and Motion Day.~~ Rulings on Motions.

(1) ***Generally.*** ~~Unless local conditions make it impracticable, each superior court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of. The judge~~ Except as these rules otherwise provide, the court at any time or place, and on such notice, if any, as the ~~judge~~court considers reasonable, may make orders for the advancement, conduct, and hearing of ~~actions~~ motions.

(2) ***Law and Motion Day.*** ~~To expedite its business, the court may make provision by~~ The court may establish by local rule or order a regular day, time and place to hear, consider and resolve motions.

(3) ***Summary Motions.*** The court may provide by local rule or order for the submission and determination of motions without oral ~~hearing upon~~argument

based on the filing of brief written statements ~~of~~setting forth reasons in support ~~and~~or opposition to a motion.

(d) ~~**Oral Argument.**~~ **Oral Argument.** ~~Oral argument shall be limited, in accordance with local rules, to a prescribed number of minutes, which shall~~ The court by local rule or order may limit the length of oral argument, which may not be exceeded without ~~special permission in advance~~prior court approval.

(e) Motions for Reconsideration.

(1) ***Generally.*** A party seeking reconsideration of a court order or ruling ~~of the court~~ may file a motion for reconsideration.

(2) ***Procedure.*** All such motions ~~for reconsideration~~, however denominated, ~~shall~~must be submitted without oral argument and without ~~response~~the filing of a responsive or reply memorandum, unless the court orders otherwise ~~directs~~. No motion for reconsideration ~~shall~~may be granted, however, without the court providing all other parties an opportunity ~~for response, a motion authorized by this Rule may not be employed as~~to respond.

(3) ***No Effect on Appeal Deadline.*** A motion for reconsideration is not a substitute for a motion ~~pursuant to~~filed under Rule 50(b), 52(b), 59 or ~~60 of these Rules,~~60, and ~~shall~~will not ~~operate to~~ extend the time within which a notice of appeal must be filed.

(f) Limitations on Motions to Strike.

(1) ***Generally.*** Unless made at trial or an evidentiary hearing, a motion to strike may be filed only if it is expressly authorized by statute or other rule, or if it seeks to strike any part of a filing or submission on the ground that it is prohibited, or not authorized, by a specific statute, rule, or court order. ~~Unless the motion to strike is expressly authorized by statute or rule: (a) it may not exceed two (2) pages in length, including any supporting memorandum; (b) any responsive memorandum must be filed within five (5) days of service of the motion and may not exceed two (2) pages in length; and (c) no reply memorandum may be filed unless authorized by the court.~~

(2) ***Procedure.*** Unless the motion to strike permitted by Rule 7.2(f)(1) is expressly authorized by rule or statute:

(A) it may not exceed 2 pages in length, including its supporting memorandum;

(B) any responsive memorandum must be filed within 5 days after service of the motion and may not exceed 2 pages in length; and

(C) no reply memorandum may be filed unless the court orders otherwise.

(3) ***Objections to Admission of Evidence on Written Motions.*** ~~Subject to Rule 56(c)(4), governing motions for summary judgment, any~~

(A) *Objections.* Any objections to, and any arguments regarding the admissibility of, evidence offered in support of or in opposition to a motion (other than a summary judgment motion) must be presented in the objecting party~~'~~'s responsive or reply memorandum and may not be presented in a separate motion to strike or other separate filing. Rule 56(c)(4) provides the procedure for raising objections to the admissibility of evidence in offered in support of, or in opposition to, a summary judgment motion.

(B) *Response to Objections.* Any response to an objection must be included in the responding party~~'~~'s reply memorandum ~~or the underlying motion~~ and may not be presented in a separate responsive memorandum.

(C) *Objections to Evidence Offered in a Reply Memorandum.* If the evidence at issue is offered for the first time in connection with a reply memorandum, ~~the~~an objecting party may file a separate objection limited to addressing the new evidence and not exceeding ~~three (~~3~~)~~ pages in length, within ~~five (~~5~~)~~ days after ~~service of~~ the reply memorandum is served. No responsive memorandum may be filed unless ~~authorized by~~ the court orders otherwise.

(g) Agreed Extensions of Time for Filing Memoranda.

(1) ***Generally.*** Subject to the court~~'~~'s power to reject any such agreement, parties may agree to ~~any extension of~~ extend the dates ~~upon~~on which response and reply memoranda are due ~~when~~if the extension does not otherwise conflict with other ~~scheduling dates~~deadlines set by the court or these ~~R~~rules.

(2) ***Procedure.*** To make an extension effective ~~under this subsection, a notice of the extension to which~~, the parties ~~have agreed~~ must ~~be filed,~~file a notice setting ~~out~~forth the agreed-upon dates on which the response or reply briefs ~~shall then~~will be due. The notice ~~shall~~must set forth in its title the number of extensions agreed to with respect to that filing (e.g., "Notice of First Extension of Time ~~To~~to File Response on Motion ~~To~~to Dismiss").

(3) ***Limitations.*** No extension ~~shall~~will be effective without prior court approval if it purports to make the filing of a reply or other final memorandum due ~~less~~fewer than ~~five~~5 days before a date for hearing or oral argument ~~date~~ previously set by the court, or if the notice of th~~at~~e extension is filed after the memorandum is due.

(4) ***Effective Date.*** No order is necessary to obtain an extension under this ~~subsection, and the~~rule. The extension ~~shall be~~is effective upon the filing of the notice of extension, unless and until the court ~~disapproves the change. The provisions of this~~

~~subsection do not apply to motion practice under Rule 56.~~enters an order disapproving the time extension.

(h) Good Faith Consultation Certificate. When these rules require that a "good faith consultation certificate" accompany a motion, the movant must attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring with—or attempting to confer with—the party or person against whom the motion is directed. The consultation required by this rule must be in person or by telephone, and not merely by letter or email.

Rule ~~7.2.~~ 7.3. Motions *in Limine*

~~**Rule 7.2. Motions *in limine***~~

(a) Obligation to Confer. Within sufficient time to comply with ~~subsection (b) of this rule~~Rule 7.3(b), the parties ~~shall~~must confer to identify any disputed evidentiary issue~~s~~ that ~~are~~they anticipate~~d to~~ will be the subject of ~~motions~~a motion *in limine*.

(b) Deadline for Filing. Unless a different schedule is ordered by the court, the parties must file all motions *in limine* for which pretrial rulings are desired no later than 30 days before either a Trial Management Conference or, if no Trial Management Conference is set, ~~then~~ the date of the trial.~~, the parties shall file all motions *in limine for which pretrial rulings are desired.*~~

(c) No Replies Permitted. The moving party ~~shall~~may not file a reply in support of its motion *in limine*.

(d) Pretrial Rulings. All motions *in limine* submitted in accordance with ~~subsection (b) of this rule shall~~Rule 7.3(b) must be ruled ~~upon~~on before trial unless the court determines the particular issue of admissibility is better considered at trial. The court's denial of a motion *in limine* preserves the moving party's objection to the evidence for purposes of appeal.

(e) ~~Motion~~ **Effect of Noncompliance.** Motions *in limine* not filed in accordance with ~~subsection (b) of this rule shall~~Rule 7.3(b) will be deemed untimely and ~~shall~~will not be ruled ~~upon prior to~~on before trial ~~except for~~unless good cause is shown.~~(f)~~ The failure to file a motion *in limine* in compliance with this rule ~~shall~~does not operate as a waiver of the right to object to evidence at trial.

Rule 7.4. Orders to Show Cause

(a) Generally. A court, on application supported by affidavit showing sufficient cause, may issue an order requiring a party to show cause why the party applying for the order

should not have the relief it requests in its application. The court must designate a date by which the party must respond, and may set a hearing on the application.

(b) Service. An order to show cause must be served in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5. Service must be effected within such time as the court orders.

Rule 7.5. Joint Filings

(a) Duties. If a rule or order requires parties to jointly prepare and file a document with the court, each party has a duty to:

(1) make itself reasonably available to participate in preparing the document;

(2) promptly respond to communications from any other party concerning the document;

(3) cooperate and make a good faith effort to resolve differences about the document's content, format and the manner in which it will be filed; and

(4) assure that the document is timely filed.

(b) Separate Sections. If a rule or order allows it, each party or side may prepare its own section of a joint filing, but each section must be clearly identified as being separately prepared by that party or side. A party or side may not make changes to another party's or side's section of a draft joint filing.

(c) Separate Filing. If the filing of a joint document becomes impractical because another party fails to comply with its duties under this rule, a party may prepare and file a document on its own behalf. If it does so, the filing's title must indicate that the party is filing it separately from the other party.

(d) Sanctions. On motion or on its own, a court may sanction any party who violates any of its duties under this rule.

Rule 8. General Rules of Pleading

~~Rule 8(a). Claims for relief~~

(a) Claim for Relief. A pleading ~~which sets forth~~that states a claim for relief~~, whether an original claim, counterclaim, crossclaim, or third-party claim, shall~~ must contain:

~~1. A~~**(1)** a short and plain statement of the grounds ~~upon which~~for the court~~'~~'s jurisdiction ~~depends~~, unless the court already has jurisdiction and the claim needs no new ~~grounds of jurisdiction to~~jurisdictional support ~~it.~~;

~~2. A~~**(2)** a short and plain statement of the claim showing that the pleader is entitled to relief~~.~~; and

~~3. A~~**(3)** a demand for ~~judgment for~~ the relief ~~the pleader seeks. Relief~~sought, which may include relief in the alternative or ~~of several~~ different types ~~may be demanded~~of relief.

(b) Defenses; Admissions and Denials.

(1) ***Generally.*** In responding to a pleading, a party must:

(A) state in short and plain terms its defenses to each claim asserted against it; and

(B) admit or deny the allegations asserted against it by an opposing party.

(2) ***Denials—Responding to the Substance.*** A denial must fairly respond to the substance of the allegation.

(3) ***General and Specific Denials.*** A party who intends in good faith to deny all the allegations of a pleading—including the jurisdictional grounds—may do so by a general denial subject to the obligations provided in Rule 11(a). A party who does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) ***Denying Part of an Allegation.*** A party who intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) ***Lacking Knowledge or Information.*** A party who lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) ***Effect of Failing to Deny.*** An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

~~**Rule 8(b). Defenses; form of denials**~~

~~A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.~~

~~Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits, but when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11(a).~~

~~Rule 8(d). Effect of failure to deny~~

~~Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.~~

~~Rule 8~~(c)~~.~~ Affirmative ~~defenses~~Defenses.

(1) ***Generally.*** ~~In pleading~~ In responding to a ~~preceding~~ pleading, a party ~~shall set forth~~must affirmatively state any avoidance or affirmative defense, including:

(A) accord and satisfaction~~,~~;

(B) arbitration and award~~,~~;

(C) assumption of risk~~,~~;

(D) contributory negligence~~,~~;

(E) duress~~,~~;

(F) estoppel~~,~~;

(G) failure of consideration~~,~~;

(H) fraud~~,~~;

(I) illegality~~,~~;

(J) laches~~,~~;

(K) license~~,~~;

(L) payment~~,~~;

(M) release~~,~~;

(N) res judicata~~,~~;

(O) statute of frauds~~,~~;

(P) statute of limitations~~, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has~~; and

(Q) waiver.

(2) ***Mistaken Designation.*** If a party mistakenly designate~~d~~s a defense as a counterclaim, or a counterclaim as a defense, the court ~~on terms~~must, if justice ~~so~~ requires, ~~shall~~ treat the pleading as ~~if there had been a proper designation~~though it were correctly designated, and may impose terms for doing so.

~~Rule 8(e). Pleading to be concise and direct; consistency~~

(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.

~~1.~~**(1)** ***Generally.*** Each ~~averment~~allegation of a pleading ~~shall~~must be simple, concise, and direct. No technical ~~forms of pleading or motions are~~form is required.

~~2.~~**(2)** ***Alternative Statements of a Claim or Defense.*** A party may set ~~forth~~out two or more statements of a claim or defense alternatively or hypothetically, either in ~~one~~a single count or defense or in separate ~~counts or defenses. When two or more statements are made in the alternative and~~ones. If a party makes alternative statements, the pleading is sufficient if any one of them ~~if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also~~is sufficient.

(3) ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as ~~the party~~it has, regardless of consistency ~~and whether based on legal or equitable grounds or both. All statements shall be made subject to the obligations set forth in Rule 11(a)~~.

~~Rule 8(f). Construction of pleadings~~

(e) Construing Pleadings. ~~All pleadings shall~~ Pleadings must be ~~so~~ construed so as to do ~~substantial~~ justice.

~~**Rule 8(g).**~~ **Claims for ~~damages~~Damages.** In all ~~cases~~actions in which a party is pursuing a claim other than for a sum certain or for a sum which can by computation be made certain, no dollar amount or figure for damages sought ~~shall~~may be stated in any pleading allowed under Rule ~~7(a) of these Rules.~~7. The pleading setting forth the claim may include a statement reciting that the minimum jurisdictional amount established for filing the action has been satisfied.

~~Rule 8(h). Civil cover sheets; classification of civil actions~~

(g) Civil Cover Sheets.

(1) ***Generally.***

(A) When filing ~~the initial complaint or petition in~~ a civil action, ~~the~~a plaintiff ~~shall~~must complete and submit a Civil Cover Sheet in a form approved by the Supreme Court. The public may obtain this form from the website of the Administrative Office of the Courts.

(B) The Civil Cover Sheet ~~shall~~must contain:

(i) the ~~following:~~ plaintiff~~'~~'s correct name and mailing address;

(ii) the ~~name of~~ plaintiff~~'~~'s attorney's name and bar number;

(iii) the defendant~~'~~'s name(s)~~,~~;

(iv) the nature of the civil action or proceeding;

(v) the main case categories and subcategories designated by the Administrative Director;

(vi) whether the action meets the criteria for a complex civil action listed in ~~Rule 8(i)~~Rule 8(h); and

(vii) such other information as the Supreme Court may require. ~~The~~

(C) A superior court ~~in each county may, with the approval of the Supreme Court, adopt a~~may require by local rule ~~requiring~~ that additional information be provided in an Addendum to the Civil Cover Sheet. ~~The Civil Cover Sheet shall be maintained on the website of the Administrative Office of the Courts.~~

(2) ***Writs of Garnishment.*** A writ of garnishment ~~do~~does not require a Civil Cover Sheet~~. Writs of garnishment shall~~, but it must include, under the ~~caption of~~case number on the petition's or complaint ~~whichever~~'s first page, one of the following notations ~~is~~, as applicable:

(A) ~~F~~federal exemption;

(B) ~~E~~enforce order of support;

(C) ~~E~~enforce order of bankruptcy;

(D) ~~E~~enforce collection of taxes; or

(E) ~~N~~non-earnings.

(3) ***Complex Civil Actions.*** ~~In those counties in which a complex civil litigation program has been established, in addition to the Civil Cover Sheet designation~~

~~required by subsection (1), the caption shall also identify the action as complex if the action meets the criteria listed in Rule 8(i).~~If an action is designated as complex under Rule 8(h), the notation "complex" must appear under the case number on the complaint's first page. This requirement is in addition to the designation required under Rule 8(g)(1) in the Civil Cover Sheet.

~~Rule 8(i). Complex civil litigation program designation~~

(h) Complex Civil Litigation Program Designation.

(1) ***Definition.*** In those counties in which a complex civil litigation program has been established, a "complex ~~case~~civil action" is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.

(2) ***Factors.*** In deciding whether a civil action is a complex ~~case~~civil action under ~~subsection~~ (h)(1), the court ~~shall~~must consider the following factors:

(A) numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;

(B) management of a large number of witnesses or a substantial amount of documentary evidence;

(C) management of a large number of separately represented parties;

(D) coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;

(E) substantial postjudgment judicial supervision;

(F) the ~~case~~action would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law;

(G) inherently complex legal issues;

(H) factors justifying the expeditious resolution of an otherwise complex dispute; and

(I) any other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) ***Procedure for Designating a Complex Civil Action.*** **~~Procedure for designating a complex case~~**.

(A) *Generally.* ~~At the time of filing the~~ When filing its initial complaint, a plaintiff may designate an action as a complex ~~case~~civil action by filing a motion and

separate certification of complex ~~case~~civil action identifying the case attributes ~~outlined~~ in ~~paragraph~~ Rule 8(h)(2) justifying the designation. The certification ~~shall~~must be in a form approved by the Supreme Court as set forth in ~~paragraph (8) of this rule~~Rule 8(h)(8) and must be served on the defendant along with the motion ~~at the time of service of~~when the complaint~~. Plaintiff'~~ is served. A plaintiff's certification, and any controverting certificate of a party represented by an attorney, ~~shall~~must be signed by at least one attorney of record in the attorney~~'~~'s individual name. A party who is not represented by an attorney ~~shall~~must sign the party~~'~~'s certification of complexity or controverting certification.

(B) *Effect of Signature.* The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of ~~Rule 8(i) of the Arizona Rules of Civil Procedure~~this rule; that the signer has read the certificate of complexity or controverting certificate; that to the best of the signer~~'~~'s knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to complexity is not set forth for any improper purpose. ~~The provisions of Rule 11(a) of these Rules apply~~Rule 11(a) applies to every certification of complexity filed under this ~~R~~rule.

(4) ***Procedure for*** ~~**opposing designation.**~~***Opposing Designation.*** If a plaintiff has certified ~~a case~~an action as complex~~ and~~, the court has not previously declared the action to be a complex ~~case~~civil action, and the defendant disagrees with the plaintiff~~'~~'s assertion as to complexity, the defendant ~~shall~~must file~~ and serve~~ no later than when that party~~'s~~ files its first responsive pleading a response to plaintiff~~'~~'s motion and a controverting certification that specifies the particular reason for the defendant~~'~~'s disagreement with plaintiff~~'~~'s certificate.

(5) ***Designation by*** ~~**defendant or joint designation.**~~ ***Defendant or Joint Designation.*** ~~A defendant may designate an action as a complex case if~~If the plaintiff has not done so and if the court has not already made a ruling in this matter, a defendant may designate an action as a complex civil action by filing a motion and the certification of complex ~~case~~civil action described in ~~subsection~~ Rule 8(h)(3) ~~at~~with or before the ~~time of~~ filing of defendant~~'~~'s first responsive pleading~~ and serving them upon the plaintiff~~. The parties may join in designating an action as a complex ~~case~~civil action by filing a joint motion and certification of complex ~~case~~civil action with or before the filing of defendant~~'~~'s first responsive pleading.

(6) ***Action by*** ~~**court.**~~***Court.***

(A) *On Motion When Filing an Initial Pleading.* The presiding superior court judge ~~of the court or designee shall~~in the county in which the action is pending, or the judge's designee, must decide, with or without a hearing, whether the action is a

complex ~~case~~civil action within 30 days after the filing of the response to the designating party'~~s motion. The court may decide on its own motion, or on a noticed motion by any party,~~'s motion.

(B) *Later Ruling.* At any time during the pendency of an action, the court, on motion or on its own, may decide that a civil action is a complex ~~case~~civil action or that an action previously declared to be a complex ~~case~~civil action is not a complex ~~case. This ruling may be made at any time during the pendency of an action, for good cause shown~~civil action.

(C) *Sanctions.* If the court finds that ~~an attorney or~~a party or its counsel has made an allegation as to complexity ~~which~~ that was not made in good faith, the court, ~~upon~~on motion or ~~upon~~on its own~~ initiative~~, ~~shall~~may make such orders with regard to such conduct as are just, including, among others, any action authorized under ~~Rule 11(a) of these Rules~~Rule 11(a).

(7) ***Not Appealable.*** Parties ~~shall~~do not have the right to appeal the court~~'~~'s decision regarding the designation of an action as complex or noncomplex.

(8) ***Program Designation Certification Form.*** The certification of a complex ~~case shall~~civil action must be substantially in the form set forth in ~~Rule 84,~~Rule 84, Form 10.

Experimental Rule 8.1. Assignment and Management of Commercial Cases

(a) Application; Definitions. This rule applies in counties that have established specialized courts for commercial cases, which are referred to in this rule as "the commercial court."

The commercial court will hear "commercial cases," as defined in Rule 8.1(a)(1), which also meet the criteria of either Rule 8.1(b) or Rule 8.1(c).

(1) A "commercial case" is one in which:

(A) At least one plaintiff and one defendant are "business organizations;"

(B) The primary issues of law and fact concern a "business organization;" or

(C) The primary issues of law and fact concern a "business contract or transaction."

(2) A "business organization" includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A "business

organization" excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

(3) A "business contract or transaction" is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations. The term "business contract or transaction" excludes a "consumer contract or transaction."

(4) A "consumer contract or transaction" is one that is primarily for personal, family, or household purposes.

(b) Cases With No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court will hear a commercial case that:

(1) Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

(2) Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

(3) Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;

(4) Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;

(5) Is a shareholder or member derivative action;

(6) Arises from a commercial real estate transaction;

(7) Arises from a relationship between a franchisor and a franchisee;

(8) Involves the purchase or sale of securities or allegations of securities fraud; or

(9) Concerns a claim under state antitrust law.

(c) Cases Subject to an Amount in Controversy Requirement. If the amount in controversy is at least $50,000, the commercial court will hear a commercial case that:

(1) Arises from a contract or transaction governed by the Uniform Commercial Code;

(2) Involves the sale of services by, or to, a business organization;

(3) Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;

(4) Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or

(5) Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.

(d) Ineligible Case Types. Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

(1) Evictions;

(2) Eminent domain or condemnation;

(3) Civil rights;

(4) Motor vehicle torts and other torts involving physical injury to a plaintiff;

(5) Administrative appeals;

(6) Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or

(7) Wrongful termination of employment.

(e) Assignment of Cases to Commercial Courts.

(1) ***Plaintiff's Duties.*** If a case meets the definition of a "commercial case" as set forth above, and also meets the criteria of either Rule 8.1(b) or Rule 8.1(c), the plaintiff must include in the initial complaint's caption the words "eligible for commercial court." At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.

(2) ***Assignment to Commercial Court.*** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge.

(3) ***Motion to Reconsider Assignment to Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through 8.1(d). Any party filing a motion under this Rule must do so no later than 20 days after the defendant files an answer or a motion under Rule 12, or within 20 days after that party's appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.

(4) ***Motion to Transfer to Commercial Court.*** On the court's own initiative, on motion of a party filed within 20 days after a defendant files an answer or a motion under Rule 12, or on motion of a party filed within 20 days of that party's appearance, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).

(5) ***Complex Cases.*** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a complex civil litigation program under Rule 8(i).

(f) Case Management. Rules 16(a) through 16(k) apply to cases in the commercial court, except:

(1) ***Scheduling Conference.*** Scheduling conferences under Rule 16(d) are mandatory.

(2) ***Initial Conference.*** Before filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:

(A) Requirements and limitations on disclosure and production of ESI;

(B) The form or formats in which the ESI will be disclosed or produced; and

(C) If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.

(3) ***Joint Report.*** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including the following:

(A) Whether the parties have reached any agreements with regard to ESI, what those agreements are, those areas on which they were unable to agree, and whether the parties request the court to enter an order concerning ESI;

(B) Whether the parties reached agreements under Rule 502 of the Rules of Evidence;

(C) Whether any party is requesting the court to enter a protective order under Rule 26(c), and if so, a brief statement concerning the need for a protective order; and

(D) Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

(g) Motions. With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.

Rule 9. Pleading Special Matters

~~Rule 9~~(a)~~.~~ Capacity or Authority to Sue; Legal Existence.

(1) ***Generally.*** Except when required to show that the court has jurisdiction, a pleading need not allege:

(A) ~~It is not necessary to aver the~~ a party's capacity ~~of a party~~ to sue or be sued ~~or the~~;

(B) a party's authority ~~of a party~~ to sue or be sued in a representative capacity; or

(C) the legal existence of an organized association of persons that is made a party~~,~~ ~~except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment~~.

(2) ***Raising Those Issues.*** To raise any of those issues, a party must do so by a specific denial, which ~~shall include such~~must state any supporting ~~particulars as~~facts that are peculiarly within the ~~pleader's~~party's knowledge.

~~Rule 9~~(b)~~.~~ Fraud, ~~m~~Mistake, ~~c~~Condition of the ~~mind~~~~In all averments of~~**Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake ~~shall be stated with particularity~~. Malice, intent, knowledge, and other ~~condition of~~conditions of a person's mind ~~of a person~~ may be a~~v~~ll~~er~~rged generally.

~~Rule 9~~(c)~~.~~ Conditions ~~precedent~~Precedent. In pleading ~~the performance or occurrence of~~ conditions precedent, it ~~is sufficient~~suffices to ~~aver~~allege generally that all conditions precedent have occurred or been performed ~~or have occurred. A denial of performance or occurrence shall be made specifically and~~. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

~~Rule 9~~(d)~~.~~ Official ~~d~~Document or ~~act~~Act. In pleading an official document or official act, it ~~is sufficient~~suffices to ~~aver~~allege that the document was legally issued or the act was legally done ~~in compliance with law~~.

~~Rule 9~~(e)~~.~~ Judgment. In pleading a judgment or decision ~~of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient~~, it suffices to ~~aver~~plead the judgment or decision without ~~setting forth matter~~pleading facts showing that the decision-maker had jurisdiction to render it.

~~Rule 9~~(f)~~.~~ Time and ~~place~~ Place. ~~For the purpose of~~ An allegation of time or place is material when testing ~~the sufficiency of a pleading, averments of time and place are~~

~~material and shall be considered like all other averments of material matter~~a pleading's sufficiency.

~~**Rule 9(g).**~~ **Special ~~damage~~ Damages.** ~~When items~~ If an item of special damage ~~are~~is claimed, ~~they shall~~it must be specifically stated.

(h) Complaint in an Action for Libel or Slander. In an action claiming libel or slander, it suffices to allege generally that a defamatory matter pertained to the plaintiff. It is not necessary for the plaintiff to allege extrinsic facts supporting that allegation. If the defendant controverts the allegation in an answer, the plaintiff must prove it at trial.

~~**Rule 9(h). Complaint in action for libel or slander**~~

~~In an action for libel or slander, the complaint need not state the extrinsic facts applying to the plaintiff the defamatory matter out of which the claim arose, but may allege generally that the libel or slander was published or spoken concerning the plaintiff, and if the allegation is controverted the plaintiff shall establish on the trial that it was so published or spoken.~~

~~**Rule 9(i). Verification of answer**~~

~~Any responsive pleading setting up any of the following matters, unless the truth of the pleading appears of record, shall be verified by affidavit.~~

~~1. That the plaintiff does not have legal capacity to sue.~~

~~2. That the plaintiff is not entitled to recover in the capacity in which the plaintiff sues.~~

~~3. That there is another action pending in this state between the same parties for the same claim.~~

~~4. That there is a defect of parties, plaintiff or defendant.~~

~~5. A denial of partnership, or of incorporation, of the plaintiff or defendant.~~

~~6. A denial of the execution by the defendant or by the defendant's authority of any~~

~~instrument in writing upon which any pleading is based, in whole or in part, and alleged to have been executed by the defendant or by the defendant's authority, and not alleged to be lost or destroyed. When the instrument is alleged to have been executed by a person then deceased, the affidavit may state that the affiant has reason to believe, and does believe, that such instrument was not executed by the decedent or by the decedent's authority.~~

~~7. A denial of the genuineness of the endorsement or assignment of a written instrument.~~

~~8. That a written instrument upon which a pleading is based is without consideration, or that the consideration therefor has failed in whole or in part.~~

~~9. That an account which is the basis of plaintiff's action, and supported by an affidavit, is not just, and in such case the answer shall set forth the items and particulars which are unjust.~~

Rule 10. Form of Pleadings

~~Rule 10~~(a)~~.~~ Caption; ~~n~~Names of ~~parties~~Parties. Every pleading ~~shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in~~must have a caption in the form prescribed by Rule 7.1(a), along with the pleading's designation under Rule ~~7(a). In~~7. The title of the complaint ~~the title of the action shall include the names of~~must name all the parties~~, but in~~; the title of other pleadings and documents ~~it is sufficient to state the name of~~, after naming the first party on each side ~~with an appropriate indication of~~, may refer generally to other parties~~.~~ by the designation "*et al.*"

~~Rule 10~~(b)~~.~~ Paragraphs; ~~separate statements~~ Separate Statements. ~~All averments of claim or defense shall be made~~ A party must state its claims or defenses in numbered paragraphs, ~~the contents of~~ each ~~of which shall be~~ limited as far as practicable to a ~~statement of a~~ single set of circumstances~~, and~~. A later pleading may refer by number to a paragraph ~~may be referred to by number in all succeeding pleadings. Each~~in an earlier pleading. If doing so would promote clarity, each claim founded ~~upon~~on a separate transaction or occurrence —and each defense other than ~~denials shall~~a denial—must be stated in a separate count or defense ~~whenever a separation facilitates the clear presentation of the matters set forth~~.

~~Rule 10~~(c)~~.~~ Adoption by ~~reference; exhibits~~ Reference; Exhibits. ~~Statements~~ A statement in a pleading may be adopted by reference elsewhere in ~~a different part of~~ the

same pleading or in ~~another~~any other pleading or ~~in a~~ motion. A copy of a written instrument ~~which~~that is an exhibit to a pleading is a part ~~thereof~~of the pleading for all purposes.

~~**Rule 10(d). Method of preparation and filing**~~ [Redlining Note: The substance of Rule 10(d) on formatting and related items has been moved to Rule 7.1]

~~All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8- 1/2 inches x 11 inches, with a margin at the top of the first page of not less than 2 inches; a margin at the top of each subsequent page of not less than 1- 1/2 inches; a left-hand margin of not less than 1 inch; a right-hand margin of not less than 1/2 inch; and a margin at the bottom of the page of not less than 1/2 inch.~~

~~Notwithstanding the foregoing, exhibits, attachments to pleadings, or pleadings from jurisdictions other than the State of Arizona which are larger than the specified size shall be folded to the specified size or folded and fastened to pages of the specified size. Exhibits or attachments to pleadings which are smaller than the specified size shall be fastened to pages of the specified size. An exhibit, attachment to a pleading or a pleading from a jurisdiction other than the State of Arizona not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable.~~

~~All pleadings and other papers filed shall have the pages numbered and shall state the number of the action, the title of the court and action, the nature of the paper filed and the name, address, Arizona Bar Number. and telephone number of the attorney. Originals only shall be filed, except that where it is necessary to file more than one copy of a pleading or other paper the additional copies may be photocopies or computer generated duplicates.~~

~~All pleadings and other papers filed, other than printed forms, shall be clearly handwritten or typewritten on one side of the page only. The body of all documents shall be double spaced and shall not exceed 28 lines per page, except for headings. quotations and footnotes which may be single spaced.~~

~~Printed forms may be single spaced except that those requiring the signature of a judge or~~

~~commissioner shall be double spaced. Printed forms must be single sided. All printed forms shall be on paper of sufficient quality and weight to assure legibility upon duplication, microfilming or imaging.~~

~~The court may, on its own motion or on request of any party, waive any of the foregoing requirements or provisions.~~

~~Rule 10(e). Deleted Sept. 15, 1987, effective October 1, 1987~~

~~Rule 10(f). Designation of defendant~~

~~When the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. When the defendant's true name is discovered the pleading or proceeding may be amended accordingly.~~

(d) Using a Fictitious Name to Identify a Defendant. If the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. If the defendant's true name is discovered, the pleading or proceeding should be amended accordingly.

Rule 11. Signing ~~of~~ Pleadings, Motions, and Other Documents; Representations to the Court; Sanctions; Assisting Filing by Self-Represented Person

~~Rule 11(a). Signing of pleadings, motions and other papers; sanctions~~

(a) Signature. Every pleading, written motion, and other ~~paper of a party represented by an attorney shall~~document served or filed with the court must be signed by at least one attorney of record in the attorney'~~s individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by~~'s name—or by a party personally if the party is unrepresented. The document must state the signer's address, e-mail address and telephone number. Unless a rule or statute specifically states otherwise, pleadings need not be verified or accompanied by affidavit. The ~~rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an~~court must strike an unsigned document unless the omission is promptly corrected after being called to the attorney's or party~~ constitutes a certificate by the signer~~'s attention.

(b) Representations to that~~e the signer has read the~~ Court. By signing a pleading, motion, or other ~~paper;~~document, the attorney or party certifies that to the best of the ~~signer'~~person's knowledge, information~~,~~ and belief formed after reasonable inquiry ~~it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed~~:

(1) it is not being presented for any improper purpose, such as to harass ~~or to~~, cause unnecessary delay, or needlessly increase ~~in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.~~the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) ***Generally.*** If a pleading, motion or other ~~paper~~document is signed in violation of this rule, the court, ~~upon~~on motion or ~~upon~~on its own ~~initiative, shall~~, must impose ~~upon~~on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the ~~pleading~~document, including a reasonable attorney~~'~~'s fee.

(2) ***Consultation.*** Before filing a motion for sanctions under this rule, the moving party must:

(A) attempt to resolve the matter by good faith consultation as provided in Rule 7.2(h); and

(B) if the matter is not satisfactorily resolved by consultation, serve the opposing party with written notice of the specific conduct that allegedly violates Rule 11(b). If the opposing party does not withdraw or appropriately correct the alleged violation(s) within 10 days after the written notice is served, the moving party may file a motion under Rule 11(c)(3).

(3) ***Motion for Sanctions.*** A motion for sanctions under this rule must:

(A) be made separately from any other motion;

(B) describe the specific conduct that allegedly violates Rule 11(b);

(C) be accompanied by a Rule 7.2(h) good faith consultation certificate; and

(D) attach a copy of the written notice provided to the opposing party under Rule 11(a)(2)(B).

(d) Assisting Filing by Self-Represented Person. An attorney may help ~~to~~ draft a pleading, motion or other document filed by an otherwise self-represented person, and the attorney need not sign that pleading, motion, or other document. In providing such drafting assistance, the attorney may rely on the otherwise self-represented person~~'~~'s representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which ~~instance~~case the attorney shall make an independent reasonable inquiry into the facts.

~~**11(b). Verification of pleading generally**~~ [Redlining Note: The substance of Rule 11(b) has been moved to Rule 80(f)]

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

~~**Rule 11(c). Verification of pleading when equitable relief demanded**~~

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

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

~~Rule 12. Defenses and Objections; When and How Presented; by Pleading or Motion; Motion for Judgment on Pleadings~~

~~**Rule 12(a). When presented**~~

(a) Time to Serve a Responsive Pleading.

(1) ***Generally.*** Unless another time is specified by rule or statute, the time for serving a responsive pleading is as follows:

(A) ~~(1) A defendant shall~~ A defendant or third-party defendant must serve ~~and file~~ an answer

~~(A)~~ :

(i) within ~~twenty~~20 days after ~~the~~being serv~~ice~~ed ~~of~~ with the summons and complaint ~~upon the defendant~~, except as otherwise provided in Rules 4.2(d) and 4.2(m) ~~of these rules; or~~

~~(B) if service of the summons~~; or

(ii) if it has ~~been~~ timely waived ~~on request~~service under Rule ~~4.1(c) or 4.2(d~~4(f), within ~~sixty (~~60~~)~~ days after the ~~date when the~~ request for a waiver was sent, or within ~~ninety (~~90~~)~~ days after ~~that date if~~it was sent to the defendant ~~was addressed~~or third-party defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 20 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 20 days after being served with an order to reply, unless the order specifies a different time.

~~(2) A party served with a pleading stating a cross-claim against that party shall serve and file an answer thereto within twenty days after being served. The plaintiff shall serve and file a reply to a counterclaim in the answer within twenty days after service of the answer or, if a reply is ordered by the court, within twenty days after service of the order, unless the order otherwise directs.~~

~~(3)~~ **(2)** ***Effect of a Motion.*** Unless the court sets a different time ~~is fixed by court order, the service of~~, serving a motion ~~permitted~~ under this rule alters these periods ~~of time~~ as follows:

(A) if the court denies the motion or postpones its disposition until ~~the~~ trial ~~on the merits~~, the responsive pleading ~~shall~~must be served within ~~ten~~10 days after notice of the court~~'~~'s action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading ~~shall~~must be served within ~~ten~~10 days after ~~service of~~ the more definite statement is served.

~~**Rule 12(b).**~~ **How ~~presented; motion to dismiss~~to Present Defenses.** Every defense~~, in law or fact,~~ to a claim for relief in any pleading~~, whether a claim, counterclaim, crossclaim, or third-party claim, shall~~ must be asserted in the responsive pleading ~~thereto~~ if one is required~~, except that~~. But a party may assert the following defenses ~~may at the option of the pleader be made~~ by motion:

~~1.~~ **(1)** ~~Lack~~ lack of ~~jurisdiction over the~~ subject ~~-~~matter~~.~~ jurisdiction;

~~2.~~ **(2)** ~~Lack~~ lack of personal jurisdiction ~~over the person.~~

~~3.~~ **(3)** ~~Improper~~ improper venue~~.~~

~~4.~~ **(4)** ~~Insufficiency of~~ insufficient process~~.~~

~~5.~~**(5)** ~~Insufficiency of~~ insufficient service of process~~.~~;

~~6.~~ **(6)** ~~Failure~~ failure to state a claim upon which relief can be granted~~.~~; and

~~7.~~ **(7)** ~~Failure~~ failure to join a party under Rule 19.

A motion ~~making~~asserting any of these defenses ~~shall~~must be made before pleading if a ~~further pleading is permitted. No~~responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. A party does not waive a defense or objection ~~is waived by being joined~~by joining it with one or more other defenses or objections in a responsive pleading or ~~motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. The defense numbered 3 may be made~~in a motion. A party may assert improper venue as a defense

only if the action cannot be or could not have been transferred to the proper county ~~pursuant to~~under A.R.S.~~, § 12-404. If, on a motion asserting the defense numbered 6 to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.~~ § 12-404.

~~Rule 12~~(c)~~.~~ Motion for ~~j~~Judgment on the ~~pleadings~~Pleadings. After the pleadings are closed~~ but within such time as not to delay the trial, any~~—but no later than the date on which dispositive motions must be filed—a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion ~~for judgment on the pleadings~~under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to, and not excluded by, the court, the motion ~~shall~~must be treated as one for summary judgment ~~and disposed of as provided in~~under Rule ~~56, and all~~56. All parties ~~shall~~must be given a reasonable opportunity to present all the material ~~made~~that is pertinent to ~~such a~~the motion~~ by Rule 56.~~.

~~Rule 12(d). Preliminary hearings~~

~~The defenses specifically enumerated as 1 through 7 in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.~~

~~Rule 12~~(e)~~.~~ Motion for ~~more definite statement~~a More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before ~~interposing~~filing a responsive pleading. The motion ~~shall~~must point out the defects complained of and the details desired. If the ~~motion is granted~~court orders a more definite statement and the order~~ of the court~~ is not obeyed within ~~ten~~10 days after notice of the order or within ~~such other~~the time ~~as~~ the court ~~may fix~~sets, the court may strike the pleading ~~to which the motion was directed or make such~~or issue any other appropriate order~~ as it deems just~~.

~~Rule 12(f). Motion to strike~~

(f) Motion to Strike. ~~Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within twenty days after service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from a pleading any~~ The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 20 days after the pleading is served.

(g) Joining Motions.

(1) ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule.

~~Rule 12(g). Consolidation of defenses in motion~~

(2) ***Limitation on Further Motions.*** ~~A~~Except as provided in Rule 12(h)(2) or (3), a party who makes a motion under this rule ~~may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated~~must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

~~Rule 12(h). Waiver or preservation of certain defenses~~

(h) Waiving and Preserving Certain Defenses.

(1) ***When Some Are Waived.*** ~~A party waives all defenses and objections which that party does not present either by motion as hereinbefore provided, or, if that party has made no motion, in that party's answer or reply, except~~ A party waives any defense listed in Rule 12(b)(2)-(5) by:

~~(1)~~ **A)** ~~A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if~~

~~omitted~~omitting it from a motion in the circumstances described in ~~subdivision~~ Rule 12(g)~~,~~(2); or

(B) ~~if it is neither made~~ failing to either:

(i) make it by motion under this rule~~ nor included~~; or

(ii) include it in a responsive pleading or in an amendment ~~thereof permitted~~allowed by Rule 15(a)~~ to be made~~(1) as a matter of course.

(2) ***When to Raise Others.*** ~~A defense of failure~~ Failure to state a claim upon which relief can be granted, ~~a defense of failure to join a party indispensable under Rule 19, and an objection of failure~~to join a person required by Rule 19(b), or to state a legal defense to a claim may be ~~made~~ raised:

(A) in any pleading ~~permitted~~allowed or ordered under Rule 7;

(B) by a~~), or by~~ motion ~~for judgment on the pleadings, or~~ under Rule 12(c); or

(C) at ~~the~~ trial~~ on the merits~~.

(3) ***Lack of Subject-Matter Jurisdiction.*** ~~Whenever it appears by suggestion of the parties or otherwise that~~ If the court determines at any time that it lacks ~~jurisdiction of the~~ subject -matter jurisdiction, the court ~~shall~~must dismiss the action.

(i) Preliminary Hearings. If a party so moves, any defense listed in Rule 12(b)(1)-(7)—whether made in a pleading or by motion—and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

Rule 13. Counterclaim and ~~Cross-Claim~~Crossclaim

~~Rule 13~~(a)~~.~~ Compulsory ~~counterclaims~~Counterclaim.

(1) ***Generally.*** A pleading ~~shall~~must state as a counterclaim any claim ~~which~~ that—at the time of ~~serving the pleading~~ its service—the pleader has against ~~any~~an opposing party~~,~~ if ~~it~~ the claim:

(A) arises out of the transaction or occurrence that is the subject matter of the opposing party~~'~~'s claim; and

(B) does not require ~~for its adjudication the presence of third parties of~~adding another party over whom the court cannot acquire jurisdiction.~~ But the~~

(2) ***Exceptions.*** The pleader need not state the claim if~~ (1) at the time~~:

(A) when the action was commenced, the claim was the subject of another pending action~~,~~; or

(2B) the opposing party ~~brought suit upon the~~sued on its claim by attachment or other process ~~by which the court~~that did not ~~acquire jurisdiction to render a~~establish personal ~~judgment~~jurisdiction over the pleader on that claim, and the pleader ~~is~~does not ~~stating~~assert any counterclaim under this ~~Rule 13.~~rule.

~~Rule 13~~(b)~~.~~ Permissive ~~counterclaims~~Counterclaim. A pleading may state as a counterclaim ~~any claim~~ against an opposing party ~~not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim~~any claim that is not compulsory.

~~Rule 13~~(c)~~.~~ Relief Sought in a Counterclaim~~ exceeding opposing claim~~ . A counterclaim ~~may or may~~need not diminish or defeat the recovery sought by the opposing party. It may ~~claim~~request relief ~~exceeding~~that exceeds in amount or differ~~ent~~s in kind from ~~that~~the relief sought ~~in the pleading of~~by the opposing party.

~~Rule 13~~(d)~~.~~ Counterclaim ~~a~~Against the ~~state~~State. These ~~Rules shall not be construed to enlarge beyond the limits now fixed by law~~rules do not expand the right to assert ~~counterclaims~~ a counterclaim—or to claim ~~credits~~ a credit—against the ~~state~~State of Arizona or one of its an officers or ~~agency thereof~~agencies.

~~Rule 13(e). Counterclaim maturing or acquired after pleading~~~~A claim which either~~ **Counterclaim Maturing or Acquired After Pleading.** The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the ~~pleader~~party after serving ~~a pleading may, with the permission of the court, be presented as a counterclaim by supplemental~~an earlier pleading.

~~Rule 13(g). Cross-claim against co-party~~

(f) Crossclaim Against a Coparty.

~~A pleading~~**(1)** ***Generally.*** A party may state as a ~~cross-claim~~crossclaim any claim ~~by one party~~ against a ~~co-party arising~~coparty if the claim arises out of the same transaction ~~or~~, occurrence, or event that is the subject matter ~~either~~ of the original action or of a counterclaim ~~therein~~, or ~~relating~~if the claim relates to any property that is the subject matter of the original action. The ~~cross-claim~~crossclaim may include a claim that the ~~party against whom it is asserted~~coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(2) ***When Co-Defendants Must Present Crossclaims.*** A defendant's crossclaim against a co-defendant must be stated when the defendant files an answer or other response to the complaint or counterclaim, unless an amendment is later allowed under Rule 15(a).

~~**Rule 13(h). Joinder of additional parties.**~~

(g) Joining Additional Parties. ~~Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.~~Rules 19 and 20 govern the addition of a person as a party to a counterclaim or crossclaim.

~~**Rule 13(i). Separate trials; separate judgments**~~

(h) Separate Trials; Separate Judgments. If the court orders separate trials ~~as provided in~~under Rule 42(b), it may enter judgment on a counterclaim or ~~cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court~~crossclaim under Rule 54(b) when it has jurisdiction ~~so~~ to do so, even if the opposing party's claims ~~of the opposing party~~ have been dismissed or otherwise ~~disposed of~~resolved.

Rule 14. Third-Party Practice

~~**Rule 14(a). When defendant may bring in third party**~~**(a) When a Defending Party May Bring in a Third Party.**

(1) ***Timing of the Summons and Third-Party Complaint.*** ~~At any time after commencement of the action a defendant, as a~~ A defending party may, as third-party plaintiff, ~~may cause~~serve a summons and third-party complaint ~~to be served upon a person not a party to the action~~on a nonparty who is or may be liable to ~~the third-party plaintiff~~it for all or part of the ~~plaintiff's~~ claim against it. But the third-party plaintiff~~. A copy of all previous pleadings, as defined in Rule 7(a) of these Rules, that have been filed in the action shall be served together with the third-party complaint or be provided by the third-party plaintiff to the person served promptly after service. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff~~ must, by motion, obtain the court's leave if it files the third-party complaint ~~not later~~more than 10 days after serving ~~the~~its original answer.~~ Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action.~~

(2) ***Third-Party Defendant's Claims and Defenses.*** The person served with the summons and third-party complaint~~, hereinafter called~~ the "third-party defendant~~, shall make any~~":

(A) must defen~~ses~~d ~~to~~ against the third-party plaintiff~~'s claim as provided in Rule 12, and any counterclaims against the third-party plaintiff and cross-claims against~~

~~other third-party defendants as provided in Rule 13. The~~'s claim under Rules 8 and 12;

(B) must assert any counterclaim against the third-party plaintiff under Rule 13(a), and may assert any counterclaim against the third-party plaintiff under Rule 13(b) or any crossclaim against another third-party defendant under Rule 13(f);

(C) may assert against the plaintiff any defense~~s which~~ that the third-party plaintiff has to the plaintiff~~'~~'s claim~~. The third-party defendant~~ ; and

(D) may also assert against the plaintiff any claim ~~against the plaintiff~~ arising out of the transaction or occurrence that is the subject matter of the plaintiff~~'~~'s claim against the third-party plaintiff.

(3) ***Plaintiff's Claims Against a Third-Party Defendant.*** The plaintiff may assert against the third-party defendant any claim ~~against the third-party defendant~~ arising out of the transaction or occurrence that is the subject matter of the plaintiff~~'~~'s claim against the third-party plaintiff~~, and the third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13.~~. The third-party defendant must then defend against the plaintiff's claim under Rules 8 and 12 and assert any counterclaim under Rule 13(a), and may assert any counterclaim under Rule 13(b) or any crossclaim under Rule 13(f).

(4) ***Motion to Strike, Sever, or Try Separately.*** Any party may move to strike the third-party claim, ~~or for its severance or separate trial~~to sever it, or to try it separately.

(5) ***Third-Party Defendant's Claim Against a Nonparty.*** A third-party defendant may proceed under this rule against ~~any person not a party to the action~~a nonparty who is or may be liable to the third-party defendant for all or part of ~~the~~any claim ~~made in the action~~ against ~~the third-party defendant~~it.

~~Rule 14(b). When plaintiff may bring in third party~~

(b) **When a ~~counterclaim~~Plaintiff May Bring in a Third Party.** When a claim is asserted against a plaintiff, ~~he~~the plaintiff may ~~cause~~bring in a nonparty as a third party ~~to be brought in under circumstances which under~~if this ~~R~~rule would ~~entitle~~allow a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

~~Rule 15~~(a)~~.~~ Amendments Before Trial.

~~1.~~**(1)** ***Amending as a Matter of Course.*** A party may amend ~~the party's~~its pleading once as a matter of course:

(A~~.~~) no later than ~~twenty-one~~21 days after serving it if the pleading is one to which no responsive pleading is permitted; or

(B~~.~~) no later than ~~twenty-one~~21 days after ~~service of~~ a responsive pleading is served if the pleading is one to which a responsive pleading is required or, if a motion under ~~Rule 12(b), (e), or (f)~~Rule 12(b), (e), or (f) is served, on or before ~~he~~the date on which a response to the motion is due, whichever is earlier.

(2) ***Other Amendments.*** ~~Otherwise~~ In all other instances, a party may amend ~~the party's~~its pleading only ~~by~~with leave of court or ~~by~~with the written consent of ~~the adverse party~~all opposing parties who have appeared in the action. Leave to amend ~~shall~~must be freely given when justice requires. ~~Amendment~~

(3) ***Effect on Pending Motions.*** After the filing of a motion under Rule 12(b), (e), or (f), an amendment as a matter of course ~~after service of a motion under Rule 12(b), (e), or (f)~~ does not, by ~~self~~itself, moot the motion as to the adequacy of the pleading's allegations ~~of the pleading~~ as revised in the amended pleading and does not relieve a party opposing ~~he~~the motion from filing a timely response~~ to the motion~~.

~~2.~~**(4)** ***Proposed Pleading as an Exhibit.*** A party ~~who moves~~moving for leave to amend a pleading must attach a copy of the proposed amended pleading as an exhibit to the motion~~, which shall indicate in what respect it differed~~. The exhibit must show the respects in which the proposed pleading differs from the existing pleading~~ that it amends,~~ by bracketing or striking through the text to be deleted and underlining the text to be added.

(5) ***Filing and Response.*** If a motion for leave to amend is granted, the moving party ~~shall~~must file and serve the amended pleading within ~~ten~~10 days after the entry of the order granting the motion, unless the court orders otherwise~~ orders~~.~~3. A party shall plead in response to~~ If the pleading is one to which a responsive pleading is required, an opposing party must answer or otherwise respond an amended pleading within the time remaining for response to the original pleading or within ~~ten~~10 days after ~~service of~~ the amended pleading is served, whichever ~~period may be the longer~~is later, unless the court orders otherwise~~ orders~~.

~~Rule 15(b). Amendments to conform to the evidence~~

(b) Amendments During and After Trial.

(1) ***Based on an Objection at Trial.*** If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the court may permit the pleadings to be amended. The court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would unfairly prejudice that party's action or defense on the merits. The court may grant a continuance to enable the objecting party to respond to the evidence.

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

~~Rule 15~~(c)~~.~~ Relation ~~b~~Back of ~~amendments~~Amendments.

(1)*Amendment Adding Claim or Defense.* ~~Whenever the~~ An amendment relates back to the date of the original pleading if the amendment asserts a claim or defense ~~asserted in the amended pleading~~that arose out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading~~, the amendment relates back to the date of the original pleading.~~.

(2) ***Amendment Changing Party.*** An amendment changing the party against whom a claim is asserted relates back if~~ the foregoing provision~~:

(A) Rule 15(c)(1) is satisfied; and~~,~~

(B) within the ~~period provided by law for commencing the action against the party to be brought in by amendment,~~ applicable limitations period—plus the period provided ~~by Rule 4(i)~~in Rule 4(i) for the service of the summons and complaint~~,~~—the party to be brought in by amendment~~, (1)~~:

(i) has received such notice of the institution of the action that ~~the party~~it will not be prejudiced in maintaining a defense on the merits, and

(~~2~~ii) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(3) *Service.* Service of process in compliance with Rules 4.1(h), (i), or (j) ~~of these rules~~ satisfies the ~~requirement of clauses (1~~requirements of Rule 15(c)(2)(B)(i) and (~~2) hereof~~B)(ii) with respect to the state, county, or municipal corporation ~~—~~or any agency or officer ~~thereof~~ of those entities~~—~~to be brought into the action as a defendant.

~~Rule 15~~(d)~~.~~ Supplemental ~~pleadings~~ Pleadings. ~~Upon~~ On motion ~~of a party the court may, upon~~and reasonable notice~~ and upon such terms as are just~~, the court may permit the party to ~~serve~~file a supplemental pleading setting forth ~~transactions or occurrences or events which have~~any transaction, occurrence, or event that happened~~ since~~ after the date of the pleading ~~sought~~ to be supplemented. ~~Permission~~A court may ~~be granted~~permit supplementation even though the original pleading is defective in ~~its statement of~~stating a claim for relief or defense. ~~If the~~The court ~~deems it advisable that~~may order the ~~adverse~~opposing party to plead to the supplemental pleading~~, it shall so order, specifying the time therefor~~ within a specified time.

Rule 16. Scheduling and Management of ~~Cases~~Actions

~~Rule 16~~(a)~~.~~ Objectives~~ of case management~~. In accordance with Rule 1, the court ~~shall~~must manage a civil action with the following objectives:

(1) expediting a just disposition of the action;

(2) establishing early and continuing control so that the ~~case~~action will not be protracted because of lack of management;

(3) ensuring that discovery is appropriate to the needs of the action considering the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, the burden or expense imposed by the discovery, and the parties' resources;

(4) discouraging wasteful, expensive and duplicative pretrial activities;

(~~4~~5) improving the quality of case resolution through more thorough and timely preparation;

(~~5~~6) facilitating the appropriate use of alternative dispute resolution;

(~~6~~7) conserving parties~~'~~' resources;

(~~7~~8) managing the court~~'~~'s calendar to eliminate unnecessary trial settings and continuances; and

(~~8~~9) adhering to applicable standards for timely resolution of civil actions.

~~Rule 16(b). Joint report and proposed scheduling order~~ Joint Report and Proposed Scheduling Order.

(1) ***Applicability.*** This ~~section~~ Rule 16(b) applies to all civil actions except:

~~A.~~ **(A)** ~~Medical~~ medical malpractice ~~cases~~actions;

~~B.~~ **(B)** ~~Cases~~ actions subject to compulsory arbitration under Rule 72(b);

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

~~D.~~ **(D)** ~~Cases~~ actions seeking the following relief:

~~i.~~ **(i)** ~~Change~~ change of name;

~~ii.~~ **(ii)** ~~Forcible~~ forcible entry and detainer;

(iii~~.~~**)** ~~E~~enforcement, domestication, transcript, or renewal of a judgment;

(iv~~. An~~**)** an order pertaining to a subpoena sought ~~pursuant to~~under Rule 45.1(e);

~~v.~~ **(v)** ~~Restoration~~ restoration of civil rights;

~~vi.~~ **(vi)**~~Injunction~~ injunction against harassment or workplace harassment;

(vii~~.~~**)** ~~D~~delayed birth certificate;

(viii~~.~~**)** ~~A~~amendment of birth certificate or marriage license;

(ix~~.~~**)** ~~C~~civil forfeiture;

~~x.~~ **(x)** ~~Distribution~~ distribution of excess proceeds;

(xi~~.~~**)** ~~R~~review of a decision of an agency or a court of limited jurisdiction; and

(xii~~.~~**)** ~~D~~declarations of factual innocence under Rule 57.1 or factual improper party status under Rule 57.2.

(2) ***Conference of the Parties.*** No later than 60 days after any defendant has filed an answer to the complaint or 180 days after ~~commencement of~~ the action commences, whichever occurs first~~,~~ the parties ~~shall~~must confer regarding the subjects set forth in Rule 16(d).

(3) ***Filing of Joint Report and Proposed Scheduling Order.*** No later than 14 days after the parties confer under Rule 16(b)(2), they ~~shall~~must file a Joint Report and a Proposed Scheduling Order with the court stating~~,~~ to the extent practicable~~,~~

—their positions on the subjects set forth in Rule 16(d) and proposing a Scheduling Order that specifies deadlines for the following by calendar date, month, and year deadlines for the following:

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

(B) identification of areas of expert testimony;

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

(D) propounding of written discovery;

(E) disclosure of non-expert witnesses;

(F) completion of depositions;

(G) completion of all discovery other than depositions;

(H) final supplementation of Rule 26.1 disclosures;

(I) holding a Rule 16.1 settlement conference or private mediation;

(J) filing of dispositive motions;

(K) a proposed trial date; and

(L) the anticipated number of days for trial.

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

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

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

(i) Every party except defaulted parties has filed an answer;

(ii) There are no third party claims;

(iii) The parties intend to have no more than one expert per side; and

(iv) Each party intends to call no more than four lay witnesses at trial.

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

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

(6) *Case Designation.* ~~Upon request of~~ On any party's request, the court may designate any ~~case~~action as expedited, standard, or complex. The court sh~~a~~oul~~l~~d endeavor to conduct trial in expedited ~~cases~~actions within ~~twelve~~12 months after the ~~commencement of the~~ action commenced.

~~Rule 16~~(c)~~.~~ Scheduling ~~orders~~Orders.

(1) *Timing.* The court ~~shall~~must issue a Scheduling Order as soon as practicable either after receiving the parties~~'~~' Joint Report and their Proposed Scheduling Order under Rule 16(b) or after holding a Scheduling Conference.

(2) *Contents.* The Scheduling Order ~~shall establish~~must include calendar deadlines specifying the month, date, and year for each of the items included in the Proposed Scheduling Order submitted ~~pursuant to~~under Rule 16(b). The Scheduling Order ~~shall~~must also set either (1) a trial date or (2) a date for a Trial-Setting Conference under Rule 16(f) at which a trial date may be set. Absent leave of court, no trial ~~shall~~may be set unless the parties certify that they engaged in a settlement conference, or private mediation or that they will do so by a date certain ~~established~~approved by the court. The Scheduling Order also may direct that a party must request a conference with the court before moving for an order relating to discovery. It also may address other appropriate matters. ~~The~~

(3) *Modification of Dates Established by Scheduling Order.* The parties may modify the dates established in a Scheduling Order that govern court filings or hearings ~~may be modified~~ only for good cause and with the court~~'~~'s consent. Once a trial date is set, ~~it~~the parties may ~~be modified~~modify that date only ~~pursuant to~~under Rule 38.1.

~~Rule 16~~(d)~~.~~ Scheduling Conferences in ~~n~~Non-medical ~~malpractice cases~~Malpractice Actions. Except in medical malpractice ~~cases, upon~~actions, on a party's written

request ~~of any party~~ the court ~~shall,~~ must—or ~~upon~~on its own ~~motion~~ the court may~~,~~ —set a Scheduling Conference. At any Scheduling Conference under this Rule 16(d), the court may:

(1) ~~D~~determine ~~the~~what additional disclosures, discovery and related activities ~~to~~will be undertaken and a schedule ~~therefor.~~for those activities;

(2) ~~D~~discuss which form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3)~~.~~;

(3) ~~D~~determine whether the court should enter orders addressing one or more of the following:

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

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

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

(4) ~~D~~determine a schedule for the disclosure of expert witnesses and ~~the method of such disclosure, including~~ whether the parties should be required to provide signed reports from ~~the experts should be required.~~retained or specially employed experts setting forth a complete statement of all opinions, the basis and reasons for the opinions, and the facts or data considered by the expert in forming the opinions;

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

(6) ~~D~~determine a date for the disclosure of non-expert witnesses and the order of their disclosure~~.~~;

(7) ~~D~~determine a deadline for the filing of dispositive motions~~.~~;

(8) ~~R~~resolve any discovery disputes~~.~~;

(9) ~~E~~eliminate non-meritorious claims or defenses~~.~~;

(10) ~~P~~permit the amendment of the pleadings~~.~~;

(11) ~~A~~assist in identifying those issues of fact ~~which~~that are still ~~at issue.~~contested;

(12) ~~O~~obtain stipulations ~~as to~~for the foundation or admissibility of evidence~~.~~;

(13) ~~D~~determine the desirability of special procedures for ~~management of~~managing the ~~case.~~action;

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

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

(16) ~~D~~determine whether ~~Rule 26.1 has been appropriately~~the parties have complied with ~~by the parties.~~Rule 26.1;

(17) ~~D~~determine a date for filing the Joint Pretrial Statement required by ~~section (g) of these Rules.~~Rule 16(g);

(18) ~~Discuss~~ set a trial date and determine the anticipated number of days needed for trial;

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

(~~19)~~ 20) ~~D~~determine how a verbatim record of future proceedings in the ~~case~~action will be made~~.~~; and

(~~20)~~ 21) discuss other matters and ~~make such~~enter other orders ~~as~~that the court deems appropriate.

~~Rule 16(e). Scheduling and subject matter at comprehensive pretrial conferences in medical malpractice cases~~ Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Actions. ~~In medical malpractice cases, within five days of~~This Rule 16(e) applies in medical malpractice actions. Within 5 days after receiving answers or motions from all served defendants ~~who have been served~~, a plaintiff ~~shall~~must notify the court ~~to whom the case has been assigned~~ so that ~~a comprehensive pretrial conference~~it can ~~be~~ set a Comprehensive Pretrial Conference. Within 60 days ~~of~~after receiving the notice, the court ~~shall~~must conduct a ~~c~~Comprehensive ~~p~~Pretrial ~~c~~Conference. At that ~~c~~Conference, the court and the parties ~~shall~~must:

(1) Determine the additional disclosures, discovery and related activities to be undertaken and a schedule ~~therefor~~for those activities. The schedule ~~shall~~must include the depositions to be taken, any medical examination ~~which~~that a defendant desires to be made of a plaintiff, and ~~what~~the additional documents, electronically stored information, and other materials ~~are~~ to be exchanged. ~~Only~~Except on the parties' stipulation or on motion showing good cause, only those depositions specifically authorized in the ~~comprehensive pretrial conference shall be allowed~~

~~except upon stipulation of the parties or upon motion and a showing of good cause. The court, upon request of any defendant, shall~~conference may be taken. On any defendant's request, the court must require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(~~A~~a)(2)~~ of these Rules~~ or records ordered to be produced by the court. If records are obtained ~~pursuant to~~under such authorization, the party obtaining the records ~~shall~~must furnish —at its sole expense—complete copies to all other parties~~ at the sole expense of the party obtaining the records.~~;

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

(3) Determine the order of and dates for the disclosure of all other expert and non-expert witnesses~~, provided that the date for disclosure of~~. The deadlines for disclosing all witnesses, expert and non-expert, ~~shall~~must be at least 45 days before the close of discovery. ~~Any witnesses not appropriately disclosed shall be precluded~~Unless extraordinary circumstances are shown, the court must preclude any untimely disclosed witness from testifying at trial~~ unless there is a showing of extraordinary circumstances.~~;

(4)~~ Limit~~ Determine the number of ~~experts as provided~~expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D)~~ of these Rules.~~;

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

(6) Resolve any discovery disputes~~.~~;

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

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

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

(10) Set a date for filing the Joint Pretrial Statement required by ~~subpart (g) of this~~ Rule~~.~~ 16(g);

(11) Set a trial date~~.~~;

(12) Determine how a verbatim record of future proceedings in the ~~case~~action will be made~~.~~; and

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

~~Rule 16~~(f)~~.~~ Trial~~-setting conference~~ Setting Conference.

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

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

(A) ~~T~~the status of discovery and any dispositive motions that have been or will be filed~~.~~;

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

(C) ~~T~~the imposition of time limits on trial proceedings ~~or portions thereof.~~;

(D) ~~T~~the use of juror questionnaires~~.~~;

(E) ~~T~~the use of juror notebooks~~.~~;

(F) ~~T~~the giving of brief pre-voir dire opening statements and preliminary jury instructions~~.~~;

(G) ~~T~~the effective management of documents and exhibits~~.~~; and

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

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

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

(1) ***Preparation of Joint Pretrial Statement.*** Counsel or the unrepresented parties who will try the ~~case~~action and who are authorized to make binding stipulations ~~shall~~must confer and prepare a written Joint Pretrial Statement, signed by each

counsel or ~~party, that shall be filed ten~~unrepresented party. The parties must file the Joint Pretrial Statement no later than 10 days before the date of the Trial Management Conference, or if no conference is scheduled, ~~ten~~10 days before trial. Plaintiffs ~~shall~~must submit their portion of the Joint Pretrial Statement to all parties no later than ~~twenty~~20 days before the ~~statement is due~~date when the Statement must be filed. All other parties ~~shall~~must submit their portion of the Joint Pretrial Statement to all parties no later than ~~fifteen~~15 days before the ~~statement is due~~date when the Statement must be filed.

(2) ~~The~~ ***Contents of Joint Pretrial Statement.*** The parties must prepare the Joint Pretrial Statement ~~shall be prepared by the parties~~ as a single document ~~and~~that must contain the following:

(A) Stipulations of material fact and applicable law;

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

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

(D) A list of witnesses ~~intended to be used by each party during trial. Each party shall~~each party intends to call to testify at trial, identifying those witnesses whose testimony will be presented solely by deposition. Each party must list any objection~~s~~ to a witness and the basis for that objection. ~~No~~Unless the court orders otherwise for good cause, no witness ~~shall be used~~may testify at the trial other than those listed~~, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated~~;

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

(F) A statement by each party ~~indicating~~identifying any proposed deposition summaries or designating portions of any deposition testimony to be offered by

that party at trial, other than for impeachment purposes. ~~Deposition~~The parties must designate deposition testimony ~~shall be designated~~ by transcript page and line numbers. ~~A~~The parties must file with the Joint Pretrial Statement a copy of any proposed deposition summary and the written transcript of designated deposition testimony ~~should be filed with the Joint Pretrial Statement~~. Each party ~~shall~~must list any objection~~s~~ to the proposed deposition summaries and designated deposition testimony and the basis for ~~any objections. Except~~that objection. Unless the court orders otherwise for good cause ~~shown~~, no deposition testimony ~~shall~~may be used at trial other than that designated or counter-designated ~~or~~in the Joint Pretrial Statement or that used solely for impeachment purposes;

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

(H) ~~Technical~~ Requested technical equipment ~~needed or~~;

(I) Requested interpreters ~~requested~~;

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

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

(~~K~~L) A brief description of settlement efforts; and

(M) How a verbatim record of the trial will be made.

(3) ***Delivery of Exhibits.*** ~~At the time of the filing of~~ Plaintiffs must deliver copies of all their exhibits to all parties no later than 10 days before the date when the Joint Pretrial Statement~~, the parties shall~~ must be filed. All other parties must deliver copies of all their exhibits to all parties no later than 5 days before the date when the Joint Pretrial Statement must be filed. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before these deadlines.

(4) ***Additional Documents to File if Trial Is to a Jury.*** If the trial is to a jury, the parties must—on the same day they file the Joint Pretrial Statement—file (A) an agreed-upon set of jury instructions, verdict forms, and voir dire questions, and (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon~~, and (C) a statement by each party on how a verbatim record of the trial will be made~~.

(4)5) *Jury Notebooks.* A party intending to submit a jury notebook to the jurors shallmust serve a copy of the notebook on the other parties five days before the Trial Management Conference, or, if no conference is scheduled, five days before the trial.(5) Any trial memoranda shall be filed fiveno later than 5 days before the Trial Management Conference, or, if no conference is scheduled, fiveno later than 5 days before the trial.

(6) *Trial Memoranda.* A party must file any trial memorandum no later than 5 days before the Trial Management Conference, or, if no conference is scheduled, no later than 5 days before the trial.

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

(7) 8) *Modifications.* The This rule's provisions of this rule may be modified by order of the court order.

Rule 16(h). Pretrial ordersOrders. After any conference held pursuant tounder this Rule,rule, the court must enter an order shall be entered reciting the action taken. This order shall controlcontrols the subsequentlater course of the action unless modified by a subsequentlater court order. The order followingentered after a Trial Management Conference under Rule 16(g) shallmay be modified only to prevent manifest injustice.

Rule 16(i). Sanctions.

(1) *Generally.* If a party or attorney Except on a showing of good cause, the court—on motion or on its own—must enter such orders as are just—including, among others, any of the orders in Rule 37(b)(2)(B), (C), or (D)—if a party or attorney:

(A) fails to obey a scheduling or pretrial order or fails to meet the discovery, disclosure and other deadlines set forth therein, or if no appearance is made on behalf of a party at a Scheduling or Trial Management Conference, or if a party or party's attorney deadlines set in the order;

(B) fails to appear at a Scheduling Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference;

(C) is substantially unprepared to participate in the conference, or if a party or party's attorney a Scheduling Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference;

(D) fails to participate in good faith in a Scheduling or Trial Management Conference or in the preparation of the Joint Report and Proposed Scheduling

~~Order or Joint Pretrial Statement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, any of the orders provided in Rule 37(b)(2)(B), (C), or (D). The fact that a trial date has not been set does not preclude sanctions under this Rule, including the exclusion from evidence of untimely disclosed information. In lieu of or in addition to any other sanction, the judge shall~~ Conference, Comprehensive Pretrial Conference, Trial-Setting Conference, or Trial Management Conference; or

(E) fails to participate in good faith in the preparation of a Joint Report and Proposed Scheduling Order or a Joint Pretrial Statement.

(2) ***Award of Expenses.*** Unless the court finds the conduct substantially justified or that other circumstances make an award of expenses unjust, the court must—in addition to or in lieu of any other sanction—require the party, ~~or~~ the attorney representing the party, or both~~,~~ to pay ~~the~~:

(A) another party's reasonable expenses, including attorney's fees, incurred as ~~the~~a result of ~~any noncompliance with this Rule, including attorneys' fees, or payment of~~ the conduct;

(B) an assessment to the clerk ~~of the court,~~; or

(C) both~~, unless the judge finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.~~.

(3) ***Trial Date.*** The fact that a trial date has not been set does not preclude sanctions under this rule, including the sanction of excluding untimely disclosed information from evidence.

~~**Rule 16(j).**~~ **Alternative ~~dispute resolution~~**~~Upon~~**Dispute Resolution.** On motion ~~of any party,~~ ~~—~~or ~~upon~~on its own ~~initiative~~ after consult~~atio~~ng with the parties~~,~~ ~~—~~the court may direct the parties ~~in any action~~ to submit the dispute ~~which~~that is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

~~**Rule 16(k).**~~ **Time ~~limitations~~Limits.** The court may impose reasonable time limits on ~~the~~ trial proceedings ~~or portions thereof~~.

* * *

Comment

2017 Amendment

Federal Rule of Civil Procedure 26(b)(1) was amended effective December 1, 2015, to expressly use the word "proportional" in describing the scope of discovery. The

amendments to Arizona Rules of Civil Procedure 16(a) and 26(b)(1)(C) have not been amended to incorporate use of the word "proportional," but instead Rule 16(a)(3) uses the word "appropriate." This was done to avoid any possible misreading of the rules that might place undue emphasis on any one factor (e.g., the amount in controversy). No single factor is intended to be dispositive in all cases, but rather the factors should be considered together in determining the appropriateness of given discovery in an action. While the language of the "proportional" versus "appropriate" differs, the factors under Federal Rule of Civil Procedure 26(b)(1) for reaching that determination are similar to those under amended Arizona Rule of Civil Procedure 16(a)(3) and 26(b)(1)(C).

Rule 16.1. Settlement Conferences: Objectives

~~**Rule 16.1. Settlement conferences: objectives**~~

(a) ~~**Mandatory Settlement Conferences.**~~**Generally.** At any party's request or on its own, a court may hold one or more pretrial settlement conferences unless the action is a lower court appeal or is subject to compulsory arbitration under Rule 72. A pretrial settlement conference must be held in a medical malpractice action. ~~Except in appeals from a lower court, medical malpractice cases, and cases subject to compulsory arbitration under Rule 72(b), at the request of any party, the court may direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate either in person or, with leave of court, by telephone, in a conference or conferences before trial for the purpose of facilitating settlement. Unless otherwise ordered by the court, all requests for settlement conferences shall be made not later than 60 days prior to trial. The court may also schedule a settlement conference upon its own motion.~~

(b) Deadlines and Scheduling.

(1) ***Timing.***

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

~~**(b)**~~ **B)** In all other actions, the Scheduling Order sets the deadline for a settlement conference, unless the court orders otherwise.

(2) ***Scheduling and Planning.*** The ~~court shall enter an order that sets~~order setting a settlement conference should include the date ~~for~~, time and place of the ~~settlement~~ conference, ~~a~~the deadline ~~for furnishing~~by which settlement conference memoranda must be submitted, and other matters the court deems appropriate ~~in~~

~~the circumstances of the case~~. An order setting a settlement conference ~~shall~~may not be modified except by ~~leave of~~ court ~~upon a showing of~~order for good cause.

(c) Settlement Conference Memoranda. ~~At least five (~~

(1) *Requirement and Timing.* Each party must submit a settlement conference memorandum to the court at least 5~~)~~ days ~~prior to~~before the settlement conference~~, each party shall furnish the court with a separate memorandum. In non-~~.

(2) *Method of Submission.*

(A) In a medical malpractice ~~cases, the~~action, a settlement conference memorandum ~~shall not~~must be filed ~~with the clerk of the court, and the parties shall furnish the memoranda sealed to the division assigned to the case. In medical malpractice cases, the settlement conference memoranda shall be filed and exchanged.~~and served on all other parties participating in the conference.

(B) In all other actions, a settlement conference memorandum must not be filed. Instead, it must be delivered under seal to the judge assigned to the action. Unless the court orders otherwise, the memorandum does not need to be served on the other parties.

(3) *Contents.* Each settlement conference memorandum ~~shall address the following~~must provide:

(~~1~~A) a general description of the claims, defenses and issues in the ~~lawsuit~~action, and the ~~positions of each~~ party ~~with respect to~~'s position on each claim, defense and issue;

(~~2~~B) a general description of the evidence that ~~will be presented by each side with respect to each issue~~that the party anticipates presenting at trial;

(~~3~~C) a summary of ~~the~~any settlement negotiations that have ~~previously~~already occurred;

(~~4~~) D) ~~an~~ the party's assessment ~~by each party~~ of the ~~anticipated result~~likely outcome if the ~~matter did proceed~~action proceeds to trial; and

(~~5~~E) any other information ~~each party believes will~~that might be helpful to the ~~settlement process~~settling the action.

(4) *Admissibility.* No part of any settlement conference memorandum ~~shall be~~is admissible ~~at trial~~in evidence.

(d) Attendance. ~~Settlement conferences shall be attended by all of the parties to the litigation and their~~ Every party and its counsel must attend a settlement conference unless specifically excused by the court for good cause ~~by the court. In addition, the~~

~~defendants shall~~. Additionally, each party must have a representative present ~~with~~who has actual authority to enter into a binding settlement agreement. All participants ~~shall~~must appear in person ~~except pursuant to stipulation of~~unless the parties agree or ~~order of~~ the court orders otherwise.

(e) Confidentiality. The court ~~shall~~may order that discussions ~~in settlement conferences shall be confidential among the parties, their counsel and the court~~between the court and a party or the party's counsel during a settlement conference be treated confidentially and not be revealed to others.

(f) ~~Discretion to~~ Transfer. ~~The court, upon~~ On motion or on its own ~~motion, or upon,~~ the ~~motion of a party,~~court may transfer ~~the~~a settlement conference to another court division ~~of the court,~~that is willing to conduct the ~~settlement~~ conference.

(g) *Ex Parte* Communications. ~~At any settlement conference conducted pursuant to this Rule, the~~ The court, with the consent of ~~all those~~the parties participating in the conference, may engage in *ex parte* communications if the court ~~determines that will~~believes it might facilitate the action's settlement ~~of the case~~.

(h) Sanctions. ~~The provisions of Rule 16(i) of these Rules concerning sanctions shall apply to a conference provided by this rule.~~ A court may enter any of the sanctions provided in Rule 16(i) if a party or its counsel is substantially unprepared to participate in a settlement conference or fails to participate in the conference in good faith.

~~Rule 16.2. Good Faith Settlement Hearings~~

~~**Rule 16.2(a). Petition**~~

~~In any action where it is alleged that two or more parties are joint tortfeasors, and a settlement is entered into by any of the parties to the action, the court, upon petition of any party, shall make a formal determination whether the settlement is made in good faith. Any petition shall be accompanied by affidavits. If the petition is filed by the parties to the settlement, such affidavits shall set forth the terms of the settlement and the circumstances establishing the good faith of the settlement.~~

~~**Rule 16.2(b). Objection to petition**~~

~~Within ten days after a petition has been filed, any other party may file an objection to the petition, supported by accompanying affidavits. Replies to the objection shall be filed~~

~~within ten days of service of the objection. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties.~~

~~**Rule 16.2(c). Hearing**~~

~~Upon timely request of any party, the court shall set a time for hearing of the objection. If no request is made, the court may, in its discretion, set a time for such hearing, or rule without a hearing. If a hearing is set, the court shall consider the circumstances and evidence set forth in the parties' affidavits, and shall receive other evidence as presented.~~

~~**Rule 16.3. Initial case management conference in cases assigned to the complex civil litigation program**~~

Rule 16.2. Initial Case Management Conference in Actions Assigned to the Complex Civil Litigation Program

(a) Conference; Subjects for Consideration. Once ~~a case~~an action is determined to be a complex civil ~~case,~~action under Rule 8(h)(6), the court must conduct an initial case management conference ~~with all parties represented shall be conducted~~ at the earliest practical date with all represented parties, and must promptly enter a Case Management Order ~~issued by~~after the ~~court promptly thereafter~~conference. Among the subjects that should be considered at such a conference are:

(1) the status of parties and pleadings;

(2) determining whether severance, consolidation, or coordination with other actions is desirable;

(3) scheduling motions to dismiss or other preliminary motions;

(4) scheduling class certification motions, if applicable;

(5) scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master;

(6) issuing protective orders;

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

(8) any measures the parties must take to preserve discoverable documents or electronically stored information;

(9) any agreements reached by the parties for asserting claims of privilege or of protection as to trial-preparation materials after production;

(10) appointing liaison counsel and admission of non-resident counsel;

(11) scheduling settlement conferences;

(12) ~~notwithstanding Rule 26.1, the establishment~~ whether the requirements and timing ~~of~~for disclosure ~~requirements~~under Rule 26.1 should be varied;

(13) scheduling expert disclosures and whether sequencing of expert disclosures is warranted;

(14) scheduling dispositive motions;

(15) adopting a uniform numbering system for documents and establishing a document depository;

(16) determining whether electronic service of discovery materials and pleadings is warranted;

(17) organizing a master list of contact information for counsel;

(18) determining whether expedited trial proceedings are desired or appropriate;

(19) scheduling further conferences as necessary;

(20) use of technology, videoconferencing and/or teleconferencing;

(21) determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination ~~thereof;~~of these procedures; and

(22) such other matters as the court or the parties deem appropriate ~~to~~in manag~~e~~ing or expedit~~e~~ing the ~~case~~action.

(b) Meeting of Parties Before Conference. Before ~~the date set by the court for~~ the initial case management conference, all parties who have appeared in the action, or their ~~attorneys, shall~~counsel, must meet and confer concerning the matters to be raised at the conference, ~~shall~~must attempt in good faith to reach agreement on as many case management issues as possible, and ~~shall~~must submit a joint report to the court no later than ~~seven (~~7~~)~~ days before the ~~initial case management~~ conference. ~~A~~The court may sanction a party ~~who~~or its counsel if the party or counsel fails to participate in good faith ~~shall be subject to sanctions~~in this meeting.

(c) Purpose of Conference. The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(d) Establishing Time Limits. Time limits should be regularly used to expedite major phases of a complex civil ~~cases~~action. Time limits should be established early, tailored to the circumstances of each ~~case~~action, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference ~~shall~~must be set by the court as early as possible~~ with a trial date to follow within 60 days of the final pre-trial conference~~.

(e) Commencement of Discovery. ~~Absent an order of~~ Unless the ~~court, or~~parties agree by stipulation ~~of the parties~~ filed with the court or the court orders otherwise, no party may initiate discovery or disclosure in a complex civil ~~case~~action until the court has ~~issued~~entered a Case Management Order ~~following the initial case management conference~~in the action.

IV. ~~Parties~~ PARTIES

Rule 17. ~~Parties~~ Plaintiff and Defendant; Capacity; Public Officers

~~Rule 17~~(a)~~.~~ Real ~~p~~Party in ~~interest~~Interest.

(1) ***Designation Generally.*** ~~Every action shall be prosecuted in the name of the real party in interest.~~ An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(A) a personal representative or executor;

(B) an administrator;

(C) a guardian;

(D) a bailee;

(E) a trustee of an express trust;

(F) a party with whom or in whose name a contract has been made for another's benefit; and

(G) a party authorized by statute.

(2) ***Action in the Name of the State for Another's Use or Benefit.*** When a state statute so provides, an action for another's use or benefit must be brought in the name of the State of Arizona.

(3) *Joinder of the Real Party in Interest.* The court may not dismiss an action for failure to prosecute in the name of the real party in interest until, after an objection, a reasonable time has been allowed for the real party in interest to ratify, join, or be substituted into the action. After ratification, joinder, or substitution, the action proceeds as if it had been originally commenced by the real party in interest.

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

~~**Rule 17(b). Actions by personal representatives; setting aside judgment**Actions for the recovery of personal property, debts or damages, and for the title to or possession of lands, or for any right attached thereto or arising therefrom, or for an injury or damage thereto~~

or guardian may commence or maintain any action that the testator or intestate could have commenced or maintained, and an action may be ~~commenced by~~brought against an executor, administrator, or guardian ~~appointed in this state in the same manner as if commenced by the testator or intestate, and judgment therein shall be as conclusive as if~~if it could have been brought against the testator or intestate. The judgment in such an action is as conclusive as if it was rendered in favor of or against the testator or intestate. ~~The judgment may be set aside upon the application of any person interested for~~An interested person may apply to set aside the judgment on the ground that it resulted from fraud or collusion ~~on the part of~~by the executor, administrator, or guardian.

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

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

~~actions might have been maintained by or against the testator or intestate.~~

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

(c) Actions by or Against a County, City, or Town. ~~Actions~~ An action brought by or against a county or an incorporated city or town ~~shall be in~~must use its corporate name when identifying it as a party.~~.~~

(d) Public Officer's Title and Name. A public officer who sues or is sued in an official capacity may be identified as a party by the officer's official title rather than by name, provided that it is sufficient to identify the particular public officer being sued, but the court may require the officer's name to be used or added to identify the officer as the party.[1]

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

(e) Actions Against a Surety, Assignor, or Endorser. ~~The~~ A plaintiff may sue a contractual assignor, endorser, guarantor~~ and~~, surety~~ upon a contract, and~~, or the drawer of a bill ~~which~~that has been accepted, ~~may be sued~~ without joining the maker, acceptor, or other principal obligor ~~when~~ if:

(1) the latter resides ~~beyond the limits of the state~~outside Arizona, or in ~~such~~a part of ~~the state that the latter cannot be reached by ordinary process of law, or when~~Arizona where it cannot be served under Rules 4, 4.1, or 4.2;

(2) the latter~~'~~'s residence is unknown and cannot be ascertained ~~by the use of~~through reasonable diligence~~, or when~~ ;

(3) the latter is dead~~,~~; or

(4) the latter is insolvent.

~~Rule 17(g). Infants or incompetent persons~~

(f) Minor or Incompetent Person.

(1) ***With a Representative.*** ~~Whenever~~ The following representatives may sue or defend on behalf of a minor or an ~~infant or~~ incompetent person~~ has a representative, such as~~ :

(A) a general guardian~~,~~;

[1] Redlining Note: The substance of Rule 25(e)(2) has been moved to Rule 17(d).

(B) a conservator; or

(C) a similar fiduciary~~, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or~~.

(2) ***Without a Representative.***

(A) *Generally.* A minor or an incompetent person who does not have a duly appointed representative ~~the infant or incompetent~~ may sue by a next friend or by a guardian ad litem. The court ~~shall~~must appoint a guardian ad litem ~~for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person~~—or issue another appropriate order—to protect a minor or incompetent person who is unrepresented in an action.

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

(B) *Consent.* ~~No person shall be appointed guardian ad litem or next friend except upon written consent filed in the action.~~ No person may be appointed guardian ad litem unless the person files a written consent to the appointment

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

(C) *Bond.* ~~If~~ If a next friend or guardian ad litem brings an action ~~is brought for the minor by a next friend or guardian ad litem, the next friend or guardian ad litem shall~~on behalf of a minor, that person may not receive any of the minor's money or property ~~of the minor until such friend or guardian files~~without filing a bond as security ~~therefor~~ in ~~such form~~an amount and ~~with~~under such ~~surety~~terms as the court approves.

(D) *Liability for Costs.* Unless the court orders otherwise, a next friend or guardian ad litem may ~~prescribe and approve. A guardian or next friend shall~~ not be held personally liable for costs~~, unless by special order of the court~~.

(E) *Compensation.* The court may ~~allow the guardian or next friend a~~award reasonable compensation ~~for~~to a next friend or a guardian ad litem for their services ~~to~~, which must be taxed as part of the ~~costs of the~~ action's costs.

~~**Rule 17(j).**~~ **Partnerships.**~~Any~~ A partnership may sue and be sued in the name ~~which~~that it has ~~assumed~~adopted or by which it is known.

Rule 18. Joinder of Claims~~ and Remedies~~

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

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

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

(b)Joinder of Contingent Claims. ~~Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action, but the court shall~~ A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief ~~in that action~~ only in accordance with the parties' relative substantive rights~~ of the parties~~. In particular, a ~~plaintiff~~party may state a claim for money and a claim to ~~have~~ set aside a conveyance that is fraudulent as to that ~~plaintiff~~party, without first ~~having obtained~~obtaining a judgment ~~establishing~~for the ~~claim for~~ money.

Rule 19. Required Joinder of ~~Persons Needed for Just Adjudication~~Parties

~~Rule 19~~(a)~~.~~ Persons Required to ~~be~~Be ~~j~~Joined if ~~feasible~~Feasible.

(1) ***A Person Required to Be Made a Party.*** A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction ~~over the subject matter of the action shall~~must be joined as a party ~~in the action~~ if :

(~~1~~A) in the~~at~~ person~~'~~'s absence, the court cannot accord complete relief ~~cannot be accorded~~ among ~~those already~~existing parties~~,~~; or ~~(2) the~~

(B) that person claims an interest relating to the subject of the action and is so situated that ~~the disposition~~disposing of the action in ~~his~~the person's absence may :

(i) as a practical matter impair or impede the person~~'~~'s ability to protect th~~at~~e interest ; or

(ii) leave ~~any of the persons already parties~~an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations ~~by reason~~because of the ~~claimed~~ interest.

(2) *Joinder by Court Order.* If ~~the~~a person required to be made a party has not been ~~so~~ joined, the court ~~shall~~must order that the person be made a party. ~~If the~~A person ~~should~~who refuses to join as a plaintiff ~~but refuses to do so, the person~~ may be made either a defendant~~,~~ or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If ~~the~~a joined party objects to venue and the joinder ~~of that party~~ would ~~render the~~make venue ~~of the action~~ improper, the court must dismiss that party ~~shall be dismissed from the action~~.

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

(b) When Joinder Is Not Feasible. If a person ~~as described in subdivision (a)(1)-(2) hereof~~required to be joined if feasible cannot be ~~made a party~~joined, the court ~~shall~~must determine whether, in equity and good conscience, the action should proceed among the existing parties ~~before it,~~ or should be dismissed~~, the absent person being thus regarded as indispensable~~. The factors ~~to be considered by~~for the court to consider include: ~~first, to what~~

(1) the extent to which a judgment rendered in the person~~'~~'s absence might ~~be prejudicial to the~~prejudice that person or th~~ose~~ ~~already~~existing parties; ~~second,~~

(2) the extent to which~~, by~~ any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment~~, by the~~ ;

(B) shaping ~~of~~the relief~~, or other measure, the prejudice can be lessened or avoided; third,~~ ; or

(C) other measures;

(3) whether a judgment rendered in the person~~'~~'s absence ~~will~~would be adequate; ~~fourth,~~ and

(4) whether the plaintiff ~~will~~would have an adequate remedy if the action ~~is~~were dismissed for nonjoinder.

~~**Rule 19(c).**~~ **Pleading ~~reasons for nonjoinder~~**~~A pleading~~**the Reasons for Nonjoinder.** When asserting a claim for relief ~~shall~~, a party must state :

(1) the name~~s~~, if known ~~to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined,~~, of any person required to be joined if feasible who is not joined; and

(2) the reasons ~~why they are~~for not ~~joined~~joining that person.

~~**Rule 19(d).**~~ **Exception of ~~class actions~~Class Actions.** This rule is subject to ~~the provisions of~~ Rule 23.

Rule 20. Permissive Joinder of Parties

~~Rule 20(a). Permissive joinder~~(a) Persons Who May Join or Be Joined.

(1) ***Plaintiffs.*** ~~All persons~~ Persons may join in one action as plaintiffs if :

(A) they assert any right to relief jointly, severally, or in the alternative ~~in~~with respect ~~of~~to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and ~~if~~

(B) any question of law or fact common to all ~~these persons~~plaintiffs will arise in the action. ~~All persons~~

(2) ***Defendants.*** Persons may be joined in one action as defendants if ~~there~~:

(A) any right to relief is asserted against them jointly, severally, or in the alternative~~,~~ ~~any right to relief in~~ with respect ~~of~~to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and ~~if~~

(B) any question of law or fact common to all defendants will arise in the action. ~~A~~

(3) ***Extent of Relief.*** Neither a plaintiff ~~or~~nor a defendant need ~~not~~ be interested in obtaining or defending against all the relief demanded. ~~Judgment~~The court may ~~be given for~~grant judgment to one or more ~~of the~~ plaintiffs according to their ~~respective~~ rights ~~to relief~~, and against one or more defendants according to their ~~respective~~ liabilities.

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

(b) Protective Measures. The court may ~~make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party~~issue orders—including an order for separate trials—to protect a party against embarrassment, delay, expense, or other prejudice that arises from including a person against whom the party asserts no claim and who asserts no claim against the party~~, and may order separate trials or make other orders to prevent delay or prejudice~~.

Rule 21. ~~Misjoinder~~ Improper Joinder and ~~n~~Non-joinder of ~~parties~~Parties; Severance

~~Misjoinder~~Joinder of ~~parties~~a party that is not permitted under Rule 20(a) is not a ground ~~for dismissal of~~to dismiss an entire action. ~~Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately~~At any time—on just terms—the court may dismiss an improperly joined party or join any party who may be properly joined under Rule 20(a). The court may also sever

any claim against a party, and that severed claim may proceed as a separate and independent action.

Rule 22. Interpleader

~~Rule 22~~(a) Grounds.

(1) ***Generally.*** Interpleader~~Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their~~ is a procedure where one holding money or property subject to adverse claims may seek to avoid multiple liability by joining in a single action anyone who asserts or may assert claims to the money or property.

(2) ***By a Plaintiff.*** A plaintiff may join as defendants anyone who asserts or may assert claims to the money or property.

(3) ***By a Defendant.*** A defendant may seek interpleader through a crossclaim or counterclaim.

(4) ***Propriety of Interpleader.*** Interpleader is proper even though:

(A) the claims, or the titles on which the claims depend~~ do not have~~, lack a common origin or are ~~not~~adverse and independent rather than identical~~ but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable~~; or

(B) the party requesting interpleader denies liability in whole or in part to any or all of the claimants.~~ A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.~~

~~Rule 22~~(b)~~.~~ Release from ~~liability; deposit or delivery~~ Liability Upon Deposit or Delivery. ~~Any~~ A party ~~invoking the~~requesting interpleader~~, as provided by subdivision (a) of this Rule,~~ under (a) may move the court for an order discharging that party from liability to ~~either~~the claimants. The court may discharge the party~~, and~~ upon ~~depositing~~:

(1) the party's deposit in court of the ~~amount~~money claimed~~, or by delivering~~; or

(2) the party's delivery of the property ~~to the party entitled thereto, or into court~~ as the court ~~may direct, that party may be discharged~~directs.

(c) Relation to Other Rules. This rule supplements—and does not limit—the joinder of parties allowed by Rule 20.

Rule 23. Class Actions

~~**Rule 23**~~**(a)**~~**.**~~ **Prerequisites** ~~**to a class action.**~~ One or more members of a class may sue or be sued as representative parties on behalf of all members only if :

(1) the class is so numerous that joinder of all members is impracticable~~,~~;

(2) there are questions of law or fact common to the class~~,~~;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class~~,~~; and

(4) the representative parties will fairly and adequately protect the interests of the class.

~~**Rule 23**~~**(b)**~~**.**~~ **Types of Class** ~~**actions maintainable**~~An**Actions.** A class action may be maintained ~~as a class action if the prerequisites of subdivision (a) are~~if Rule 23(a) is satisfied~~,~~ and ~~in addition~~if:

(1) ~~the prosecution of~~ prosecuting separate actions by or against individual class members ~~of the class~~ would create a risk of :

(A) inconsistent or varying adjudications with respect to individual class members ~~of the class which~~that would establish incompatible standards of conduct for the party opposing the class~~,~~; or

(B) adjudications with respect to individual class members ~~of the class which would~~ that—as a practical matter—would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede ~~their~~the other members' ability to protect their interests; ~~or~~

(2) the party opposing the class has acted or refused to act on grounds that apply generally ~~applicable~~ to the class, ~~thereby making appropriate~~so that final injunctive relief or corresponding declaratory relief ~~with respect to~~is appropriate for the class as a whole; or

(3) the court finds that the questions of law or fact common to ~~the~~class members ~~of the class~~ predominate over any questions affecting only individual members, and that a class action is superior to other available methods for ~~the fair and efficient~~

~~adjudication of~~fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

(A) ~~the interest of members of~~ the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already ~~commenced~~begun by or against class members ~~of the class;~~ ;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties ~~likely to be encountered in the management of~~in managing a class action.

(c) Certification Order; Notice to Class Members; Judgment; Issues Classes; Subclasses. ~~**Rule 23(c). Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions**~~

(1) ~~As soon as~~ ***Certification Order.***

(A) *Time to Issue.* At an early practicable ~~after the commencement of an action brought~~time after a person sues or is sued as a class ~~action~~representative, the court ~~shall~~must hold a hearing and determine by ~~written~~ order whether ~~it is to be so maintained. The court shall set forth its reasons and shall describe all evidence in support of its determination. An order under this subdivision may be conditional, and~~to certify the action as a class action.

(B) *Defining the Class; Appointing Class Counsel.* An order that certifies a class action must:

(i) define the class and the class claims, issues, or defenses; and

(ii) appoint class counsel under Rule 23(g).

(C) *Altering or Amending the Order.* An order that grants or denies class certification may be altered or amended before ~~the decision on the merits~~final judgment.

(2) ***Notice.***

(A) *For (b)(1) or (b)(2) Classes.* For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.

~~2)~~ **(B)** *For (b)(3) Classes.* ~~In~~ For any class ~~action maintained~~certified under ~~subdivision~~ Rule 23(b)(3), the court ~~shall~~must direct to ~~the~~class members ~~of the class~~ the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice ~~shall advise each member that (A) the court will exclude the member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires,~~must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through ~~counsel.~~an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

(3) ***Judgment.*** Whether or not favorable to the class, the judgment in a class action must:

(A) ~~3) The judgment in an action maintained as a~~ for any class ~~action~~certified under ~~subdivision~~ Rule 23(b)(1) or (b)(2), ~~whether or not favorable to the class, shall~~ include and describe those whom the court finds to be ~~members of the class. The judgment in an action maintained as a class action under subdivision~~ class members; and

(B) for any class certified under Rule 23(b)(3), ~~whether or not favorable to the class, shall~~ include and specify or describe those to whom the ~~notice provided in subdivision~~ Rule 23(c)(2) notice was directed, ~~and~~ who have not requested exclusion, and whom the court finds to be class members ~~of the class~~.

(4) ***Particular Issues.*** When appropriate ~~(A),~~ an action may be brought or maintained as a class action with respect to particular issues~~, or (B)~~.

(5) ***Subclasses.*** When appropriate, a class may be divided into subclasses ~~and~~that are each ~~subclass~~ treated as a class~~, and the provisions of~~ under this rule ~~shall then be construed and applied accordingly~~.

(d)Conducting the Action. ~~**Rule 23(d). Orders in conduct of actions**~~

(1) ***Generally.*** ~~In the conduct of actions to which~~ In conducting an action under this rule ~~applies~~, the court may ~~make appropriate~~issue orders that: ~~(1) determining~~

(A) determine the course of proceedings or prescrib~~ing~~e measures to prevent undue repetition or complication in ~~the presentation of~~presenting evidence or argument; ~~(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of~~

(B) require—to protect class members and fairly conduct the action~~, that notice be given in such manner as the court may direct~~—giving appropriate notice to some or all ~~of the~~class members of :

(i) any step in the action~~, or of~~;

(ii) the proposed extent of the judgment~~,~~; or ~~of~~

(iii) the members' opportunity ~~of members~~ to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or to otherwise ~~to~~ come into the action;

(C) ~~(3) imposing~~ impose conditions on the representative parties or on intervenors;

(D) ~~(4) requiring~~ require that the pleadings be amended to eliminate ~~therefrom~~ allegations ~~as to~~about representation of absent persons~~,~~ and that the action proceed accordingly; or

~~(5)~~ **E)** deal~~ing~~ with similar procedural matters. ~~The orders may be combined with an~~

(2) ***Combining and Amending Orders.*** An order under Rule ~~16, and~~23(d)(1) may be altered or amended ~~as may be desirable~~ from time to time~~.~~ ~~**Rule 23(e). Dismissal or compromise**~~ and may be combined with an order under Rule 16.

(e) Settlement, Voluntary Dismissal, or Compromise. The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. The following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

~~A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.~~

(1) the court must direct notice in a reasonable manner to all class members who would be bound by the proposal;

(2) if the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate;

(3) the parties seeking approval must file a statement identifying any agreement made in connection with the proposal;

(4) if the class action was previously certified under Rule 23(b)(3), the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion by individual class members who had an earlier opportunity to request exclusion but did not do so; and

(5) any class member may object to the proposal if it requires court approval under this rule; the objection may be withdrawn only with the court's approval.

~~**Rule 23(f).**~~ **Appeals.** The court~~'~~'s order certifying or denying class action status is appealable in the same manner as a final order or judgment. During the pendency of an appeal under A.R.S. § 12-1873, all discovery and other proceedings ~~shall be~~are stayed except that~~,~~ on motion ~~of a party,~~ the court may permit discovery ~~proceedings~~ to continue.

(g) Class Counsel.

(1) ***Appointing Class Counsel.*** Unless a statute provides otherwise, a court that certifies a class must appoint class counsel. In appointing class counsel, the court:

(A) must consider:

(i) the work counsel has done in identifying or investigating potential claims in the action;

(ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;

(iii) counsel's knowledge of the applicable law; and

(iv) the resources that counsel will commit to representing the class;

(B) may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class;

(C) may order potential class counsel to provide information on any subject pertinent to the appointment and to propose terms for attorney's fees and nontaxable costs;

(D) may include in the appointing order provisions about the award of attorney's fees or nontaxable costs under Rule 23(h); and

(E) may make further orders in connection with the appointment.

(2) ***Standard for Appointing Class Counsel.*** When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under Rule 23(g)(1) and (4). If more than one adequate applicant seeks appointment, the court must appoint the applicant best able to represent the interests of the class.

(3) ***Interim Counsel.*** The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

(4) ***Duty of Class Counsel.*** Class counsel must fairly and adequately represent the interests of the class.

(h) Attorney's Fees and Nontaxable Costs. In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement. The following procedures apply:

(1) A claim for an award must be made by motion under Rule 54(g)—subject to the provisions of this rule—at a time the court sets. Notice of the motion must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

(2) A class member, or a party from whom payment is sought, may object to the motion.

(3) The court may hold a hearing and must find the facts and state its legal conclusions under Rule 52(a).

(4) The court may refer issues related to the amount of the award to a special master, as provided in Rule 53.

Rule 23.1. Derivative ~~actions by shareholders~~Actions

(a) Applicability. ~~In a derivative action brought by~~ This rule applies when one or more shareholders ~~or members to enforce a right~~ , members, or partners—as applicable—of a corporation ~~or of an~~, limited liability company, limited partnership, or unincorporated association~~,~~ bring a derivative action to enforce a right that the corporation ~~or~~, limited liability company, limited partnership, or unincorporated association ~~having~~may properly assert but has failed to enforce ~~a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the plaintiff complains or that the share or membership thereafter devolved on the plaintiff by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action the plaintiff desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the~~.

(b) Pleading Requirements. The complaint must:

(1) be verified;

(2) allege facts sufficient to show that the plaintiff has standing to maintain the derivative action; and

(3) allege facts sufficient to show that the plaintiff satisfies all statutory and other requirements under the law for maintaining the derivative action.

(c) Settlement, Voluntary Dismissal, and Compromise. A derivative action may not be settled, voluntarily dismissed, or compromised without court approval ~~of the court, and notice of the~~. Notice of a proposed settlement, voluntary dismissal, or compromise ~~shall~~must be given to shareholders ~~or members in such manner as the court directs.~~, members, or partners—as applicable—in the manner that the court orders. If the court determines that a proposed settlement, voluntary dismissal, or compromise will substantially affect the interests of the shareholders, members, or partners—or a class of shareholders, members, or partners—the court must order that notice be given to the affected shareholders, members or partners.

Rule 23.2. Actions ~~r~~Relating to ~~u~~Unincorporated ~~a~~Associations

~~An~~This rule applies to an action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties. The action may be maintained only if it appears that ~~the representative~~those parties will fairly and adequately protect the interests of the association and its members. In ~~the conduct of~~conducting the action, the court may ~~make~~enter any appropriate orders corresponding with those ~~described~~ in Rule 23(d), and the procedure for settlement, voluntary dismissal, or compromise ~~of the action shall~~must correspond with th~~at~~e pro~~vid~~cedure in Rule 23(e).

Rule 24. Intervention

~~Rule 24(a).~~ **Intervention of ~~right~~Upon Right.** On timely ~~application~~motion, the court must permit anyone ~~shall be permitted~~ to intervene ~~in an action:~~ who:

(1) ~~when a statute confers~~ has an unconditional right to intervene under a statute; or

(2) ~~when the applicant~~ claims an interest relating to the ~~property or transaction which is the~~ subject of the action, and ~~the applicant~~ is so situated that ~~the disposition~~disposing of the action in the person's absence may as a practical matter impair or impede the ~~applicant's~~person's ability to protect that interest, unless ~~the applicant's interest is adequately represented by~~ existing parties adequately represent that interest.

~~Rule 24(b).~~ **Permissive ~~intervention~~Intervention.**

(1) ***Generally.*** ~~Upon~~ On timely ~~application~~motion, the court may permit anyone ~~may be permitted~~ to intervene ~~in an action~~who:

~~1.~~ **(A)** ~~When a statute confers~~ has a conditional right to intervene~~.~~ under a statute; or

~~2.~~ **(B)** ~~When an applicant's~~ has a claim or defense ~~and~~that shares with the main action ~~have~~ a common question of law or fact ~~in common~~.

(2) ***By a Government Officer or Agency.*** On timely motion, the court may permit a state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under a statute administered by the officer or agency.

(3) ***Delay or Prejudice.*** In exercising its discretion over permissive intervention, the court ~~shall~~must consider whether the intervention will unduly delay or prejudice the adjudication of the ~~rights of the~~ original parties' rights.

~~Rule 24~~(c)~~.~~ Procedure.

(1) ***Requirements of Motion.*** Anyone moving to intervene must:

(A) ~~A person desiring to intervene shall~~ serve ~~a~~the motion ~~to intervene upon~~on the parties as provided in Rule ~~5. The motion shall state the grounds therefor and shall be accompanied by~~5; and

(B) attach as an exhibit to the motion a copy of the proposed pleading ~~setting forth~~in intervention that sets out the claim or defense for which intervention is sought.

(2) ***Filing and Service of Pleading in Intervention.*** Unless the court orders otherwise, an intervenor must file and serve the pleading in intervention within 10 days after entry of the order granting the motion to intervene.

(3) ***Response to Pleading in Intervention.*** If the pleading in intervention is one to which a party must respond, that party must plead in response to the pleading in intervention within 20 days after it is served. If the pleading in intervention does not require a party to file a responsive pleading, that party may plead in response to the pleading in intervention within 20 days after it is served.

~~**Rule 24(d). Time to answer**~~

~~If the motion to intervene is granted, the plaintiff and defendant shall be allowed a reasonable time, not exceeding twenty days, in which to answer the pleading of the intervener.~~

Rule 25. Substitution of Parties

~~Rule 25~~(a)~~.~~ Death.

(1) ***Substitution if the Claim Is Not Extinguished.*** If a party dies and the claim is not ~~thereby~~ extinguished, the court may order substitution of the proper ~~parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rules 4, 4.1 or 4.2, as applicable, of these rules for the service of a summons. Unless the motion for substitution~~party. Any party or the decedent's successor or representative may file a motion to substitute. If the motion is not made ~~not later than 90 days after the death is suggested upon the record by service~~

~~of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party~~within 90 days after a statement noting the death is served, the court must dismiss the claims by or against the decedent.

(2) ***Statement Noting Death.*** A party or the decedent's successor or representative may file a statement noting the death of a party. If filed by a party, the statement must identify the decedent's successor or representative if one exists and is known by the party filing the statement. Anyone filing a statement noting death must serve the statement on the parties as provided in Rule 5 and on nonparties in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable. ~~In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.~~

(3) ***Service of Motion to Substitute.*** Anyone filing a motion to substitute must serve the motion on the parties as provided in Rule 5 and on the decedent's successor or representative in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(4) ***Continuation Among the Remaining Parties.*** After a party's death, if the claim survives only for or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

~~Rule 25(b). Death of defendant after tort action commenced~~

~~An action to recover damages for injuries to the person, or death caused by the wrongful act, default or neglect of another, shall not abate by reason of the death of the defendant, and the decedent's personal representative may be substituted as defendant. If the action is against a receiver, assignee or trustee, and such receiver, assignee or trustee dies, resigns or is removed from office, the successor in office may be substituted as defendant. The action shall thereupon proceed to judgment as if the defendant had remained alive, or the original receiver, assignee or trustee had continued in office.~~

~~Rule 25(c). Incompetency~~

(b) Incompetency. If a party becomes incompetent, the court ~~upon motion served as provided in subdivision (a) of this Rule may allow~~may—on motion or on stipulation of the parties and the incompetent party's representative—permit the action to be continued by or against the party~~'s representative.~~'s representative. Anyone filing such a motion must serve the motion on the parties as provided in Rule 5 and on the representative of the incompetent party in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

~~**Rule 25(d**~~**c**~~**).**~~ **Transfer of Interest.** If a party's interest~~In case of any transfer of interest~~ is transferred, the action may be continued by or against ~~the original~~that party, unless the court ~~upon motion directs the person to whom the interest is transferred~~—on motion or on stipulation of the parties and the transferee—orders the transferee to be substituted in the action or joined with the original party. ~~Service of the motion shall be made~~Anyone filing such a motion must serve the motion on the parties as provided in ~~subdivision (a) of this~~ Rule 5 and on the transferee in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

~~**Rule 25(e**~~**d**~~**).**~~ **Public ~~officers; death or separation from office~~**~~1. When~~**Officers; Death or Separation from Office.** An action does not abate when a public officer who is a party ~~to an action~~ in an official capacity ~~and during its pendency~~ dies, resigns, or otherwise ceases to hold office~~,~~ while the action ~~does not abate and the~~is pending. The officer~~'~~'s successor is automatically substituted as a party. ~~Proceedings following~~Counsel for the public officer must file a notice of the substitution ~~shall~~and later proceedings should be in the ~~name of the~~ substituted party's name, but any misnomer not affecting the parties' substantial rights ~~of the parties shall~~must be disregarded. ~~An~~The court may order ~~of~~ substitution ~~may be entered~~ at any time, but the ~~omission to enter~~absence of such an order ~~shall~~does not affect the substitution.

~~2. A public officer who sues or is sued in an official capacity may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.~~

~~V. Depositions and Discovery~~**V. DISCLOSURE AND DISCOVERY**

Rule 26. General Provisions Governing Discovery

~~Rule 26~~(a)~~.~~ Discovery ~~methods~~~~Parties~~Methods. A party may obtain discovery by ~~one or more~~any of the following methods:

(1) depositions ~~upon~~by oral examination or written questions under Rules 30 and 31, respectively;

(2) written interrogatories under Rule 33;

(3) production of documents or things or permission to enter ~~upon~~onto land or other property, for inspection and other purposes under Rule 34;

(4) physical and mental examinations under Rule 35; ~~and~~

(5) requests for admission under Rule 36; and

(6) subpoenas for production of documentary evidence or for inspection of premises under Rule 45(c).

~~Rule 26~~(b)~~.~~ Discovery ~~s~~Scope and ~~limits~~Limits. Unless ~~otherwise limited by order of~~ the court orders otherwise in accordance with these rules, the scope of discovery is as follows:

(1) ~~*In General.*~~ ***Generally.***

(A) *Scope.* Parties may obtain discovery regarding any nonprivileged matter~~, not privileged, which~~ that is relevant to the subject matter ~~involved in~~of the pending action, ~~whether it relates to~~including matters relevant to: (i) the claim or defense of ~~the party seeking discovery or to the claim or defense of any other party, including~~any party; (ii) the existence, description, nature, custody, condition and location of any books, documents, or other tangible things; and (iii) the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the~~at~~ information ~~sought~~ appears reasonably calculated to lead to the discovery of admissible evidence.

(B) *Specific Limits on Discovery of Electronically Stored Information.* A party need not provide discovery of electronically stored information from sources that the party ~~identifies as~~shows are not reasonably accessible because of undue burden or expense. ~~On motion to compel discovery or for a protective order, the party~~

~~from whom discovery is sought must show~~If a party makes that showing, the ~~information is not reasonably accessible because of undue burden or expense. If that showing is made, the~~ court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause, considering the ~~limitations in the final paragraph of subsection (b)(1) of this Rule~~limits of Rule 26(b)(1)(C). The court may specify conditions for the disclosure or discovery.

(C) *Limits on Discovery.* ~~The frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court~~ The court—on motion under Rule 26(c) or on its own after reasonable notice to the parties—must limit discovery that would otherwise be permissible if it determines that the discovery: (i) ~~the discovery sought~~ is unreasonably cumulative or duplicative~~, or obtainable~~; (ii) can be obtained from ~~some other~~another source that is ~~either~~ more convenient, less burdensome, or less expensive; (~~ii)~~iii) seeks information that the party ~~seeking discovery~~ has had ample opportunity ~~by discovery in the action~~ to obtain ~~the information sought~~; or (~~iii) the discovery~~iv) is unduly burdensome or expensive~~,~~ given the needs of the ~~case~~action, the importance of the discovery in resolving the issues and achieving a just resolution of the action on the merits, the importance of the issues at stake, the amount in controversy, ~~limitations on~~and the parties' ~~resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c)~~' resources.

(2) ***Insurance Agreements.*** Disclosure of insurance agreements is required under Rule 26.1(a)(10). ~~*Insurance agreements.* A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.~~

(3) ***Work Product and Witness Statements.***

(A) *Documents and Tangible Things Prepared in Anticipation of Litigation or for Trial* ~~*preparation: Materials.* Subject to the provisions of subdivision (b)(4) of this rule~~. Ordinarily, a party may ~~obtain discovery of~~not discover documents and tangible things ~~otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for~~that another party or ~~by or for that other party's~~its representative (including the other party~~'~~'s attorney, consultant, surety, indemnitor, insurer, or agent) ~~only upon a showing that the~~

~~party seeking discovery~~prepared in anticipation of litigation or for trial. But, subject to Rule 26(b)(4), a party may discover those materials if:

(i) the materials are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has a substantial need ~~of~~for the materials ~~in the preparation of the party's~~to prepare its case and ~~that the party is unable~~cannot, without undue hardship ~~to~~, obtain their substantial equivalent ~~of the materials~~ by other means. ~~In ordering~~

(B) *Protection Against Disclosure of Opinion Work Product.* If the court orders discovery of ~~such~~ materials ~~when the required showing has been made, the court shall~~under Rule 26(b)(3)(A), it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of ~~an~~party's attorney or other representative ~~of a party~~ concerning the litigation.

(C) *Discovery of Own Statement.* ~~A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain~~ Any party or other person may—on request and without the showing required ~~showing a~~under Rule 26(b)(3)(A)—obtain the party's or other person's own previous statement ~~concerning~~about the action or its subject matter ~~previously made by that person~~. If the request is refused, the party or other person may move for a court order~~.~~ ~~The provisions of~~, and Rule 37(a)(4) appl~~y~~ies to the award of expenses ~~incurred in relation to the motion. For purposes of this paragraph, a~~. A statement ~~previously made is (A~~discoverable under this rule is either:

(i) a written statement that the party or other person signed or otherwise adopted or approved ~~by the person making it,~~; or

~~(B) a~~**ii)** a contemporaneous stenographic, ~~mechanical, electrical~~video, audio, or other recording~~,~~ or a transcription ~~thereof, which is a~~of it—that recites substantially verbatim ~~recital of an~~the party's or other person's oral statement ~~by the person making it and contemporaneously recorded~~.

(4) ~~*Trial Preparation: Experts.*~~ ***Expert Discovery.***

(A) *Deposition of an Expert Who May Testify.* A party may depose any person who has been ~~identified~~disclosed as an expert ~~whose opinions may be presented at trial~~witness under Rule 26.1(a)(6).

(B) ~~A~~ *Expert Employed Only for Trial Preparation.* Ordinarily, a party may ~~through interrogatories or by deposition~~not discover facts known or opinions held by an expert who has been retained or specially employed by another party

in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial~~,~~. A party may discover such facts or opinions only:

(i) as provided in Rule 35(b); or ~~upon a~~

(ii) on showing ~~of~~ exceptional circumstances under which it is impracticable for the party ~~seeking discovery~~ to obtain facts or opinions on the same subject by other means.

(C) *Payment.* Unless manifest injustice would result, ~~(i)~~ the court ~~shall~~must require that the party seeking discovery :

(i) pay the expert a reasonable fee for time spent in responding to discovery under ~~subdivisions~~ Rule 26(b)(4)(A) ~~and (b)(4)~~or (B) ~~of this rule~~; and

(ii) ~~with respect to~~ for discovery ~~obtained~~ under ~~subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to~~Rule 26(b)(4)(B), also pay the other party a fair portion of the fees and expenses it reasonably incurred ~~by the latter party~~ in obtaining the expert's facts and opinions ~~from the expert~~.

(D) *Number of Experts Per Issue.*

(i) *Generally.* ~~In all cases including medical malpractice cases~~ Unless the parties agree or the court orders otherwise for good cause, each side ~~shall~~is presumptively ~~be~~ entitled to call only one ~~independent~~retained or specially employed expert to testify on an issue~~, except upon a showing of good cause. Where~~. When there are multiple parties on a side and those parties cannot agree ~~as to~~on which ~~independent~~ expert ~~will be called~~to call on an issue, the court ~~shall~~may designate the ~~independent~~ expert to be called or~~, upon the showing of~~ for good cause~~, may~~ allow more than one ~~independent~~ expert to be called.

(ii) *Standard-of-Care Experts in Medical Malpractice Actions.* ~~In medical malpractice cases, each party shall presumptively be entitled to only one standard-of-care expert. A defendant may testify on the issue of that defendant's standard-of-care~~ Notwithstanding the limits of Rule 26(b)(4)(D)(i), a defendant in a medical malpractice action may in addition to that defendant~~'s independent~~'s standard-of-care expert witness ~~and~~ testify on the issue of that defendant's standard-of-care. In such an instance, the court ~~shall~~is not ~~be~~ required to allow the plaintiff an additional expert witness on the issue of the standard-of-care.

(5) ***Notice of Non-party at Fault.*** ~~Any party who alleges, pursuant to A.R.S. § 12-2506(B), that a person or entity~~ No later than 150 days after filing its answer, a

party must serve on all other parties—and may file with the court—a notice disclosing any person: (A) not currently or formerly named as a party in the action; and (B) whom the party alleges was wholly or ~~partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action shall provide the identity, location, and~~partly at fault under A.R.S. § 12-2506(B). The notice must: (A) disclose the identity and location of the non-party allegedly at fault; and (B) disclose the facts supporting the ~~claimed liability of such non-party within one hundred fifty (150) days after the filing of that party's answer~~allegation of fault. The trier of fact ~~shall~~may not ~~be permitted to~~ allocate ~~or apportion~~ any percentage of fault to ~~any~~a non-party ~~whose identity~~who is not disclosed in accordance with ~~the requirements of~~ this ~~subsection~~rule except ~~upon written agreement of~~on stipulation of all the parties or ~~upon~~on motion ~~establishing~~showing good cause, reasonable diligence, and lack of unfair prejudice to all other parties.

~~Rule 26~~(c)~~.~~ Protective ~~orders~~Orders.

(1) ***Generally.*** ~~Subject to paragraph (2) of this rule, upon motion by a~~ A party or ~~by the~~any person from whom discovery is sought~~, and for good cause shown,~~ may move for a protective order in the court ~~in which~~where the action is pending —or alternatively, on matters relating to a deposition, the court in the county where the deposition ~~is to be taken, may make any order which justice requires~~will be taken. Subject to Rule 26(c)(4), the court may, for good cause, enter an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) ~~(1) that~~ forbidding the discovery ~~not be had~~;

B) ~~(2) that the discovery may be had only on specified~~ specifying terms and conditions, including ~~a designation of the~~ time ~~or~~and place~~; (3) that~~, for the discovery ~~may be had only by a~~;

(C) prescribing a discovery method ~~of discovery~~ other than ~~that~~the one selected by the party seeking discovery;

D) ~~(4) that~~ forbidding inquiry into certain matters ~~not be inquired into~~, or ~~that~~limiting the scope of ~~the~~ discovery ~~be limited~~ to certain matters;

E) ~~(5) that~~ designating the persons who may be present while the discovery ~~be~~is conducted ~~with no one present except persons designated by the court~~;

F) (~~6)~~ requiring that a deposition ~~after being~~be sealed ~~be~~and opened only ~~by order of the~~on court order;

G) (~~7)~~ requiring that a trade secret or other confidential research, development, or commercial information not be ~~disclosed~~revealed or be ~~disclosed~~revealed only in a ~~designated~~specified way; and

(~~8)~~**H)** requiring that the parties simultaneously file specified documents or information ~~enclosed~~ in sealed envelopes, to be opened as ~~directed by~~ the court directs.

(2) ***Ordering Discovery.*** If ~~the~~a motion for a protective order is wholly or partly denied ~~in whole or in part~~, the court may, on ~~such~~just terms ~~and conditions as are just~~, order that any party or person provide or permit discovery. ~~The provisions of~~

(3) ***Awarding Expenses.*** Rule 37(a)(4) appl~~y~~ies to the award of expenses ~~incurred in relation to the~~on a motion for a protective order.

(~~2)~~**4)** ***Confidentiality Orders.***

(A) *Burden of Proof.* Before ~~entering~~the court may enter an order ~~in any way restricting~~that limits a party or person from disclosing information or materials produced in ~~discovery~~the action to a person who is not a party to the ~~litigation in which the information or materials are being discovered or denying an intervener'~~action and before the court may deny an intervenor's request for access to such discovery materials~~, a court shall direct~~: (a) the party seeking confidentiality ~~to~~must show why a confidentiality order should be entered or continued; and (b) the party or interven~~e~~or opposing confidentiality ~~to~~must show why a confidentiality order should be denied in whole or in part, modified or vacated. The burden of showing good cause for an order ~~shall remain~~remains with the party seeking confidentiality. ~~The court shall then~~

(B) *Findings of Fact.* When ruling on a motion for a confidentiality order, the court must make findings of fact concerning any relevant factors, including but not limited to: (i) any party~~'~~'s or person's need to maintain the confidentiality of such information or materials; (ii) any nonparty~~'~~'s or interven~~e~~or~~'~~'s need to obtain access to such information or materials; and (iii) any possible risk to the public health, safety, or financial welfare to which such information or materials may relate or reveal. ~~Any order restricting release of such information or materials to nonparties or interveners shall use the least restrictive means to maintain any needed confidentiality.~~ No such findings of fact are needed ~~where~~if the parties

have stipulated to such an order or ~~where~~if a motion to intervene and to obtain access to materials subject to a confidentiality order ~~are not opposed~~is unopposed.

(C) *Least Restrictive Means.* An order restricting release of information or materials to nonparties or intervenors must use the least restrictive means necessary to maintain any needed confidentiality.

~~**Rule 26(d).**~~ **Sequence ~~and timing of discovery~~of Discovery.** Unless, on motion, the court ~~upon motion,~~orders otherwise for the ~~convenience of~~ parties' and witnesses' convenience and in the interests of justice~~, orders otherwise,~~ :

(1) methods of discovery may be used in any sequence; and ~~the fact that a party is conducting~~

(2) discovery~~, whether by deposition or otherwise, shall not operate to delay~~ by one party does not require any other party~~'s~~ to delay its discovery.

(e) Supplementing Discovery Responses. A party who has responded to an interrogatory, request for production, or request for admission must supplement or correct its response if it learns that the response was or has become materially incomplete or incorrect and if the additional or corrective information has not otherwise been disclosed to the other parties during the discovery process or in writing. A party must supplement or correct a discovery response under this rule in a timely manner, but in no event more than 30 days after it learns that the response is materially incomplete or incorrect.

~~**Rule 26(e). Supplementation of responses**~~

~~Except as provided in Rule 26.1 a party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:~~

~~(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify and the substance of the person's testimony, (C) the identity of any other person expected to be called as a witness at trial and (D) the identity, location and the facts supporting the~~

~~liability of any nonparty who is claimed to be wholly or partially at fault in causing any personal injury, property damage or wrongful death, pursuant to A.R.S. § 12-2506(B) (as amended). A party shall supplement responses with respect to any question directly addressed to (B), (C) or (D) prior to sixty (60) days before the date of trial. Any witness not identified in accordance with this Rule shall not be permitted to testify except for good cause shown or upon written agreement of the parties. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any nonparty whose identity is not disclosed in accordance with subpart (D) of this rule except for good cause shown or upon written agreement of the parties.~~

~~(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which (A) the party knows that the response was incorrect when made, or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.~~

~~(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.~~

~~**Rule 26(f). Discovery requests, responses, objections and sanctions**~~

(f) Sanctions. The court ~~shall assess~~may impose an appropriate sanction —including any order under Rule 16(i) —against ~~any~~a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with discovery.

(g) Discovery Motions. ~~**Rule 26(g). Discovery motions**~~ Any discovery motion must attach a good faith consultation certificate complying with Rule 7.2(h).

~~No discovery motion will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.~~

Rule 26.1. Prompt ~~d~~Disclosure of ~~i~~Information

(a) Duty to Disclose~~, Scope.~~; Disclosure Categories. Within the times set forth in ~~subdivision (b)~~Rule 26.1(d) or in a Scheduling Order, each party ~~shall~~must disclose in writing ~~to every other party~~and serve on all other parties a disclosure statement that sets forth:

(1) The factual basis of ~~the claim or defense. In the event of multiple~~each of the disclosing party's claims or defenses~~, the factual basis for each claim or defense.~~;

(2) The legal theory ~~upon~~on which each ~~claim or defense~~of the disclosing party's claims or defenses is based, including~~, where~~ if necessary for a reasonable understanding of the claim or defense~~,~~ citations ~~of pertinent~~to relevant legal ~~or case~~ authorities~~.~~;

(3) The name~~s~~, address~~es~~, and telephone number~~s~~ of ~~any~~each witness~~es~~ whom the disclosing party expects to call at trial ~~with~~, and a ~~fair~~ description of the substance—and not merely the subject matter—of the testimony sufficient to fairly inform the other parties of each witness~~'~~' expected testimony~~.~~;

(4) The name~~s~~ and address~~es~~ of ~~all~~each person~~s~~ whom the disclosing party believes may have knowledge or information relevant to the ~~events, transactions, or occurrences that gave rise to~~subject matter of the action, and a fair description of the nature of the knowledge or information each such ~~individual~~person is believed to possess~~.~~;

(5) The name~~s~~ and address~~es~~ of ~~all persons who have given statements, whether written or recorded, signed or unsigned~~each person who has given a statement—as defined in Rule 26(b)(3)(C)(i) and (ii)—relevant to the subject matter of the action, and the custodian of ~~the copies~~each of those statements~~.~~;

(6) The name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the expert's qualifications ~~of the witness~~, and the name and address of the custodian of copies of any reports prepared by the expert~~.~~;

(7) A computation and ~~the~~ measure of ~~damage~~each category of damages alleged by the disclosing party ~~and~~, the documents or testimony on which such computation and measure are based, and the name~~s~~, address~~es~~, and telephone ~~numbers of all damage~~

~~witnesses.~~number of each witness whom the disclosing party expects to call at trial to testify on damage;

(8) The existence, location, custodian, and general description of any tangible evidence, ~~relevant~~ documents, or electronically stored information that the disclosing party plans to use at trial ~~and relevant insurance agreements.~~;

(9) The existence, location, custodian, and general description of any tangible evidence, documents, or electronically stored information that the disclosing party believes may be relevant to the subject matter of the action; and

~~A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by a party to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection, copying, testing or sampling. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.~~

(10) For any insurance policy, indemnity agreement, or suretyship agreement under which another person may be liable to satisfy part or all of a judgment entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, (A) the existence and contents of the insurance policy, indemnity agreement, or suretyship agreement; (B) the existence and contents of any disclaimer, limitation or denial of coverage or reservation of rights under the insurance policy, indemnity agreement, or suretyship agreement; and (C) the remaining dollar limits of coverage under the insurance policy, indemnity agreement or suretyship agreement. A party need only supplement its disclosure regarding the remaining dollar limits of coverage upon another party's written request made within 30 days before a settlement conference or mediation or within 30 days before trial. Within 10 days after such a request is served, a party must supplement its disclosure of the remaining dollar limits of coverage. For purposes of this rule, an insurance policy means a contract of or agreement for or effecting insurance, or the certificate memorializing it—by whatever name it is

called—and includes all clauses, riders, endorsements, and papers attached to, or a part of, it, but does not include an application for insurance. Information concerning an insurance policy, indemnity agreement, or suretyship agreement is not admissible in evidence merely because it is disclosed under this rule.

(b) Disclosure of Hard Copy Documents and Electronically Stored Information.

(1) ***Hard Copy Documents.*** Unless there is good cause for not doing so, a party must serve with its disclosure a copy of any documents existing in hard copy that it has identified under Rule 26.1(a)(8), (9), and (10). If production is not so made, the party must provide with its disclosure the name and address of the custodian of the documents. A party who produces hard copy documents for inspection must produce them as they are kept in the usual course of business.

(2) ***Electronically Stored Information.***

(A) *Duty to Confer.* When the existence of electronically stored information is disclosed or discovered, the parties must confer promptly and attempt to agree on matters relating to its disclosure and production, including:

(i) requirements and limits on the disclosure and production of electronically stored information;

(ii) the form in which the information will be produced; and

(iii) if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing the information.

(B) *Resolution of Disputes.* If the parties are unable to satisfactorily resolve any dispute, they may present it to the court for resolution in a single joint motion. The joint motion must include the parties' positions and the separate certification from all counsel required under Rule 26(g).

(C) *Production of Electronically Stored Information.* Unless the parties agree or the court orders otherwise, within 40 days after serving its initial disclosure statement, a party must produce the electronically stored information identified under Rule 26.1(a)(8) and (9). Absent good cause, no party need produce the same electronically stored information in more than one form.

(D) *Presumptive Form of Production.* Unless the parties agree or the court orders otherwise, a party must produce electronically stored information in the form requested by the receiving party. If the receiving party does not specify a form, the producing party may produce the electronically stored information in native form or in another reasonably usable form that will enable the receiving party to

have the same ability to access, search, and display the information as the producing party.

(c) Purpose; Scope.

(1) ***Purpose.*** The purpose of the disclosure requirements of this Rule 26.1 is to ensure that all parties are fairly informed of the facts, legal theories, witnesses, documents, and other information relevant to the action.

(2) ***Scope.*** A party must include in its disclosures information and data in its possession, custody and control as well as that which it can ascertain, learn, or acquire by reasonable inquiry and investigation.

(d) Time for Disclosure; ~~a~~ Continuing Duty.

(1) ***Initial Disclosures.*** ~~The parties shall make the~~ Unless the parties agree or the court orders otherwise, a party seeking affirmative relief must serve its initial disclosure ~~required by subdivision~~ of information under Rule 26.1(a) as fully as then reasonably possible ~~within forty (40)~~no later than 40 days after the filing of ~~a~~the first responsive pleading to the ~~Complaint, Counterclaim, Crossclaim or Third Party Complaint unless the parties otherwise agree, or the Court shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the disclosures shall be served as provided by Rule 5. In domestic relations cases involving children whose custody is at issue, the parties shall make disclosure regarding custody issues no later than 30 days after mediation of the custody dispute by the conciliation court or a third party results in written notice acknowledging that mediation has failed to settle the issues, or at some other time set by court order~~complaint, counterclaim, crossclaim or third party complaint that sets forth the party's claim for affirmative relief. Unless the parties agree or the court orders otherwise, a party filing a responsive pleading must serve its initial disclosure of information under Rule 26.1(a) as fully as then reasonably possible no later than 40 days after it files its responsive pleading.

(2) ***Additional or Amended Disclosures.*** The duty of disclosure prescribed in ~~subdivision~~ Rule 26.1(a) ~~shall be~~is a continuing duty, and each party ~~shall make~~must serve additional or amended disclosures whenever new or additional information is discovered or revealed. ~~Such~~A party must serve such additional or amended disclosures ~~shall be made seasonably~~in a timely manner, but in no event more than ~~thirty (~~30~~)~~ days after the information is revealed to or discovered by the disclosing party. If the information is disclosed in a written discovery response or a deposition in a manner that reasonably informs all parties of the information, the information need not be presented in a supplemental disclosure statement. A party

seeking to use information ~~which~~ that ~~party~~it first disclosed later than ~~(A)~~ the deadline set in a Scheduling Order~~,~~ or ~~(B)~~ in the absence of such a deadline, ~~sixty (~~later than 60~~)~~ days before trial~~,~~ must ~~seek~~obtain leave of court to extend the time for disclosure as provided in Rule 37(c)(2) or (c)(3).

~~(3) All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.~~

~~**(d) Signed Disclosure.**~~

e) Signature Under Oath. Each disclosure ~~shall~~must be ~~made~~ in writing and signed under oath~~, signed~~ by the party making the disclosure.

(f) Claims of Privilege or Protection of ~~Trial Preparation~~Work Product Materials.

(1) ***Information Withheld.*** When a party withholds information ~~is withheld~~ from disclosure or discovery on a claim that it is privileged or subject to protection as ~~trial-preparation materials, the claim shall be made~~ work product, the party must:

(A) expressly make the claim; and ~~shall be supported by a description of~~

(B) describe the nature of the ~~documents, communications, or things~~information not produced or disclosed ~~that is sufficient to~~in a manner that—without revealing information that is itself privileged or protected—will enable other parties to ~~contest~~assess the claim.

(2) ***Information Produced.*** If a party contends that information subject to a claim of privilege or of protection as ~~trial-preparation~~work product material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party ~~that~~who received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has ~~made and may~~; must not use or disclose the information until the claim is resolved~~. A receiving party~~; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim~~. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it~~. The producing party must preserve the information until the claim is resolved.

Rule 26.2. Exchange of ~~r~~Records and ~~d~~Discovery ~~limitations~~Limits in ~~m~~Medical ~~m~~Malpractice ~~cases~~Actions

(a) Exchange of Medical Records.

(1) ***By Plaintiff.*** Within ~~five~~5 days ~~of~~after the date that plaintiff notifies the court ~~pursuant to~~under Rule 16(e)~~ of these Rules~~ that all served defendants have either answered or filed motions, plaintiff ~~shall~~must serve ~~upon~~on defendants copies of all of plaintiff~~'~~'s available medical records relevant to the condition ~~which~~that is the subject matter of the action.

(2) ***By Defendants.*** Within ~~ten~~10 days ~~of~~after the date ~~of service by~~ plaintiff ~~of such~~serves medical records under Rule 26.2(a)(1), each defendant ~~shall~~must serve ~~upon~~on plaintiff copies of all of plaintiff~~'~~'s available medical records relevant to the condition ~~which~~that is the subject matter of the action.

(3) ***By Request.*** In lieu of serving copies of the above-described medical records, counsel may~~,~~ before the ~~date set~~deadline for ~~exchange~~service of the records~~,~~ inquire of opposing counsel concerning the ~~documents or electronically stored information which~~records that opposing counsel wishes produced and may then ~~produce~~serve by the deadline copies of only those records ~~which are~~ specifically requested.

(b)~~ Discovery Limitations.~~ Discovery Limits Before Comprehensive Pretrial Conference.

(1) ***Generally.*** ~~Before the comprehensive pretrial conference contemplated by Rule 16(e) of these Rules, the parties may exchange~~ Unless the parties agree or the court orders otherwise for good cause, the parties are limited to the following discovery before the Comprehensive Pretrial Conference under Rule 16(e) is held:

(A) Service of the uniform interrogatories set forth in ~~the Appendix and~~Rule 84, Form 4;

(B) Service of 10 additional non-uniform interrogatories~~. Any subparagraph of~~ under Rule 33, with any subpart to a non-uniform interrogatory ~~will be treated as one non-uniform~~counting as a separate interrogatory~~. The parties may also submit~~;

(C) Service of a request for production of documents ~~pursuant to~~under Rule ~~34 of these Rules, requesting~~34, limited to the following items:

~~1.~~ **(i)** ~~A~~ a party~~'~~'s wage information ~~where~~if relevant~~.~~;

~~2.~~ **(ii)** ~~Written~~ written or recorded statements by any party or witness, including reports or statements of experts~~.~~;

~~3.~~ **(iii)** ~~Any~~ any exhibits ~~intended~~the party intends to ~~be used~~use at trial~~.~~; and

4. **(iv)** Incident incident reports.; and

(D) In addition, the depositions Depositions of the parties and any known liability experts may be taken. No other discovery is permitted before the comprehensive pretrial conference except pursuant to stipulation of the parties, or, upon motion and a showing of good cause. Stipulations for additional discovery shall not be unreasonably withheld.

(2) ***Stipulations for Additional Discovery.*** A party may not unreasonably withhold a stipulation for additional discovery under Rule 26.2(b)(1). A party or counsel who unreasonably withholds a stipulation for additional discovery is subject to sanctions under Rule 26(f).

Rule 27. Depositions Discovery Before an Action Is Filed or PendingDuring an Appeal

Rule 27(a). Before action; petition; notice and service; order and examination; use of deposition

(a) Before an Action Is Filed.

1.**(1)** ***Petition.*** A person who desireswants to perpetuate that person's own testimony or that of another person regardingto obtain discovery to preserve evidence about any matter that may be cognizable in any Arizona state court may file a verified petition in the superior court in the county of the residence ofwhere any expected adverse party resides. The petition shallmust be entitledtitled in the petitioner's name of the petitioner and shall must:

(A) show:(i) That that the petitioner expects to be a party to an action cognizable in aany Arizona state court but iscannot presently unable to bring it or cause it to be brought.;

B) (ii) The identify the subject matter of the expected action and the petitioner'.'s interest therein.;

C) (iii) The show the facts whichthat the petitioner desires to establish by the proposed testimonydiscovery and the reasons for desiring to perpetuate it.perpetuating it in advance of the expected action;

D) (~~iv) The names~~ identify the name or a description of ~~the persons~~each person whom the petitioner expects ~~will~~to be an adverse ~~parties and their addresses so far as known.~~party and the person's address to the extent known;

E) (~~v) The names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each. The petition shall also ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.~~identify the name and address of each person from whom discovery is sought—who may but need not be a person identified as an expected adverse party under Rule 27(a)(1)(D)—and the evidence the petitioner expects to obtain from the discovery; and

(F) ask for an order: (i) directing the clerk to issue a subpoena under Rule 45 at the petitioner's request to obtain evidence from each named person in order to preserve the evidence; or (ii) under Rule 35 for a physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party.

(2) ***Hearing Required.*** Unless the petitioner and all expected adverse parties file a stipulation agreeing to the discovery requested in the petition, the court must hold a hearing on the relief that the petition seeks.

(3) ***Notice and Service.*** ~~2. The~~ At least 20 days before the hearing date, the petitioner ~~shall thereafter~~must serve ~~a notice upon~~ each ~~person named in the petition as an~~ expected adverse party~~, together~~ with a copy of the petition~~,~~ and a notice stating ~~that the petitioner will apply to the court, at a~~the time and place ~~named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or without the state~~of the hearing. If an expected adverse party is a minor or incompetent, Rule 17(g) applies. The petition and notice may be served either inside or outside Arizona in the manner provided in ~~Rule 4.1 or Rule 4.2 of these rules for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for~~Rules 4, 4.1, or 4.2 for serving a summons and pleading. If the petition seeks an order under Rule 35 for a physical or mental examination, the petition and notice must be served on the expected adverse party whose examination is sought or who has custody or legal control of the person whose examination is sought. In all other instances, if service cannot be made with reasonable diligence on an expected adverse party, the court may order service by publication or otherwise~~, and shall appoint, for persons not served in the manner provided in Rule 4.1 or Rule 4.2 an attorney who shall represent them, and,~~

~~in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent, the provisions of Rule 17(g) shall apply.~~.

(4) ***Opposition and Reply.*** At least 7 calendar days before the hearing date, any expected adverse party may file an opposition to the petition. The opposition must be served on the petitioner and each other expected adverse party using any of the methods described in Rule 5(c). Unless the court orders otherwise, the petitioner may not file a reply memorandum.

(5) ***Order and Effect.***

~~3.~~**(A)** *Order.* If ~~the court is~~ satisfied that ~~the perpetuation of~~perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, ~~it shall make an order designating or describing the persons whose depositions may be taken and specifying~~the court must enter an order that identifies each person who may be served with a subpoena under Rule 45 to obtain testimony or to allow inspection of documents or premises and specifies the subject matter of the permitted examination~~ and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with these Rules, and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the~~.

(B) *Effect and Use.* Discovery authorized by the court must be conducted, and may be used, as provided in these rules. A reference in these rules to the court where an action is pending ~~shall be deemed to refer to~~ means—for this rule's purposes—the court ~~in which~~where the petition for ~~such deposition~~the discovery was filed.~~4. If a~~ A deposition to perpetuate testimony ~~is~~ taken under these ~~Rules, it~~rules may be used under Rule 32(a) in any later-filed action in an Arizona state court involving the same subject matter~~ subsequently brought, in accordance with the provisions of Rule 32(a~~. Subpoena recipients have the rights of non-parties under Rule 45 regardless of whether they are identified as an expected adverse party under Rule 27(a)(1)(D).

(C) *Appointment of Counsel.* If a court authorizes a deposition but an expected adverse party is not served in the manner provided in Rules 4, 4.1, or 4.2 and is otherwise unrepresented by counsel, the court must appoint an attorney to represent that expected adverse party and to cross-examine the deponent. The

petitioner must pay for an appointed attorney's services in an amount fixed by the court.

~~Rule 27~~(b)~~.~~ Pending ~~appeal~~Appeal.

(1) ***Generally.*** The superior court that rendered judgment may—if an appeal has been taken or may still be taken—permit a party to conduct discovery under the rules to preserve evidence for use in any later superior court proceedings in that action.

~~If an appeal has been taken from a judgment of a superior court or before taking an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court.~~

(2) ***Motion.*** ~~In such case the party who desires~~ The party who wants to perpetuate ~~the~~ testimony ~~may make a motion in the court for leave to take the depositions, upon~~or preserve evidence under the rules may move for leave to conduct discovery. The moving party must provide the same notice and ~~service thereof~~serve the motion in the same manner as if the action was still pending in ~~the~~superior court. The motion ~~shall show~~must:

(A) identify the name~~s~~ and ~~addresses of the persons to be examined,~~address of each person to be deposed or from whom discovery under the rules is sought, and the expected substance of the testimony ~~which the party expects to elicit from each and~~or other discovery; and

(B) show the reasons for perpetuating the~~ir~~ testimony or other discovery. ~~If the court finds that the perpetuation of~~

(3) ***Order and Effect.*** If satisfied that perpetuating the testimony ~~is proper to avoid~~or preserving the other evidence may prevent a failure or delay of justice, ~~it~~the court may~~ make an~~ order ~~allowing~~ the ~~depositions~~requested discovery to be taken~~ and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions~~. Discovery authorized by the court must be conducted, and may be ~~taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions taken in actions pending in the superior court~~used, as provided in these rules.

Rule 28. Persons Before Whom Depositions May Be Taken; Depositions in Foreign Countries; Letters of Request and Commissions

~~Rule 28~~(a) Deposition in the United States.

(1) *Generally.* Within the United States~~; **commission** or **letters rogatory**Within the United States or within~~ a territory or insular possession subject to ~~the~~United States jurisdiction~~ of the United States, depositions shall~~, a deposition must be taken before:

(A) an officer authorized to administer oaths by ~~the laws of the United States, the State of~~federal law, Arizona law, or ~~of~~the law in the place ~~where the~~of examination~~ is held, or before~~ ;

(B) a person appointed by the court ~~in which~~where the action is pending~~. A person so appointed has power~~ to administer oaths and take testimony~~. Depositions may be taken in this state or anywhere upon notice provided by these Rules without a commission, letters rogatory or other writ.~~; or

(C) any certified reporter designated by the parties under Rule 29.

(2) *Definition of "Officer".* The term "officer" as used in Rules 30, ~~31~~31, and 32 includes a person appointed by the court under this rule or designated by the parties under Rule 29.

~~Upon proof that the notice to take a deposition outside this state has been given as provided by these Rules, the party seeking such deposition may, but is not required, after one full day's notice to the other parties, have issued by the clerk, in the form given in such notice, a commission or letters rogatory or other like writ either in lieu of the notice to take the deposition or supplementary thereto. Failure to file written objections to such form before or at the time of its issuance shall be a waiver of any objection thereto. Any objection shall be heard and determined forthwith by the court or judge thereof.~~

(b) Deposition in a Foreign Country. ~~Rule 28(b). In foreign countries~~

(1) *Generally.* ~~In~~ A deposition may be taken in a foreign country~~, depositions may be taken (1~~:

(A) under an applicable treaty or convention;

(B) under a letter of request, whether or not captioned a "letter rogatory";

(C) on notice, before a person authorized to administer oaths by federal law, Arizona law, or the law in the place ~~in which the~~of examination ~~is held, either by the law thereof or by the law of the United States, or (2~~; or

(D) before a person commissioned by the court~~, and a person so commissioned shall have the power by virtue of the commission~~ where the action is pending to administer any necessary oath and take testimony~~, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by the name or descriptive title. A letter rogatory~~.

(2) ***Form of a Request, Notice or Commission.*** When a letter of request or any other device is used according to a treaty or convention, it must be captioned in the form prescribed by that treaty or convention. A letter of request may be addressed "To the Appropriate Authority in ~~(here~~ [name ~~the country).~~"of country]." A deposition notice or a commission must designate by name or descriptive title the person before whom the deposition is to be taken.

(3) ***Letter of Request—Admitting Evidence.*** Evidence obtained in response to a letter ~~rogatory~~of request need not be excluded ~~merely for the reason that~~because it is not a verbatim transcript ~~or that~~, because the testimony was not taken under oath, or ~~for~~because of any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Letters of Request and Commissions. ~~Rule 28(c). Disqualification for interest~~

(1) ***Not Required.*** A deposition in a pending superior court action may be taken anywhere upon notice prescribed by these rules without a letter of request, commission, or other like writ.

(2) ***Issuing Letter of Request or Commission.*** The clerk may issue a letter of request—whether or not captioned a "letter rogatory"—a commission, or both:

(A) on appropriate terms after an application and one full day's notice to the other parties; and

(B) without a showing that taking the deposition in another manner is impracticable or inconvenient.

(3) ***Objections; Waiver.*** A party waives any error in the form of a letter of request or commission if it does not file a written objection before the clerk issues the letter of request or commission. The court must rule on any timely filed objection before the clerk may issue a letter of request or commission.

No**(d) Disqualification.** A deposition shallmay not be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a:

(1) any party's relative or, employee of such attorney or counsel, or is , or attorney;

(2) related to or employed by any party's attorney; or

(3) financially interested in the action.

Rule 29. Stipulations regarding discovery procedure Modifying Discovery Procedures and Deadlines

(a) By Stipulation.

(1) ***Generally.*** Unless the court orders otherwise, the parties may by stipulation (1) provide that depositions may be takenstipulate to:

(A) take a deposition before any personcertified reporter, at any time or place, uponon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, including extending the time provided in Rules 33, 34, and 36 for responses to discovery.specified—in which event it may be used in the same way as any other deposition; and

(B) modify other procedures in these rules governing or limiting discovery.

(2) ***Court Order.*** Unless it interferes with court-ordered deadlines, the time set for a hearing, or the time set for trial, a stipulation under Rule 29(a)(1) is effective without court order.

(b) By Motion. A party may move to modify any procedure governing or limiting discovery. The motion must:

(1) set forth the modification sought;

(2) show good cause for the modification; and

(3) comply with Rule 26(g).

Rule 30. Depositions ~~Upon~~by Oral Examination

~~Rule 30~~(a)~~.~~ When a Deposition May Be Taken.

(1) ***Depositions*** ~~**may be taken**~~~~After commencement of the action, the testimony of parties or any expert witnesses expected to be called may be taken by deposition upon oral examination. Depositions of document custodians may be taken~~***Permitted.*** A party may depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (C) any document custodian in order to secure production of documents and ~~to~~ establish evidentiary foundation. ~~No other depositions shall be taken except upon:~~Unless all parties agree or the court orders otherwise for good cause, a party may not depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold a stipulation for additional depositions under this rule.

~~(1) agreement of all parties;~~

~~(2) an order of the court following a motion demonstrating good cause;~~

~~(3) an order of the court following a Scheduling Conference pursuant to Rule 16(d);~~

~~(4) an order of the court following a comprehensive pretrial conference in a medical malpractice case pursuant to Rule 16(e); or~~

~~(5) an order of court following a Trial Setting Conference pursuant to Rule 16(f).~~

(2) ***Depositions by Plaintiff Fewer Than 30 Days After Serving the Summons and Complaint.*** ~~If the~~ A plaintiff ~~seeks~~must obtain leave of court to take a deposition ~~prior to the expiration of~~earlier than 30 days after ~~service of~~serving the summons and complaint ~~upon any defendant or service which is completed under Rule 4.2 of these rules, leave of court, granted with or without notice, is required except that leave is not required: (1) if~~on any defendant unless: (A) a defendant has served a ~~notice of taking~~ deposition notice or otherwise sought discovery under these rules;

or ~~2) if special notice is given as provided in subdivision (b)(2) of this rule. The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken~~ (B) the plaintiff certifies in the deposition notice, with supporting facts, that the deponent is expected to leave Arizona and will be unavailable for deposition after expiration of the 30-day period. If a party shows that it was unable, despite diligent efforts, to obtain counsel to represent it at a deposition taken under this Rule 30(a)(2), the deposition may not be used against that party.

(3) ***Incarcerated Deponents.*** Subject to Rule 30(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court prescribes.

(4) ***Compelling Attendance of Deponent.*** A party may compel a non-party deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party—or an officer, director, or managing agent of a party—need not serve a subpoena under Rule 45.

(b) Notice of a Deposition; Method of Recording; Deposition by Remote Means; Deposition of an Entity; Other Formal Requirements. ~~Rule 30(b). Notice of examination; general requirements; special notice; method of recording; production of documents and things; deposition of organization; deposition by telephone~~

(1) ***Notice Generally.*** ~~Absent a stipulation of~~ Unless all parties ~~to the action or an order of~~agree or the court ~~authorizing a briefer notice, a party desiring to take the deposition of any~~orders otherwise, a party who wants to depose a person ~~upon~~by oral ~~examination shall give~~questions must serve written notice ~~in writing~~ to every other party ~~to the action~~ at least ~~ten~~10 days ~~prior to~~before the date of the deposition. The notice ~~shall~~must state the date, time and place ~~for taking~~of the deposition~~, the name and address of each person to be examined~~ and, if known, ~~and, if~~ the deponent's name and address. If the deponent's name is ~~not known,~~unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs~~, and the name and address of the person before whom the deposition shall be taken~~.

(2) ***Producing Documents.*** If a subpoena duces tecum ~~is to~~has been or will be served on the ~~person to be examined, the designation of~~deponent, the materials ~~to be produced as set forth in the subpoena shall be attached to or included in the notice~~designated for production, as set out in the subpoena, must be listed in the deposition notice or in an attachment to the notice. A deposition notice to a

deponent who is a party to the action may be accompanied by a separate request under Rule 34 to produce documents and tangible things at the deposition. The procedures under Rule 34 apply to any such request.

~~If the deposition is to be recorded by audio or audio-video, the notice shall state the technique for recording the deposition and the protocols to be used for such recording, the identity of the person recording the deposition, and the placement of camera(s), if any.~~

~~(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice (A) states that the person to be examined is about to go out of the State of Arizona, and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period, and (B) sets forth facts to support the statement. The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11(a) are applicable to the certification.~~

~~If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party. The court may for cause shown enlarge or shorten the time for taking the deposition.~~

(3) ***Method of Recording.***

(4)A) *Permitted Methods.* Unless ~~the~~all parties ~~stipulate~~agree or the court orders otherwise, ~~the deposition shall~~testimony must be recorded by a certified ~~court~~ reporter and may also be recorded by audio or ~~audio-video~~audiovisual means.

(B) *Method Stated in the Notice.* The party who notices the deposition must state in the notice the method for recording the testimony. Unless the parties agree or the court orders otherwise, the noticing party bears the recording costs.

(C) *Additional Method.* With at least two days prior written notice to the deponent and other parties, any other party may designate another method for recording the testimony in addition to that specified in the original notice. Unless the

parties agree or the court orders otherwise, that party bears the expense of the additional recording.

(D) *Notice of Recording by Audiovisual Means.* Any notice of recording the testimony by audiovisual means must identify the placement of the camera(s).

(E) *Transcription.* ~~When a deposition is recorded only by a certified court reporter, the party taking the deposition shall bear the cost of the recording. If requested by one of the parties, the testimony shall~~ Any party may request that the testimony be transcribed. If the testimony is transcribed, the party ~~noticing~~who originally noticed the deposition ~~or the party causing the deposition to be taken shall~~will be responsible for the cost of the original transcript. ~~A~~Any other party may, at its expense, arrange to ~~have~~receive a certified copy of the transcript ~~made at the party's own expense. If audio or audio-video is additionally requested by one of the parties, the requesting party shall be responsible for the cost of such recording, and a party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy.~~.

~~When a deposition is recorded only by audio or audio-video means, the party noticing the deposition shall bear the cost of the recording. A party requesting an audio or audio-video copy of the deposition shall be responsible for the cost of the audio or audio-video copy. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a certified transcript made at the party's own expense.~~

~~Any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition.~~

(4) ***By Remote Means.*** The parties may stipulate or the court may order that a deposition be taken by telephone or other remote means. For the purposes of this rule and Rules 28(a), 37(a)(1), 45(b)(3)(B), and 45(f), the deposition takes place where the deponent answers the questions. If the deponent is not in the officer's physical presence, the officer may nonetheless place the deponent under oath or affirmation with the same force and effect as if the deponent were in the officer's physical presence.

(5) *Officer's Duties.*

(A) *Before Deposition.* Unless the parties stipulate otherwise agreed by the parties, a deposition shallmust be conducted before an officer appointed or designated under Rule 28 and shall28. The officer must begin the deposition with a statement or notation on the record by the officer that includes :

(Ai) the officer'-'s name, certification number, if any, and business address;

(Bii) the date, time and place of the deposition;

(Ciii) the deponent's name of the deponent;

(Div) the officer's administration of the oath or affirmation to the deponent; and

(E) anv) the identificationy of all persons present. The officer shall

(B) *Conducting the Deposition; Avoiding Distortion.* If the deposition is recorded by audio or audiovisual means, the officer must repeat the items in Rule 30(b)(5)(A)(i)-(iii) (A) through (C) at the beginning of each unit of recorded tape or otherthe recording medium. The deponent's and attorneys' appearance or demeanor of deponents or attorneys shallmust not be distorted through camera or sound recording techniques.

(C) *After the Deposition.* At the end of the deposition, the officer shallmust state or note on the record that the deposition is complete and shallmust set forthout any stipulations made by counsel concerning the attorneys about custody of the transcript or recording and of the exhibits, or concerningabout any other pertinentrelevant matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A ***Notice or Subpoena Directed to an Entity.*** In its deposition notice or subpoena, a party may in the party's notice name as the deponent a public or private corporation or, a limited liability company, a partnership or, an association or, a governmental agency, or other entity, and designatemust then describe with reasonable particularity the matters on whichfor examination is requested. The organization so named shallentity must then designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf,

~~and may set forth, for~~. If the entity designates more than one person to testify, it must set out the matters on which each ~~person~~ designated~~, the matters on which that~~ person will testify. ~~The persons so~~Each designated ~~shall~~person must testify ~~as to matters~~about information known or reasonably available to the ~~organization~~entity. This ~~subdivision~~ Rule 30(b)(6) does not preclude ~~taking~~ a deposition by any other procedure ~~authorized in~~allowed by these rules.

~~(7) The parties may stipulate or the court may order that a deposition be taken by telephone. For the purpose of this Rule and Rules 28(a), 37(a)(1), 45(c)(3)(A)(ii), and 45(e), a deposition is taken in the county where the deponent is to answer questions propounded to the deponent.~~

(c) Examination and Cross-Examination; Record of the Examination; Objections; Conferences Between Deponent and Counsel; Written Questions. ~~**Rule 30(c). Examination and cross-examination; record of examination; oath; objections**~~

(1) ***Examination and Cross-Examination.*** ~~Examination and cross-examination of witnesses may proceed as permitted at the~~ The examination and cross-examination of a deponent proceed as they would at trial under the ~~provisions of the~~ Arizona Rules of Evidence~~. The examination shall commence at the time and place specified in the notice or within thirty minutes thereafter. And, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays and legal holidays until completed.~~, except for Rules 103 and 615. Any party not present within ~~thirty~~30 minutes ~~following~~after the time specified in the notice of ~~taking~~ deposition waives any objection that the deposition was taken without ~~that party's~~its presence. ~~The officer before whom the deposition is to be taken shall put the witness on oath and shall~~After putting the deponent under oath or affirmation, the officer personally~~, —~~or ~~by someone~~a person acting in the presence and under the ~~officer's~~ direction ~~and in the officer's presence, record the testimony of the witness. If the deposition is taken telephonically and the witness is not physically in the presence of the officer before whom the deposition is to be taken, the officer may nonetheless place the witness under oath with the same force and effect as if the witness were physically present before the officer. The testimony shall be taken in accordance with subdivision (b)(4) of this rule~~of the officer—must record the testimony by the method(s) designated under Rule 30(b)(3).

(2) ***Objections.*** ~~All objections made at the time of the examination to the qualifications of the officer~~ The officer must note on the record any objection made during the deposition—whether to evidence, to a party's, deponent's, or counsel's conduct, to the officer's qualifications, to the manner of taking the deposition, or to ~~the manner~~

~~of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. The court shall assess an appropriate sanction, including a sanction provided for under Rule 16(i), against any party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct. In lieu~~any other aspect of the deposition. An objection must be stated concisely, in a nonargumentative manner, and without suggesting an answer to the deponent. Unless requested by the party who asked the question, an objecting person may not specify the defect in the form of a question or answer. Counsel may instruct a deponent not to answer—or a deponent may refuse to answer—only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer and the testimony is taken subject to any objection.

(3) ***Conferences Between Deponent and Counsel.*** The deponent and his or her counsel may not engage in continuous and unwarranted conferences off the record during the deposition. Unless necessary to preserve a privilege, the deponent and his or her counsel may not confer off the record while a question is pending.

(4) ***Participating Through Written Questions.*** Instead of participating in the oral examination, ~~parties~~a party may serve written questions in a sealed envelope on the party ~~taking~~who noticed the deposition~~ and the party taking the deposition shall transmit them to the officer, who shall propound~~, who must deliver them to the ~~witness~~officer. The officer must ask the deponent those questions and record the answers verbatim.

(d) Duration; Sanction; Motion to Terminate or Limit. ~~**Rule 30(d). Length of deposition; motion to terminate or limit examination**~~

(1) ***Duration.*** ~~Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties, or, upon motion and a showing of good cause~~Unless the parties agree or the court orders otherwise, a deposition is limited to 4 hours and must be completed in a single day.

(2) ***Sanction.*** The court ~~shall~~may impose ~~sanctions pursuant to Rule 16(i) for~~an appropriate sanction—including any order under Rule 16(i)—against a party or attorney who has engaged in unreasonable, groundless, abusive or obstructionist conduct in connection with a deposition.

(3) *Motion to Terminate or Limit.*

(A) *Grounds.* At any time during ~~the taking of the~~a deposition, ~~on motion of a party or of the deponent and upon a showing that the examination~~the deponent or a party may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in ~~such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which~~a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. The deponent or party must file the motion in the court where the action is pending or the court ~~in the county~~ where the deposition is being taken ~~may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition~~. If the objecting deponent or party so demands, the deposition must be suspended for the time necessary to obtain an order.

(B) *Order.* The court may order that the deposition be terminated or that its scope and manner be limited as provided in Rule 26(c). If ~~the order made terminates the examination, it shall~~terminated, the deposition may be resumed ~~thereafter~~ only ~~upon the~~by order of the court ~~in which~~where the action is pending. ~~Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of~~

(C) *Award of Expenses.* Rule 37(a)(4) appl~~y~~ies to the award of expenses ~~incurred in relation to the motion~~.

(e) Review by the Deponent; Changes. ~~Rule 30(e). Submission to witness; changes, signing~~

(1) *Review; Statement of Changes.* ~~Before completion of the deposition and if not otherwise informed by counsel, the officer shall advise a deponent of the right to review, modify, and sign the transcript or affirm the accuracy of the audio or video recording~~ If requested by the deponent or a party before ~~completion of~~ the deposition is completed, the deponent ~~shall have~~must be allowed 30 days after being notified by the officer that the transcript or recording is available in which :

(A) to review the transcript or recording; and~~,~~

(B) if there are changes in form or substance, to sign and deliver to the officer a statement ~~reciting such~~listing the changes and the reasons ~~given by the deponent~~ for making them.

(2) Officer's Certificate to Attach Changes. The officer ~~shall indicate~~must note in the certificate prescribed by ~~subdivision~~ Rule 30(f)(1) whether ~~any~~a review was requested and, if so, ~~shall append~~must attach any changes ~~made by~~ the deponent makes during the ~~period allowed. If the witness does not submit such a statement or a written explanation why such statement cannot be submitted within the time period provided, the officer shall indicate in the certificate prescribed by subdivision (f)(1) or by affidavit the fact of the refusal to submit a statement with the reason therefore, if any, and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to submit a statement require rejection of the deposition in whole or in part.~~**~~Rule 30~~**30-day period.

(f)~~.~~ Officer's Certification and ~~delivery by officer; exhibits; copies~~Delivery; Exhibits; Copies of the Transcript or Recording; Filing.

(1) ***Certification and Delivery.*** The officer must certify in writing that the ~~witness~~deponent was duly sworn by the officer and that the deposition ~~is a true record of the~~accurately records the deponent's testimony~~ given by the witness. This~~. The certificate must~~ be in writing and~~ accompany the record of the deposition. Unless the court orders otherwise~~ ordered by the court~~, the officer must~~ securely~~ seal the deposition in an envelope or package ~~endorsed with~~bearing the title of the action and marked "Deposition of [~~here insert~~witness's name~~ of witness~~]" and must promptly ~~send~~deliver it to the attorney who arranged for the transcript or recording~~, who~~. The attorney must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(2) Documents and Tangible Things.

(A) *Originals and Copies.* Documents and tangible things produced for inspection during ~~the examination of the witness~~a deposition must, ~~upon the request of~~on a party's request, be marked for identification and ~~annexed~~attached to the deposition~~ and may be inspected and copied by~~—and any party~~,~~ may inspect and copy them—except that if the person ~~producing the materials desires to retain them~~who produced them wants to keep the originals, the person may :

(~~A~~i) offer copies to be marked~~ for identification and annexed~~, attached to the deposition, and ~~to serve thereafter~~then used as originals~~ if the person affords to~~—after giving all parties a fair opportunity to verify the copies by ~~comparison~~comparing them with the originals~~,~~; or

(B) offer the originals to be marked for identification, after giving to each party an**ii)** give all parties a fair opportunity to inspect and copy them, the originals after they are marked—in which event the materialsoriginals may then be used in the same manner as if annexedattached to the deposition. Any party may move for an

(B) *Order Regarding the Originals.* On motion of any party, the court may order that the originals be annexed to and returned withattached to the deposition to the court, pendinguntil final disposition of the caseaction.

(2) **3)** ***Copies of the Transcript or Recording.*** Unless otherwise ordered by the court or agreed by the parties, the certified court reporter shall preservethe parties agree or the court orders otherwise, the officer must retain the record of anya deposition for a period of time correspondingaccording to the applicable records retention and disposition schedules adopted by the Supreme Court. Upon payment of a reasonable charges therefor, the certified court reporter shall furnishcharge, the officer must provide a copy of the transcript of the depositionor recording to any party or to the deponent.

If the record of the deposition is created solely by audio or audio-video means, and unless otherwise ordered by the court or agreed by the parties, the officer shall retain the original recording of any deposition for a period of time corresponding to the applicable records retention and disposition schedules adopted by the Supreme Court in such place and manner as to ensure its availability to the court or any party upon request. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(g). Failure to Attend a Deposition or Serve a Subpoena; Expenses. Rule 30 Failure to attend or to serve subpoena; expenses

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends A party who attends a noticed deposition in person or by an attorney pursuant to the notice, the court may order the party giving the notice to

~~pay to such other party the reasonable expenses incurred by that party and that party's attorney in~~may recover reasonable expenses for attending, including ~~reasonable~~ attorney~~'~~'s fees~~.~~, if the noticing party failed to:

(1) attend and proceed with the deposition; or

(2) ~~If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.~~ serve a subpoena on a nonparty deponent, who consequently did not attend.

Rule 31. Depositions ~~Upon~~by Written Questions

(a) When a Deposition May Be Taken. ~~Rule 31(a). Serving questions; notice~~

(1) ***Depositions Permitted.*** A party may, by written questions, depose: (A) any party; (B) any person disclosed as an expert witness under Rule 26.1(a)(6); and (c) any document custodian in order to secure production of documents and establish evidentiary foundation. Unless all parties agree or the court orders otherwise for good cause, a party may not, by written questions, depose any other person or depose a person who has already been deposed in the action. A party may not unreasonably withhold a stipulation for additional depositions under this rule.

(2) ***Service of Written Questions by Plaintiff Earlier Than 30 Days After Serving the Summons and Complaint.*** Unless a defendant has served a deposition notice or otherwise sought discovery under these rules, a plaintiff must obtain leave of court to serve written questions under Rule 31(b) earlier than 30 days after serving the summons and complaint on that defendant.

~~After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken~~

(3) ***Incarcerated Deponents.*** Subject to Rule 31(a)(1), a party may depose an incarcerated person only by agreement of the person's custodian or by leave of court on such terms as the court prescribes.

(4) ***Compelling Attendance of Deponent.*** A party may compel a non-party deponent's attendance by serving a subpoena under Rule 45. A party noticing the deposition of a party—or an officer, director, or managing agent of a party—need not serve a subpoena under Rule 45.

(b) Notice; Service of Questions and Objections; Questions Directed to an Entity.

(1) ***Service of Written Questions; Required Notice.*** A party ~~desiring~~who wants to ~~take a deposition upon~~depose a person by written questions ~~shall~~must serve them ~~upon every other party~~on all parties, with a notice stating ~~(1) the name and address of the person who is to answer them~~, if known, the deponent's name and ~~if~~address. If the deponent's name is ~~not known,~~unknown, the notice must provide a general description sufficient to identify the person or the particular class or group to which the person belongs~~, and (2)~~. The notice must also state the name or descriptive title and the address of the officer before whom the deposition ~~is to be taken. A deposition upon written questions may be taken of~~will be taken.

(2) ***Service of Additional Questions.*** Unless the parties agree or the court orders otherwise, any additional questions to the deponent must be served on all parties as follows: cross-questions, within 30 days after being served with the notice and direct questions; redirect questions, within 10 days after being served with cross-questions; and recross-questions, within 10 days after being served with redirect questions.

(3) ***Service of Objections.*** A party who objects to the form of a written question served under Rule 30(b)(1) or (2) must serve the objection in writing on all parties within the time allowed for serving the succeeding cross-, redirect, or recross-questions, or, if to a recross-question, within 5 days after service of the recross-questions.

(4) ***Questions Directed to an Entity.*** In accordance with Rule 30(b)(6), a party may depose by written questions a public or private corporation ~~or~~, a limited liability company, a partnership ~~or association or governmental agency in accordance with the provisions of Rule 30(b)(6).Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.~~, an association, a governmental agency, or another entity.

~~**Rule 31(b). Officer to take responses and prepare record**~~

(c) Delivery to the Officer; Officer's Duties. ~~A copy of the notice and copies of all questions served shall be delivered by the party taking~~ The party who noticed the deposition must deliver to the officer designated in the notice~~, who shall proceed promptly,~~ a copy of the notice and copies of all the questions and objections served under Rule 30(b). The officer must promptly proceed in the manner provided ~~by~~in Rule 30(c), (e), and (f)~~,~~ to :

(1) take the deponent's testimony ~~of the witness~~ in response to the questions ~~and to~~ ;

(2) prepare~~,~~ and certify~~, and file or mail~~ the deposition; and

(3) deliver it to the party who noticed the deposition, attaching ~~thereto the~~a copy of the notice ~~and~~, the questions ~~received by~~, and the ~~officer~~objections.

Rule 32. ~~Use of~~ Using Depositions in Court Proceedings

~~**Rule 32(a). Use of depositions**~~**(a) Using Depositions.**

~~At~~**(1)** ***In the*** ~~trial~~***Same or*** ~~at any~~***Similar Action.*** At a hearing or trial, ~~any~~all or part ~~or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then~~of a deposition taken in the action—or in another federal or state court action involving the same subject matter between the same parties, or their representatives or predecessors in interest—may be used against a party if:

(A) the testimony would be admissible under the Arizona Rules of Evidence if the deponent were present and testifying~~, may be used against any~~;

(B) the party ~~who~~or its predecessor in interest was present or represented at the ~~taking of the~~ deposition or ~~who~~ had reasonable notice ~~thereof,~~of it; and

(C) the party, its representative or its predecessor in interest had an opportunity and similar motive to develop the testimony by ~~direct, cross, or redirect examination. The party who seeks admission of the testimony by deposition may do so without proof~~examination at the deposition.

(2) ***In a Different Action.*** At a hearing or trial, all or part of a deposition taken in another federal or state court action may be used as allowed by the Arizona Rules of Evidence.

(3) ***Deponent's Availability at Trial.*** Subject to Rule 32(a)(1) and (2), all or part of a deposition may be used at trial regardless of the deponent~~'s unavailability~~'s availability to testify at trial. ~~Nothing contained in this Rule shall be construed to~~Use of a deposition at trial does not limit, in any way, ~~the right of~~ any party's right to call the ~~deposed witness~~deponent to testify in person ~~at trial~~.

(4) ***Using Part of a Deposition.*** ~~If~~ If a party offers in evidence only part of a deposition ~~is offered in evidence by a party~~, the court may require the offeror to introduce contemporaneously ~~any~~ other ~~part which ought~~parts that in fairness ~~to~~should be considered ~~together~~ with the part ~~introduced~~offered.

~~Except as provided in Rule 56(e), the use of the deposition transcript may be supplemented with contemporaneously recorded audio and video files that may be synchronized to the deposition transcript, if any.~~

~~Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Arizona Rules of Evidence.~~

(5) ***Substituted Party.*** Substituting a party under Rule 25 does not affect the right to use a previously taken deposition.

~~**Rule 32**~~**(b)**~~**.**~~ **Objections to** ~~**admissibility**~~**Admissibility.** Subject to ~~the provisions of~~ Rules 28(b) and ~~subdivision~~ 32(d)(3) ~~of this rule~~, an objection may be made at ~~the trial or~~a hearing ~~to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence~~or trial to the admission of any deposition testimony that would be inadmissible if the witness were ~~then~~ present and testifying.

~~**Rule 32**~~**(c)**~~**. Form of presentation**~~~~A party offering~~ **Form of Presentation.** Unless the court orders otherwise, a party must provide a transcript of any deposition testimony ~~may offer it in the form permitted by Rules 30(b)(4) and 30(c). If~~the party offers, but also may provide the court with the testimony in nontranscript form. On any party's request, deposition testimony ~~is~~ offered in ~~any form for any purpose, the offering party shall provide the court with a transcript of the portions offered. In cases~~

tried before a jury, if deposition testimony is to be offered for purposesa jury trial for any purpose other than impeachment and is available in non-stenographic form, it shallmust be presented to the jury in thatnontranscript form, if available, unless the court orders otherwise for good cause orders otherwise. If the testimony is not available in audio or audiovisual form, the court may require a single presenter to read the designated portions of the deposition testimony to the jury.

(d) Waiver of Objections. Rule 32(d). Effect of errors and irregularities in depositions

(1) ***To the Notice.*** *As to notice.* All errors and irregularities in the notice for taking An objection to an error or irregularity in a deposition arenotice is waived unless written objection is promptly served uponin wri

ing on the party giving the notice.

(2) ***To the Officer's Qualifications.*** *As to disqualification of officer.* Objection to taking a deposition because of disqualification An objection to the qualification of the officer before whom ita deposition is to be taken is waived unlessif not made :

(A) before the taking of the deposition begins; or as soon thereafter as

(B) promptly after the basis for disqualification becomes known or could be discovered, with reasonable diligence, could have been known.

(3) *As to* ***To the Taking of the Deposition.***

(A) *Objection to Competence, Relevance, or Materiality.* Objections to the competency of a witness An objection to a deponent's competence—or to the competencye, relevancye, or materiality of testimony are—is not waived by a failure to make themthe objection before or during the taking of the deposition, unless the ground offor the objection is one which mightcould have been obviated or removed if presentedcorrected at that time.

(B) *Objection to an Error or Irregularity at an Oral Deposition.* Errors and irregularities occurring at the oral examination in An objection to an error or irregularity at an oral deposition is waived if:

(i) the objection related to the manner of taking the deposition, in the form of thea questions or answers, inanswer, the oath or affirmation, or in thea party's conduct of parties, or other matters that could have been corrected at that time; and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto

(ii) the objection is not timely made at the taking ofduring the deposition.

(C) *Objection to a Written Question.* ~~Objections~~ An objection to the form of a written ~~questions submitted~~question under Rule 31 ~~are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized~~is waived if it is not served under Rule 31(b)(3).

~~(D) Objections to the form of the question or responsiveness of the answer shall be concise, and shall not suggest answers to the witness. No specification of the defect in the form of the question or the answer shall be stated unless requested by the party propounding the question. Argumentative interruptions shall not be permitted.~~

~~(E) Continuous and unwarranted off the record conferences between the deponent and counsel following the propounding of questions and prior to the answer or at any time during the deposition are prohibited. This conduct is subject to the proscriptions of Rule 32(d)(3)(D) and the sanctions prescribed in Rule 37.~~

(4) ***To the Officer's Completion and Return of Deposition.*** ~~*As to completion and return of deposition.* Errors and irregularities in the manner in which~~. An objection to how the officer transcribed the testimony ~~is transcribed~~ or to how the ~~deposition is~~officer prepared, signed, certified, sealed, ~~indorsed, transmitted, filed~~endorsed, delivered, or otherwise dealt with ~~by the officer under Rules 30 and 31 are~~the deposition—is waived unless a motion to suppress ~~the deposition or some part thereof~~ is made promptly after the error or irregularity becomes known or, with reasonable ~~promptness after such defect is, or with due~~ diligence ~~might~~, could have been~~, ascertained~~ known.

Rule 33. Interrogatories to Parties

~~Rule 33(a). Availability; procedures for use~~

~~Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association of governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with~~

~~or after service of the summons and complaint upon that party.~~

~~Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 40 days after the service of the interrogatories, except that a defendant may serve answers or objections within 60 days after service of the summons and complaint upon that defendant, or execution of a waiver of service, by that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory.~~

~~Rule 33(b). Scope; use at trial~~

(a) Generally.

(1) ***Definition.*** Interrogatories are written questions served by a party on another party.

(2) ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 40 written interrogatories, including all subparts. A uniform interrogatory and its subparts count as one interrogatory.

(3) ***Scope.*** ~~Interrogatories may relate to any matters which can be inquired into~~ An interrogatory may ask about any matter allowed under Rule 26(b)~~, and the answers may be used to the extent permitted by the rules of evidence~~. An interrogatory ~~otherwise proper~~ is not ~~necessarily objectionable~~improper merely because ~~an answer to the interrogatory involves~~it asks for an opinion~~or~~. An interrogatory may ask for a party's contention ~~that relates to fact~~about facts or the application of law to ~~fact, but~~facts. On motion, the court may order that such ~~an~~a contention interrogatory need not be answered until ~~after designated discovery has been completed or until a pretrial conference or other~~a later time.

(4) ***Uniform Interrogatories.*** Forms 4, 5, and 6 of Rule 84 contain uniform interrogatories, which a party may use under this rule. A party may use a uniform interrogatory when it is appropriate to the legal or factual issues of the particular

action, regardless of how the action or claims are designated. A party propounding a uniform interrogatory may do so by serving a notice that identifies the uniform interrogatory by form and number. A party may limit the scope of a uniform interrogatory—such as by requesting a response only as to particular persons, events, or issues—without converting it into a non-uniform interrogatory.

(b) Answers and Objections.

(1) ***Time to Respond.*** Unless the parties agree or the court orders otherwise, the responding party must serve its answers and any objections within 30 days after being served with the interrogatories. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant.

(2) ***Answers Under Oath.*** An answering party must—to the extent it does not state an objection—answer each interrogatory separately and fully in writing under oath. In answering an interrogatory, a party—including a public or private entity—must furnish the information available to it. It also must reproduce the text of an interrogatory immediately above its answer to that interrogatory.

(3) ***Objections.*** The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure. If a party states an objection, it must still answer the interrogatory to the extent that it is not objectionable.

(4) ***Signature.*** The party who answers the interrogatories must sign them under oath. If the answering party is a public or private entity, an authorized representative with knowledge of the information contained in the answers, obtained after reasonable inquiry, must sign them under oath. An attorney who objects to any interrogatories must sign the objections.

(c) Use. An answer to an interrogatory may be used to the extent allowed by the Arizona Rules of Evidence.

(d) Option **to Produce Business Records.** ~~**Rule 33(c). Option to produce business records.** Where the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or summary thereof, and the burden of deriving or ascertaining the answer is~~ If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of

deriving or ascertaining the answer will be substantially the same for ~~the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be derived or ascertained.~~ either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could; and

(2) giving the interrogating party a reasonable opportunity to examine and audit the records and to make copies, compilations, abstracts, or summaries.

~~Rule 33.1. Uniform and non-uniform interrogatories; limitations; procedure~~

~~**(a) Presumptive Limitations.** Except as provided in these Rules, a party shall not serve upon any other party more than forty (40) interrogatories, which may be any combination of uniform or non-uniform interrogatories. Any uniform interrogatory and its subparts shall be counted as one interrogatory. Any subpart to a non-uniform interrogatory shall be considered as a separate interrogatory. In the notice of service of uniform interrogatories, a propounding party may specifically limit the scope of the uniform interrogatory to request less information than called for in the uniform interrogatory, such as by requesting information only as to particular persons, events, or issues. Such limiting instructions do not transform the uniform interrogatory into a non-uniform interrogatory.~~

~~**(b) Stipulations to Serve Additional Interrogatories.** If a party believes that good cause exists for the service of more than forty (40) interrogatories upon any other party, that party shall consult with the party upon whom the additional interrogatories would be served and attempt to secure a written stipulation as to the number of additional interrogatories that may be served.~~

~~**(c) Leave of Court to Serve Additional Interrogatories.** If a stipulation permitting the~~

~~service of additional interrogatories is not secured, a party desiring to serve additional interrogatories may do so only by leave of court. Upon written motion or application showing good cause therefor, the court in its discretion may grant to a party leave to serve a reasonable number of additional interrogatories upon any other party. The party seeking leave to serve additional interrogatories shall have the burden of establishing that the issues presented in the action warrant the service of additional interrogatories, or that such additional interrogatories are a more practical or less burdensome method of obtaining the information sought, or other good cause therefor. No such motion or application may be heard or considered by the court unless accompanied by the proposed additional interrogatories to be served, and by the certification of counsel required by Rule 37(a)(2)C) of these Rules. The proposed additional interrogatories shall only be attached to the judge's copy of the motion and the copy served on opposing parties.~~

~~**(d) Spacing.** Whenever interrogatories are used, a space sufficient for the answer shall be left immediately below the question. The answering party shall insert the answer in the space below each interrogatory, or if it requires more space, on a separate sheet which restates the question before giving the answer.~~

~~**(e) Nonuniform Interrogatories.** The method of propounding and answering Nonuniform Interrogatories shall be as follows:~~

~~(1) A party propounding interrogatories, other than Uniform Interrogatories, shall serve upon the answering party and not the clerk of the court, the original and one copy of the interrogatories and shall serve a copy upon every other party.~~

~~(2) The answering party shall, within the time permitted by law, serve upon the propounding party and all other parties one copy of the interrogatories and typewritten answers.~~

~~**(f) Uniform Interrogatories.** The interrogatories set forth in the Appendix of Forms following these Rules are denominated as Uniform Interrogatories, and are approved for use as a standard or guide in preparation by counsel of interrogatories under Rule 33 of these Rules. The use of Uniform Interrogatories shall be governed by Rule 33 of these~~

~~Rules, and this Rule. The use of Uniform Interrogatories is not mandatory. The interrogatories should serve as a guide only, and may or may not be approved as to either form or substance in a particular case. They are not to be used as a standard set of interrogatories for submission in all cases. Any uniform interrogatory may be used where it fits the legal or factual issues of the particular case, regardless of how the action or claims are designated. The method of propounding and answering Uniform Interrogatories shall be as follows:~~

~~(1) A party propounding Uniform Interrogatories shall serve a copy of a Notice of Service of Uniform Interrogatories upon each other party to the action.~~

~~(2) The Notice of Service of Uniform Interrogatories shall contain the names of the party and attorney to whom the request is made and the number only of each uniform interrogatory for which the propounding party requests an answer.~~

~~(3) The answering party shall:~~

~~(i) reproduce the text of each interrogatory requested and insert the answer below it;~~

~~(ii) serve the original upon the propounding party and a copy upon all other parties.~~

Rule 34. ~~Production of~~ **Producing Documents, Electronically Stored Information, and Tangible Things** ~~and Entry Upon~~**, or Entering Onto Land, for Inspection and Other Purposes**

~~**Rule 34(a). Scope**Any~~ **Generally.** A party may serve on any other party ~~requests (1)~~ a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party ~~making the request, or someone acting on the requestor's behalf,~~or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information~~—~~—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations —stored in any medium from which information can be obtained ~~– translated into~~either directly or, if necessary, after translation

by the responding party into a reasonably usable form~~ when translation is practicably necessary, or to inspect, copy, test, or sample~~ ; or

(B) any designated tangible things~~ which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or~~ ; or

(2) to permit entry ~~upon~~onto 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~~possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation ~~thereon, within the scope of Rule 26(b)~~on it.

~~Rule 34~~ (b)~~.~~ Procedure~~ and limitations~~.

~~The requests may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The requests shall set forth the items to be inspected either by individual item or by specific category, and describe each item and specific category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced. The requests(s) shall not, without leave of court, cumulatively include more than ten (~~

(1) ***Number.*** Unless the parties agree or the court orders otherwise, a party may not serve requests for more than 10~~) distinct~~ items or ~~specific~~distinct categories of items on any other party.~~ Each request shall~~

(2) ***Contents of the Request.*** The request:

(A) must describe with reasonable particularity each item or distinct category of items to be inspected;

(B) must specify a reasonable time, place, and manner ~~of making~~for the inspection and for performing the related acts~~. If a party believes that good cause exists for more than ten (10) distinct items or categories of items, that party shall consult with the party upon whom a request would be served and attempt to secure a written stipulation to that effect. The party upon whom a request is served shall serve a written response within 40~~; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(3) *Responses and Objections.*

(A) *Time to Respond.* Unless the parties agree or the court orders otherwise, the party to whom the request is directed must respond in writing within 30 days after ~~the service of the request, except that~~being served. But a defendant may serve ~~a response~~its responses and any objections within 60 days after service ~~of the summons and complaint upon that defendant,~~ —or execution of a waiver of service ~~by~~ —of the summons and complaint on that defendant. ~~The court may allow a shorter or longer time. The response shall state, with respect to~~

(B) *Responding to Each Item.* For each item or category, the response must either state that inspection and related activities will be permitted as requested or ~~identify the reasons for any objection, including any objection to the requested form or forms for producing electronically stored information,. If objection is made to part of an item or category, the part shall be specified. If~~state the grounds for objecting with specificity, including the reasons.

(C) *Objections.* An objection must state whether any responsive materials are being withheld on the basis of that objection. A party objecting to part of a request must specify the objectionable part and permit inspection of the other requested materials.

(D) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection ~~is made~~ to ~~the~~a requested form ~~or forms~~ for producing electronically stored information—. If the responding party objects to a requested form—or if no form was specified in the request—the ~~responding~~ party must state the form or forms it intends to use. ~~The party submitting a request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. Unless the parties otherwise~~

(E) *Producing the Documents or Electronically Stored Information.* Unless the parties agree~~,~~ or the court ~~otherwise~~ orders otherwise, these procedures apply to producing documents or electronically stored information:

(~~1~~i) ~~a~~ A party ~~who produced documents for inspection shall~~must produce ~~them~~documents as they are kept in the usual course of business or ~~shall~~must organize and label them to correspond ~~with~~to the categories in the request;

(~~2~~ii) ~~if~~ If a request does not specify ~~the~~a form ~~or forms~~ for producing electronically stored information, a ~~responding~~ party must produce ~~the information in a form or forms in which it is ordinarily maintained or in a form or forms that are~~it in a native form or in another reasonably usable form

that will enable the requesting party to have the same ability to access, search and display the information as the producing party; and

(~~3~~)iii) Absent good cause, a party need not produce the same electronically stored information in more than one form.

~~Rule 34(c). Persons not parties~~

(c) Nonparties. ~~A person not a party to the action~~ As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to ~~submit to~~permit an inspection ~~as provided in Rule 45.~~.

Rule 35. Physical and Mental Examinations

(a) Examination ~~of Persons~~**~~Rule 35(a).~~on Order ~~for examination~~.**

(1) ***Generally.*** ~~When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which~~ The court where the action is pending may order ~~the~~a party whose physical or mental condition is in controversy to submit to a physical or mental examination by a ~~physician or psychologist or~~suitably licensed or certified examiner. The court has the same authority to order a party to produce for examination ~~the~~a person who is in the party~~'~~'s custody or under the party's legal control. ~~The~~

(2) ***Motion and Notice; Contents of the Order.*** An order under Rule 35(a)(1):

(A) may be ~~made~~entered only on motion for good cause ~~shown~~ and ~~upon~~on notice to all parties and the person to be examined ~~and to all parties and shall~~;

(B) must specify the time, place, manner, conditions, and scope of the examination; and ~~the person or persons by whom it is to be made. The person to be examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.~~

(C) must specify the person or persons who will perform the examination.

~~Rule 35(b). Report of examiner~~

(b) Examination on Notice; Motion Objecting to Examiner; Failure to Appear.

(1) ***Notice.*** When the parties agree that an examination is appropriate but do not agree as to the examiner, the party seeking the examination may proceed by giving reasonable—and not fewer than 30 days—written notice to all other parties. The notice must:

(A) identify the party or person to be examined;

(B) specify the time, place, and scope of the examination; and

(C) identify the examiner(s).

(2) ***Motion Objecting to Examiner.*** After being served with a proper notice under Rule 35(b)(1), a party who objects to the examiner(s) identified in the notice may file a motion in the court where the action is pending. For good cause, the court may order that the examination be conducted by a suitably licensed or certified examiner other than the one specified in the notice.

(3) ***Failure to Appear.*** Unless the party has filed a motion under Rule 36(b)(2), the party must appear—or produce the person in the party's custody or legal control—for the noticed examination. If the party fails to do so, the court where the action is pending may on motion make such orders concerning the failure as are just, including those under Rule 37(f).

(c) Attendance of Representative; Recording.

(1) ***Attendance of Representative.*** Unless his or her presence may adversely affect the examination's outcome, the person to be examined has the right to have a representative present during the examination.

(2) ***Recording.***

(A) *Audio Recording*. The person to be examined may audio-record any physical examination. Unless such recording may adversely affect the examination's outcome, the person to be examined may audio-record any mental examination.

(B) *Video Recording*. On order for good cause—or on stipulation of the parties and the person to be examined—an examination may be video-recorded.

(C) *Copy of Recording*. A copy of a recording made of an examination must be provided to any party upon request.

(d) Examiner's Report; Other Like Reports of Same Condition; Waiver of Privilege.

(1) ***Contents.*** ~~If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor, within twenty days of the examination, a copy of the~~

~~detailed written report of the examining licensed professional setting out the professional's~~ The examiner's report must be in writing and set out in detail the examiner's findings, including diagnoses, conclusions, and the results of ~~all tests made, diagnoses and conditions, together with~~ any tests.

(2) ***Request by the Party or Person Examined.*** The party who is examined—or who produces the person examined—may request the examiner's report, like reports of the same condition, and written or recorded notes from the examination. On such request, the party who moved for or noticed the examination must, within 20 days, deliver to the requestor copies of:

(A) the examiner's report;

(B) like reports of all earlier examinations of the same condition; and ~~copies of~~

(C) all written or recorded notes ~~filed out~~made by the examiner and the person examined at the time of the examination, ~~providing~~and must provide access to the original written or recorded notes for purposes of comparing same with the copies. ~~After delivery the party causing~~

(3) ***Request by the Examining Party.*** After delivering the materials required by Rule 35(d)(2), the party who moved for or noticed the examination ~~shall be~~is entitled ~~upon~~, on its request, to receive from the party ~~against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that such party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician or psychologist fails or refuses to make a report the court may exclude the physician's or psychologist's testimony if offered at the trial~~who was examined—or who produced the person examined—like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

~~(2)~~**4)** ***Waiver of Privilege.*** By requesting and obtaining ~~a~~the examiner's report ~~of the examination so ordered~~, or by ~~taking the deposition of~~deposing the examiner, the party examined waives any privilege ~~the party~~it may have —in that action or any other action involving the same controversy~~, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical~~—concerning testimony about all examinations of the same condition.

(5) ***Failure to Deliver a Report as Ordered.*** The court on motion may order—on just terms—that a party deliver a report of an examination. If the report is not delivered as ordered, the court may exclude the examiner's testimony at trial.

(6) ***Scope.*** **(**~~3) This subdivision applies to examinations made~~ This Rule 35(d) applies to examinations conducted by agreement of the parties, unless the agreement states otherwise. This rule does not preclude obtaining an examiner's report or deposing an examiner under other rules. ~~expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or psychologist or the taking of a deposition of the physician or psychologist in accordance with the provisions of any other rule.~~

~~Rule 35(c). Alternate procedure; notice of examination; objections~~

~~(1) When the parties agree that a mental or physical examination is appropriate but do not agree as to the examining physician or psychologist, the party desiring the examination may seek it by giving reasonable notice in writing to every other party to the action not less than 30 days in advance. The notice shall specify the name of the person to be examined, the time, place and scope of the examination, and the person or persons by whom it is to be made. The person to be physically examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.~~

~~(2) Upon motion by a party or by the person to be examined, and for good cause shown, the court in which the action is pending may, in addition to other orders appropriate under subdivision (a) of this rule, make an order that the examination be made by a physician or psychologist other than the one specified in the notice. If a party after being served with a proper notice under this subdivision does not make a motion under this rule, and fails to appear for the examination or to produce for the examination the person in the party's custody or legal control, the court in which the action is pending may on motion make~~

~~such orders in regard to the failure as are just, such as those specified in Rule 37 (f).~~

~~(3) The provisions of Rule 35(b) shall apply to an examination made under this subdivision.~~

Rule 36. Requests for Admission

~~**Rule 36(a). Request for admission**~~

(a) Scope and Procedure.

(1) ***Scope.*** A party may serve ~~upon~~on any other party a written request ~~for the admission~~to admit, for purposes of the pending action only, ~~of~~ the truth of any matters within the scope of Rule 26(b) ~~set forth in the request that relate to statements or opinions of fact or of~~relating to:

(A) facts, the application of law to fact, ~~including~~ or opinions about either; and

(B) the genuineness of any ~~documents~~ described ~~in the request. Copies of documents shall be served with the request unless they have been or are~~documents.

(2) ***Form; Copy of a Document.*** Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying. ~~The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. Each matter of which an admission is requested shall be separately set forth. The~~

(3) ***Number.*** Unless the parties agree or the court orders otherwise, a party may serve on any other party no more than 25 requests for admission.

(4) ***Time to Respond; Effect of Not Responding.*** A matter is admitted unless, within ~~(40) days after service of the request, or, in the case of a defendant, within 60 days after service of the summons and complaint upon that defendant, or execution of a waiver of service by that defendant, or within such shorter or longer time as the court may allow~~30 days after being served, the party to whom the request is directed serves ~~upon~~on the ~~party~~ requesting ~~the admission~~party a written answer or objection addressed to the matter~~, signed by the party or by the party's attorney. If objection is made~~ and signed by the party or its attorney. But a defendant may serve its answers and any objections within 60 days after service—or execution of a waiver of service—of the summons and complaint on that defendant. A shorter or longer time for responding may be stipulated to or be ordered by the court.

(5) ***Answer.*** If a matter is not admitted, the ~~reasons therefor shall be stated. The~~ answer ~~shall~~must specifically deny ~~the matter~~it or ~~set forth~~state in detail ~~the reasons~~ why the answering party cannot truthfully admit or deny ~~the matter~~it. A denial ~~shall~~must fairly ~~meet~~respond to the substance of the ~~requested admission,~~matter; and when good faith requires that a party qualify an answer or deny only a part of ~~the~~a matter ~~of which an admission is requested~~, the ~~party shall~~answer must specify ~~so much of it as is true~~the part admitted and qualify or deny the ~~remainder~~rest. ~~An~~The answering party may ~~not give~~assert lack of ~~information or~~ knowledge or information as a reason for fail~~ure~~ing to admit or deny ~~unless~~only if the party states that ~~the party~~it has made reasonable inquiry and that the information ~~known~~it knows or can readily ~~obtainable by the party~~obtain is insufficient to enable ~~the party to admit or deny. A party who considers that a matter of which an admission has been requested~~it to admit or deny.

(6) ***Objections.*** The grounds for objecting to a request must be stated. A party may not object solely on the ground that the request presents a genuine issue for trial~~ may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(e), deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested the admissions~~.

(7) ***Motion Regarding the Sufficiency of an Answer or Objection.*** The requesting party may move to determine the sufficiency of ~~the~~an answer~~s~~ or objection~~s~~. Unless the court ~~determines that~~finds an objection ~~is~~ justified, it ~~shall~~must order that an answer be served. If the court ~~determines~~finds that an answer does not comply with ~~the requirements of~~ this rule, ~~it~~the court may order either that the matter is admitted or that an amended answer be served. The court may defer its final decision until a pretrial conference or a specified time before trial. Rule 37(e) applies to an award of expenses.~~, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.~~

~~**Rule 36(b). Procedure**~~

~~Each request shall contain only one factual matter or request for genuineness of all documents or categories of documents. Each party without leave of court shall be entitled to submit no more than twenty-five (25) requests in any case except upon:~~

~~(1) agreement of all parties;~~

~~(2) an order of the court following a motion demonstrating good cause;~~

~~(3) an order of the court following a Scheduling Conference pursuant to Rule 16(d);(4) an order of the court following a comprehensive pretrial conference in a medical malpractice case pursuant to Rule 16(e); or~~

~~(5) an order of court following a Trial Setting Conference pursuant to Rule 16(f).~~

~~Any interrogatories accompanying requests shall be deemed interrogatories under Rule 33.1.~~

~~Rule 36(c). Effect of admission~~

(b) Effect of an Admission; Withdrawing or Amending It. ~~Any~~ A matter admitted under this rule is conclusively established unless the court, on motion, permits ~~withdrawal or amendment of~~ the admission to be withdrawn or amended. Subject to ~~the provisions of Rule 16 governing amendment of a pre-trial order,~~Rule 16, the court may permit withdrawal or amendment ~~when~~if it would promote the presentation of the merits of the action ~~will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will~~and if the court is not persuaded that it would prejudice ~~that~~the requesting party in maintaining or defending the action ~~or defense~~ on the merits. ~~Any~~An admission ~~made by a party~~ under this rule is ~~for the purpose of the pending action only and is~~ not an admission for any other purpose ~~nor may it~~and cannot be used against the party in any other proceeding.

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

~~Rule 37~~

(a)~~.~~ Motion for ~~order compelling disclosure or discovery~~Order Compelling Disclosure or Discovery.

(1) ***Generally.*** ~~A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:~~ A party may move for an order compelling disclosure or discovery. The party must serve the motion on all other parties and affected persons and must attach a good faith consultation certificate complying with Rule 7.2(h).

(2) ~~*Motion.*~~***Appropriate Court.*** ~~*Appropriate court.* An application for an order to a party may be made to the court in the county in which the action is pending, or, in matters relating to a deposition, to the court in the county where the deposition is being taken. An application for an order to a person who is not a party shall be made to the court in the county where the discovery is being, or is to be, taken.~~ A motion for an order to a party must be made in the court where the action is pending. A motion for an order to a nonparty must be made in the court in the county where the discovery is or will be taken.

(3) ***Specific Motions.***

(A) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 26.1, any other party may move to compel disclosure and for appropriate sanctions.

(B) *To Compel a Discovery Response.* ~~If~~ A party seeking discovery may move for an order compelling an answer, designation, production, or inspection if:

(i) a deponent fails to answer a question ~~propounded or submitted~~asked under Rule 30 or ~~31, or~~ 31;

(ii) a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a)~~, or~~ (4);

(iii) a party fails to answer an interrogatory ~~submitted~~served under Rule ~~33, or if a party, in response to a request for inspection submitted under Rule 34,~~33;

(iv) a party fails to respond that inspection will be permitted ~~as requested~~ or fails to permit inspection as requested~~, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a~~ under Rule 34; or

(v) a person fails to produce documents requested in a subpoena served under Rule 45.

(C) *Related to a Deposition.* When taking an oral deposition ~~on oral examination~~, the ~~proponent of the~~party asking a question may complete or adjourn the examination before ~~applying for an order.(C) No motion brought under this Rule 37 will be considered or scheduled unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter~~moving for an order to compel.

(~~3~~4) ***Evasive or Incomplete Disclosure, Answer, or Response.*** For purposes of this ~~subdivision~~rule, the court may treat an evasive or incomplete disclosure, answer, or response ~~is to be treated~~ as a failure to disclose, answer, or respond.

(4)5) *Payment of Expenses and Sanctions; Protective Orders.*

(A) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted —or if the disclosure or requested discovery is provided after the motion was filed, —the court shallmay, after affordinggiving an opportunity to be heard, require the party or deponentperson whose conduct necessitated the motion or, the party or attorney advising suchthat conduct, or both of them, to pay the moving party themovant's reasonable expenses incurred in making the motion, including attorney'-'s fees, unless. But the court finds that the motion was filed without the movant's first making amust not order this payment if:

(i) the movant filed the motion before attempting in good faith effort to obtain the disclosure or discovery without court action, or that ;

(ii) the opposing party'-'s nondisclosure, response, or objection was substantially justified; or that

(iii) other circumstances make an award of expenses unjust.

(B) *If the Motion Is Denied.* If the motion is denied, the court may enterissue any protective order authorized under Rule 26(c) and shallmay, after affordinggiving an opportunity to be heard, require the moving party ormovant, the attorney filing the motion, or both of them to pay to the party or deponentperson who opposed the motion theits reasonable expenses incurred in opposing the motion, including attorney'-'s fees, unless. But the court finds that the making ofmust not order this payment if the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the court may enterissue any protective order authorized under Rule 26(c) and may, after affordinggiving an opportunity to be heard, apportion the reasonable expenses incurred in relation tofor the motion among the parties and persons in a just manner.

Rule 37(b). Failure to comply with orderComply With a Court Order.

(1) ***Sanctions by the Court in the County Where the Deposition Is Taken.*** If the court in the county where the deposition is taken. If orders a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being takenand the deponent fails to obey, the failure may be considered atreated as contempt of that court.

(2) ***Sanctions by*** ~~*court in which action is pending*~~***the Court Where the Action Is Pending.***

(A) *For Not Obeying a Discovery Order.* If a party or ~~an~~a party's officer, director, or managing agent~~ of a party~~ or a ~~person~~witness designated under Rule 30(b)(6) or 31(a)~~ to testify on behalf of a party~~ (4) fails to obey an order to provide or permit discovery, including an order ~~made~~ under ~~subdivision (a) of this rule~~Rule 35 or Rule ~~35~~37(a), the court ~~in which~~where the action is pending may ~~make such orders in regard to the failure as are just, and among others~~enter further just orders. They may include the following:

(i) ~~A) An order~~ directing that the matters ~~regarding which~~described in the order ~~was made~~ or ~~any~~ other designated facts ~~shall~~ be taken ~~to be~~as established for ~~the~~ purposes of the action~~ in accordance with~~, as the ~~claim of the~~prevailing party ~~obtaining the order~~claims;

(ii) ~~B) An order refusing to allow~~ prohibiting the disobedient party ~~to~~from supporting or oppose~~e~~ing designated claims or defenses, or ~~prohibiting that party~~ from introducing designated matters in evidence;

(iii) ~~C) An order~~ striking ~~out~~ pleadings ~~or parts thereof, or~~ in whole or in part;

(iv) staying further proceedings until the order is obeyed~~, or~~;

(v) dismissing the action or proceeding in whole or ~~any~~in part~~ thereof, or~~;

(vi) rendering a default judgment ~~by default~~ against the disobedient party; or

(vii) ~~D) In lieu of any of the foregoing orders or in addition thereto, an order~~ treating as ~~a~~ contempt of court the failure to obey any order~~s~~ except an order to submit to a physical or mental examination~~;~~.

(B) *For Not Producing a Person for Examination.* ~~E) Where~~ If a party ~~has failed~~fails to comply with an order under Rule 35(a) requiring ~~that party~~it to produce another person for examination, ~~such~~the court may issue any of the orders~~ as are~~ listed in ~~paragraphs~~ Rule 37(b)(2)(A)~~, (B), and (C) of this subdivision~~i)-(vi), unless the disobedient party~~ failing to comply~~ shows that ~~that party is unable to~~it cannot produce ~~such~~the other person~~ for examination~~.

(C) *Payment of Expenses.* ~~In lieu of any of the foregoing orders~~ Instead of or in addition ~~thereto~~to the orders above, the court ~~shall require the party failing to obey the order or~~may order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney~~'~~'s fees, caused by the failure, unless the ~~court finds that the~~ failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

~~**Rule 37(c). Failure to disclose; false or misleading disclosure; untimely disclosure**~~

(c) Failure to Timely Disclose; Inaccurate or Incomplete Disclosure; Disclosure After Deadline or During Trial.

(1) ~~A~~ ***Failure to Timely Disclose.*** Unless the court orders otherwise for good cause, a party who fails to timely disclose information, a witness, or a document required by Rule 26.1 ~~shall~~may not, unless such failure is harmless, ~~be permitted to~~ use the information, witness, or document as evidence at trial, at a hearing, or on a motion.

(2) ***Inaccurate or Incomplete Disclosure.*** On motion, the ~~information or witness not disclosed, except by leave of court for good cause shown. A~~court may order a party or attorney who makes a disclosure ~~pursuant to~~under Rule 26.1 that the party or attorney knew or should have known was inaccurate or incomplete ~~and thereby causes an opposing party to engage in investigation or discovery, shall be ordered by the court~~ to reimburse the opposing party for the reasonable cost, including attorney~~'~~'s fees, of ~~such~~any investigation or discovery caused by the inaccurate or incomplete disclosure.

(3) ***Other Available Sanctions.*** In addition to or ~~in lieu~~instead of the~~se~~ sanctions under Rule 37(c)(1) and (2), the court ~~on motion of a party or on the court's own motion~~, on motion and after ~~affording~~giving an opportunity to be heard~~, may impose other appropriate sanctions. In addition to requiring~~:

(A) may order payment of the reasonable expenses, including attorney~~'~~'s fees, caused by the failure~~, these sanctions may include any of the actions authorized under subparagraphs (A), (B) and (C) of subdivision (b)(2) of this Rule and may include informing~~;

(B) may inform the jury of the party's failure ~~to make the disclosure.~~; and

(C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).

(4) ***Use of Information, Witness or Document Disclosed After Scheduling Order Deadline or Later Than 60 Days Before Trial.*** ~~2)~~ A party seeking to use information ~~which~~, a witness, or a document that ~~party~~it first disclosed later than (A) the deadline set in a Scheduling Order, or (B) in the absence of such a deadline, ~~sixty (~~60~~)~~ days before trial, must obtain leave of court by motion~~,~~. The motion must be supported by affidavit~~, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:(i)~~ and must show that ~~:~~

(A) the information, witness, or document would be allowed under the standards of ~~subsection~~ Rule 37(c)(1); and

(B) ~~ii) that~~ the party disclosed the information ~~was disclosed~~, witness, or document as soon as practicable after its discovery.

(5) ***Use of Information, Witness, or Document Disclosed During Trial.*** ~~3)~~ A party seeking to use information ~~which~~, a witness, or a document that ~~party~~it first disclosed during trial must obtain leave of court by motion~~,~~. The motion must be supported by affidavit~~, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds~~ and must show that:

(A) ~~i) that the information~~ the party, acting with due diligence, could not have ~~been~~earlier discovered and disclosed ~~earlier even with due diligence~~the information, witness, or document; and

(B) ~~ii) that~~ the ~~information was~~party disclosed the information, witness, or document immediately upon its discovery.

~~**Rule 37(d) Failure to disclose unfavorable information**~~

(d)~~.~~ Failure to Timely Disclose Unfavorable Information. ~~A~~ If a party'~~s~~ or attorney'~~s knowing failure to~~ knowingly fails to make a timely ~~disclose~~disclosure of damaging or unfavorable information ~~shall be grounds for imposition of~~required under Rule 26.1, the court may impose serious sanctions ~~in the court's discretion~~, up to and including dismissal of the ~~claim or defense~~action—or rendering of a default judgment—in whole or in part.

~~**Rule 37(e) Expenses on failure to admit**~~

(e)~~.~~ Expenses on ~~f~~Failure to ~~admit~~Admit. If a party fails to admit ~~the genuineness of any document or the truth of any matter as~~what is requested under Rule ~~36,~~36 and if the ~~party~~ requesting ~~the admissions thereafter~~party later proves the matter true—including the genuineness of ~~the~~a document ~~or the truth of the matter,~~ —the requesting party may ~~apply to the court for an order requiring the other party to~~move that the non-admitting party pay the reasonable expenses, including attorney's fees, incurred in making that proof~~, including reasonable attorney's fees~~. The court ~~shall make the~~must so order unless ~~it finds that~~ :

(1) the request was held objectionable ~~pursuant to~~under Rule 36(a)~~, or~~ ;

(2) the admission sought was of no substantial importance~~, or~~ ;

(3) the party failing to admit had a reasonable ground to believe that ~~the party~~it might prevail on the matter~~,~~; or

(4) there was other good reason for the failure to admit.

~~Rule 37(f). Failure of party to attend at own deposition or serve answer to interrogatories or respond to request for inspection~~

(f) Party's Failure to Attend Its Own Deposition or to Respond to Interrogatories or Requests for Production.

(1) *Generally.*

(A) *Motion; Grounds for Sanctions.* The court where the action is pending may, on motion, order sanctions if:

~~(~~**(i)** ~~If~~ a party or ~~an~~a party's officer, director, or managing agent~~ of a party~~ or a person designated under Rules 30(b)(6) or 31(a)~~ to testify on behalf of a party fails (1) to appear before the officer who is to take the~~(4) fails, after being served with proper notice, to appear for his or her deposition~~,~~; or

(ii) a party after being properly served with ~~a proper notice, or (2)~~interrogatories under Rule 33 or a request for production under Rule 34 fails to serve its answers~~ or~~, objections~~ to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto~~, or written response.

(B) *Certification.* A motion for sanctions for failing to answer or respond must attach a good faith consultation certificate complying with Rule 7.2(h).

(2) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 37(f)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).

(3) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court ~~shall~~may require the party failing to act~~ or~~, the attorney advising that party, or both to pay the reasonable expenses~~,~~ including attorney~~'~~'s fees~~,~~ caused by the failure, unless the ~~court finds that the~~ failure was substantially justified or ~~that~~ other circumstances make an award of expenses unjust.

~~The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).~~

~~**Rule 37 (g) Electronically stored information**~~

(g) Failure to Preserve Electronically Stored Information.

(1) ***Duty to Preserve.***

(A) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever first occurs. A court order or statute also may impose a duty to preserve certain information.

(B) *Reasonable Anticipation.* A person reasonably anticipates an action's commencement if:

(i) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(ii) it seriously contemplates commencing an action or takes specific steps to do so.

(C) *Reasonable Steps to Preserve.*

(i) A party must take reasonable steps to prevent the routine operation of an electronic information system or policy from destroying information that should be preserved.

(ii) ~~Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide~~ Factors that a court should consider in determining whether a party took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the ~~routine,~~ good-faith routine operation of an electronic information system, the timeliness of the party's actions, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the parties' resources and technical sophistication, and the amount in controversy.

(2) ***Remedies and Sanctions.*** If electronically stored information that should have been preserved is lost because a party—either before or after an action's commencement—failed to take reasonable steps to preserve it, a court may order additional discovery to restore or replace it, including, if appropriate, an order

under Rule 26(b)(1)(B). If the information cannot be restored or replaced through additional discovery, the court:

(A) upon finding prejudice to another party from the loss of the information, may order measures no greater than necessary to cure the prejudice; or

(B) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation, may:

(i) presume that the lost information was unfavorable to the party;

(ii) instruct the jury that it may or must presume the information was unfavorable to the party; or

(iii) upon also finding prejudice to another party, dismiss the action or enter a default judgment.

VI. ~~Trials~~ TRIALS

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

~~**Rule 38(a).**~~ **Right ~~preserved~~Preserved.** The right of trial by jury ~~shall be~~is preserved ~~inviolate~~ to the parties inviolate.

~~**Rule 38(b). Demand**~~

(b)Demand. ~~Any person may demand a trial by jury of~~ On any issue triable of right by ~~jury. The demand may be made by any party~~a jury, a party may obtain a jury trial as follows:

(1) ***Non-Medical Malpractice Actions.*** In all actions other than a medical malpractice action, a party may demand a jury trial by filing and serving a written demand ~~therefor in writing~~ at any time after the ~~commencement of the~~ action is commenced, but ~~not~~no later than the date on which the court sets a trial date or ~~ten~~10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or Rule 16.3 are filed, whichever first occurs. ~~The~~A demand for ~~trial by~~a jury ~~shall~~trial may not ~~be endorsed on or~~ be combined with any other motion or pleading filed with the court.

~~**Rule 38(c). Demand; specification of issues**~~

(2) ***Medical Malpractice Actions.*** In a medical malpractice action, it is presumed that one or more of the parties demand a jury trial and no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing

and serving a written stipulation waiving the right to a jury trial, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation waiving the right to a jury trial may not be combined with any other motion or pleading filed with the court.

(c) Specifying Issues. In the In its demand, a party may specify the issues which the partythat it wishes to have tried by a jury; otherwise, the party shall beis deemed to have demanded a jury trial by jury foron all the issues so triable by jury. If thea party has demanded trial bya jury fortrial on only some of the issues, any other party may, within ten10 days after service of the demand or such lesseris served or within a shorter time asordered by the court may order, serve a demand for jury trial by jury ofon any other or all factual issues of fact in the action triable by jury.

Rule 38(d). Waiver; Withdrawal. A party waives a jury trial unless its demand is properly filed and served and filed. A proper demand may be withdrawn only if the parties consent.

Rule 38.1. Setting of civil cases for trial; postponements Setting of Civil CasesActions for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar

Rule 38.1(a). Trial Setting for trial. Civil actions shall beare set for trial pursuant tounder Rule 16 or Rule 77. Preference shall beis given to short causes and casesactions that are entitled to priority by reason of statute, rule or court order are entitled to priority. The court must give the parties shall be given at least thirty30 days' notice of the trial date.

Rule 38.1(b). Postponements.

(1) ***Generally.*** Unless otherwise provided by local rule, when If a court has set an action has been set for trial on a specified date by order of the court, no postponement of, it may not postpone the trial shall be granted except forunless: (A) sufficient cause exists to do so, supported by affidavit, or by consent ofother evidence; (B) the parties, or consent; or (C) postponement is required by operation of law. Trial also may be postponed as authorized or required by local rule.

Rule 38.1(c). Application for postponement; grounds; effect of admission of truth of affidavit by adverse party

(2) ***Motion and Certification.*** A party seeking postponement of a trial must file a motion setting forth the basis for the request and the evidence supporting it. Moving counsel must attach a separate statement to the motion certifying that the

requested postponement is not being sought for the solely for the purpose of delay and that the postponement will serve the interests of justice.

(3) ***Witness Unavailability or Absence.***

(A) *Generally.* ~~On an application for a postponement of the trial, if the ground for the application is the want of testimony~~ If the ground for postponement is the unavailability or absence of the witness, the moving party ~~applying therefor shall provide~~must submit an affidavit stating or showing ~~the materiality of the testimony and that the party has used due~~:

(i) the name and address of the witness—if known;

(ii) the witness's expected testimony;

(iii) the expected testimony's materiality;

(iv) the reason for the witness's unavailability or absence;

(v) the party's diligence ~~to~~in procur~~e~~ing such testimony~~, stating such diligence and the cause of failure to procure such testimony, if known, and that such~~ and efforts to make the witness available; and

(vi) the testimony cannot be obtained from any other source.

~~If the ground for the application is the absence of a witness, the party applying shall state the name and residence of the witness and what the party expects to prove by the witness. The application in either case shall also state that the postponement is not sought for delay only, but that justice may be done.~~

(B) *Denial of a Motion for Postponement.* ~~If the adverse party admits that such testimony would be given and that it will be considered as actually given at the trial, or offered and overruled as improper, the trial shall not be postponed.~~The court may deny a motion for postponement if, among other grounds, it rules that the described testimony would be inadmissible if presented at trial or if all adverse parties stipulate that the movant's description of witness's expected testimony is accurate and would be admissible if presented at trial. If the adverse parties offer such a stipulation, the movant's description of the witness's expected testimony may be read to the jury at trial as the witness's testimony. Such testimony may be controverted as if the witness were personally present.

~~Rule 38.1(d). Deposition of witness or party; consent~~

~~The party obtaining a postponement shall, if required by the adverse party, consent that the testimony of any witness or adverse party in attendance be taken by deposition. The~~

~~testimony so taken may be read at the trial by either party as if the witnesses were present.~~

~~**Rule 38.1(e).**~~

(c) Scheduling ~~conflicts between courts~~Conflicts Between Courts.

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

(2) ~~*Resolution of conflicts.*~~ ***Resolving a Conflict.*** Upon being advised of a scheduling conflict, the affected judges ~~involved shall, if necessary, confer personally or by telephone~~should confer with each other and counsel in an effort to resolve the conflict. ~~While neither~~Neither federal nor state court ~~cases~~actions have priority in scheduling~~,~~. A court may consider the following factors ~~may be considered~~ in resolving the conflict:

(A) ~~the nature of the cases as civil or~~ whether the other action is a criminal matter, and ~~the presence of any~~, if so, whether a speedy trial ~~problems~~problem exists;

(B) ~~the length, urgency, or~~ each action's relative urgency or importance ~~of the matters~~;

(C) ~~a case which~~ whether either action involves out-of-town witnesses, parties or counsel;

(D) ~~the age of the cases~~ the actions' respective ages;

(E) ~~the matter~~ which action was ~~set~~ first set for trial;

(F) any priority granted by rule or statute; and

(G) any other pertinent factor.

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

~~**Rule 38.1(f**~~**(d)**~~**.**~~ **Dismissal ~~calendar~~Calendar.**

(1) ***Placing an Action on the Dismissal Calendar.*** The clerk ~~of the court~~ or court administrat~~ion~~r ~~shall~~ must place a civil action on the Dismissal Calendar ~~every civil action in which~~if 270 days have passed since the action was commenced, and if:

(A) in an action other than a medical malpractice action or an action assigned to arbitration, the parties have not filed a Joint Report and a Proposed Scheduling

Order under Rule 16~~ or Rule 16.3 or an arbitrator's notice of decision under Rule 76 have not been filed with the court within 270 days after the commencement thereof, or ~~(b) or Rule 16.3;

(B) in a medical malpractice ~~cases where~~action, the court has not set a date for a Comprehensive Pretrial Conference ~~within 270 days after the commencement thereof. A case remaining~~under Rule 16(e) and the parties have not filed a proposed scheduling order; or

(C) in actions assigned to arbitration, the arbitrator has not filed a notice of decision under Rule 76.

(2) ***Dismissal.*** If an action remains on the Dismissal Calendar for 60 days~~ shall be dismissed~~, the court must dismiss it without prejudice ~~for lack of prosecution, and the court shall~~and make an appropriate order ~~as to~~regarding any bond or other posted security~~ filed therein~~, unless~~ prior to~~, before the~~ expiration of such~~ 60-day period expires:

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

(~~2~~B) in a medical malpractice ~~cases~~action, the court sets a date for a Comprehensive Pretrial Conference under Rule 16(e) or the parties file a proposed scheduling order;

(C) in an action assigned to arbitration, the arbitrator files a notice of decision under Rule 76; or

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

~~(4) a notice of decision has been filed with the clerk of the court in a case assigned to arbitration.~~**~~Rule 38.1(g).~~ 3)** ***Notification.*** The clerk~~ of the court~~ or court administrator, whoever is designated by the presiding superior court judge~~, shall~~ in the county, must promptly notify counsel in writing when ~~a case~~an action is placed on the Dismissal Calendar, ~~and no~~but they are not required to provide further notice ~~shall be required prior to dismissal~~before the court dismisses an action under Rule 38.1(d)(2).

Rule 39. Trial by Jury or by the Court

~~**Rule 39(a). Trial by**~~**(a) If a Demand Is Made.** If a jury~~When~~ trial ~~by jury has been~~is demanded ~~as provided in~~under Rule 38, the action ~~shall~~must be designated ~~upon~~on the

docket as a jury action. The trial ofon all issues so demanded shallmust be by jury, unless:

1. The**(1)**the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by file a stipulation to a nonjury trial or so stipulate on the record; or

(2) the court sitting without a jury, or2. The court upon, on motion or ofon its own initiative, finds that athere is no right ofto a jury trial by jury ofon some or all of those issues does not exist.

Rule 39(b). Order of trial by jury; questions by jurors to witnesses or the court

(b) If No Demand Is Made. The court must try all issues on which a jury trial is not properly demanded, but the court may, on motion, order a jury trial on any issue for which a jury might have been demanded.

Rule 39(j). Trial by the court

Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court. Notwithstanding the failure of a party to demand a jury in an action in which such a demand might have been made of right, the court in its discretion upon motion may order a trial by jury of any or all issues.

(c) Advisory Jury; Jury Trial by Consent. In an action not triable of right by a jury, the court, on motion or on its own:

(1) may try any issue with an advisory jury; or

(2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

Rule 39(m). Advisory jury and trial by consent

In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue with an advisory jury or, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

[Redlining Note: Portions of current Rule 39 are incorporated into new Rule 40, below, as reflected in the redline]

Rule 40. Trial Procedures

(a) Scope. Rule 40 governs jury trials and, to the extent applicable, trials to the court.

(b) Objectives. The court should adopt trial procedures as necessary or appropriate to facilitate a just, speedy and efficient resolution of the action. To achieve this objective, the court may:

(1) impose time limits and allocate trial time;

(2) sequence the presentation of claims, evidence and arguments;

(3) allow advance scheduling of witnesses and other evidence;

(4) order pretrial admission of exhibits or other evidence;

(5) allow electronic presentation of evidence; and

(6) adopt other means of managing or expediting trial.

~~The~~**(c) Order of Trial.** A trial ~~by a jury shall~~should proceed in the following order, unless the court orders otherwise for good cause ~~stated in the record, otherwise directs~~:

(1) ***Preliminary Instructions.*** ~~Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 39(b)(10), and the elementary legal principles that will govern the proceeding.~~ Immediately after the jury is sworn, the court must give preliminary instructions as provided in Rule 51(a).

(2) ***Opening Statements.*** ~~The plaintiff or the plaintiff's counsel may read the complaint to the jury and make a statement of the case.~~ Each party may make a concise opening statement regarding the facts that it proposes to establish by evidence at trial. Any party may decline to make an opening statement. Opening statements should proceed in the following order:

(A) the plaintiff or the plaintiff's counsel;

(B) ~~The defendant or the defendant's counsel may read the answer 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 defendant or the defendant's counsel, unless deferred until after the close of the plaintiff's presentation of evidence; and

(C) other parties or their counsel, unless deferred until after the close of the plaintiff's and defendant's presentations of evidence, in the order the court directs.

(3) ***Evidence.*** Unless the court orders otherwise, the parties should introduce evidence in the following order:

~~(4) Other parties admitted to the action or their counsel may read their pleadings and may make a statement of their cases to the jury, but they may defer making such statement until after the close of the evidence on behalf of the plaintiff and defendant. The statement of such parties shall be in the order directed by the court.~~

~~(5) The plaintiff shall then introduce evidence.~~

~~(6) The defendant shall then introduce evidence.~~

(A) plaintiff;

(B) defendant;

(~~7~~C) ~~The~~ **o**ther parties, if any, ~~shall then introduce evidence~~ in the order ~~directed by~~ the court~~.~~ directs;

(~~8~~D) ~~The~~ plaintiff ~~may then introduce rebutting~~'s rebuttal evidence~~.~~;

(~~9~~E) ~~The~~ defendant ~~may then introduce rebutting~~'s rebuttal evidence in support of the defendant~~'~~'s counterclaim(s), if any~~. Rebuttal~~; and

(F) rebuttal evidence from other parties or with respect to cross-claims or third party complaints ~~may be introduced with the permission of~~, as the court permits and in ~~an~~the order ~~to be established at the court's discretion~~it directs.

~~The statements to the jury shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial, and any party may decline to make such statement.~~

~~(10) Jurors shall be permitted to submit to the court written questions directed to witnesses or to the court. Opportunity shall be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the court may prohibit or limit the submission of questions to witnesses.~~

~~**Rule 39(d). Verdict, deliberations and conduct of jury; sealed verdict; access to juror notes and notebooks**~~

~~1. Before the jury begins deliberating, the court shall instruct the jury on the law, the appropriate procedures to be followed during deliberations, and the appropriate method for reporting the results of its deliberations. Such instructions shall be recorded or reduced to writing and made available to the jurors during deliberations.~~

(4) ***Final Instructions.*** Final jury instructions, as provided in Rule 51, may be given before or after counsel's closing arguments.

(5) ***Closing Argument.*** The party with the burden of proof on the whole case under the pleadings should make the first and last argument in closing. If the remaining parties have different claims or defenses and are represented by different counsel, the court should prescribe the order in which they will make their respective closing arguments.

(d) Supplementing Testimony. At any time before closing arguments begin and if justice requires, the court may allow a party to introduce omitted testimony on such terms as the court orders.

~~**Rule 39(e). Omission of testimony during trial**~~

~~The court may at any time before commencement of the argument, when it appears necessary to the due administration of justice, allow a party to supply an omission in the testimony upon such terms and limitations as the court prescribes.~~

(e) Jury Deliberations.

~~2.~~ **(1)** ***Place.*** ~~When the~~ During deliberations, jurors ~~retire to deliberate, they shall~~should be kept together in ~~some~~a convenient place in the charge of ~~a proper~~an officer that the court designates. The court ~~in its discretion~~ may permit jurors to separate while not deliberating, or, on motion ~~of any party~~ or ~~the court,~~on its own, it may require them to be sequestered in the charge of a ~~proper~~designated officer whenever they leave the courtroom or place of deliberation. ~~The court shall admonish the jury not to converse among themselves or with anyone else on any subject connected with the trial while not deliberating, or to permit themselves to be exposed to any accounts of the proceeding, or to view the place or places where the events involved in the action occurred, until they have completed their deliberations.~~

~~3.~~ **(2)** ***Time.*** ~~The court shall not require a jury to deliberate after~~ Juror deliberations should take place during normal work hours unless the court, after ~~consultation with~~consulting the jury and the parties, determines that the interests of justice require evening or weekend deliberations ~~are necessary in the interest of justice~~ and it will not impose an undue hardship ~~upon~~on the jurors.

(f) Juror Notes and Notebooks.

~~4. The court may direct the jury to return a sealed verdict at such time as the court directs.~~

(1) ***Juror Notes.*** The court should instruct that the jurors that they may take and keep notes on the evidence to help refresh their memory during recesses, discussions and deliberations. The court should provide suitable writing materials for this purpose. After the jury has rendered its verdict, the notes should be collected and promptly destroyed.

~~5.~~ **(2)** ***Juror Notebooks.*** ~~Jurors shall have access to their notes and notebooks~~ The court may allow documents and exhibits to be included in notebooks for each juror's use during trial to help the jurors perform their duties.

(3) ***Access.*** During recesses, discussions and deliberations~~.~~, jurors should have access to their notes and to any juror notebooks allowed by the court.

~~**Rule 39(e). Duty of**~~**(g) Officer Duties.** Unless the court orders otherwise, the officer in charge of ~~**jury**~~~~The officer having~~ the jurors ~~under that officer's charge shall not~~ should not:

(1) allow any communication to be made to them, or make any, except to ask them if they have agreed ~~upon~~on their verdict~~, unless by order of the court, and shall not, before the verdict is rendered,~~ ; or

(2) communicate ~~to~~with any person the state~~e~~us of ~~their~~the jury's deliberations or ~~the~~any verdict ~~agreed upon~~the jury may have reached.

~~**Rule 39(f). Admonition to jurors; juror discussions**~~

(h) Juror Admonitions.

(1) ***Discussions.***

~~If~~**(A)** The court should admonish the jury that until deliberations are completed, and at all times when the jurors are ~~permitted~~allowed to separate during ~~the~~ trial, they ~~shall be admonished by the court that it is their duty not to~~must not converse

~~with or permit~~among themselves ~~to be addressed by any person~~or with anyone else on any subject connected with the trial~~; except that~~ while not deliberating.

(B) Subject to such limitations as the court may impose for good cause, the jurors sh~~a~~oul~~l~~d be instructed that they ~~will be~~are permitted to discuss the evidence among themselves in the jury room during recesses from trial when all are present, ~~as~~so long as they reserve judgment about the action's outcome ~~of the case~~ until deliberations ~~commence. Notwithstanding the foregoing, the jurors' discussion of the evidence among themselves during recesses may be limited or prohibited by the court for good cause.~~begin.

~~**Rule 39(g). Communication to court by jury**~~

(2) ***Other Influences.*** The court should admonish jurors that they should not read or view any media stories or accounts from any other sources regarding the action, or view the place or places where the events at issue occurred.

(i) Juror Communications.

(1) ***The Court.*** ~~When~~ The officer in charge of the jurors ~~desire~~should notify the court of any juror request to communicate with the court during ~~retirement, they shall make their desire known to the officer having them in charge who shall inform the court and they may be~~deliberations. If the jury is brought into court, ~~and through~~ their foreman sh~~a~~oul~~l~~d state to the court, either orally or in writing, what they desire to communicate.

(2) ***Witnesses.*** Jurors may submit to the court written questions directed to witnesses or to the court. Counsel must be allowed to object to such questions out of the jury's presence. For good cause, the court may prohibit or limit jury questions to witnesses.

~~**Rule 39(h**~~**j**~~**).**~~ **Assisting ~~j~~Jurors at ~~impasse~~Impasse.** If the jury advises the court that it has reached an impasse in its deliberations, the court may, in ~~the~~counsel's presence~~ of counsel, inquire of~~, ask the jurors to determine whether and how court and counsel can assist them in their deliberative process. After receiving the jurors~~'~~' response, if any, the judge may direct that further proceedings occur as appropriate.

~~**Rule 39(i).**~~**(k) Dismissal and Discharge of ~~jury; new trial~~Jury; New Trial.**

(1) ***Discharge Before Verdict.*** ~~The jurors may, after~~ After the action is submitted to them, the jurors may be discharged ~~by the court when they have been kept together for such time as to render it altogether improbable that they can agree, or when~~if the court determines that they are unlikely to reach a verdict, or if a calamity, sickness or accident ~~may, in the opinion of the court, require it. When~~requires it. If a jury ~~has been~~is discharged without having rendered a verdict, the action may be tried again.

(2) *Dismissal After Verdict.* When dismissing a jury after the action's conclusion, the court should inform the jurors that they are discharged from service and, if appropriate, it may release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.

~~6. When dismissing a jury at the conclusion of the case, the court shall advise the jurors that they are discharged from service and, if appropriate, release them from their duty of confidentiality and explain their rights regarding inquiries from counsel, the media, or any person.~~

~~**Rule 39(ql).**~~ **Memoranda.** Post-trial memoranda may not be filed, except:

~~No post trial memoranda shall be filed by counsel, other than memoranda~~

(1) in support of or in opposition to a motion ~~pursuant to Rule 50(b), 52(b), 59 or 60 of these Rules, unless otherwise specifically directed by the trial judge.~~ under Rules 50(b), 52(b), 59 or 60; or

(2) as ordered by the court.

~~**Rule 39(k). Procedure applicable in trial by the court**~~

~~The rules prescribed for trial of actions before a jury shall govern in trials by the court so far as applicable.~~

~~**Rule 39(n). Interrogatories when equitable relief sought; answers advisory**~~

[Redlining Note: The substance of 39(n) has been moved to Rule 49]

~~In actions where equitable relief is sought, if a jury is demanded, and more than one material issue of fact is joined, the court may submit written interrogatories to the jury covering all or part of the issues of fact, and such interrogatories shall be answered by the jury. The interrogatories shall be approved by the court, and each interrogatory shall be confined to a single question of fact and shall be so framed that it can be answered yes or no, and shall be so answered. The answers shall be only advisory to the court.~~

~~**Rule 39(o). Arguments**~~

~~The party having under the pleadings the burden of proof on the whole case shall be entitled to open and close the argument. Where there are several parties having several~~

~~claims or defenses, and represented by different counsel, the court shall prescribe the order of argument among them.~~

~~**Rule 39(p). Note taking by jurors**~~ [Redlining note: Content of 39(p) relocated to 39(f)]

~~The court shall instruct that the jurors may take notes regarding the evidence and keep the notes for the purpose of refreshing their memory for use during recesses, discussions and deliberations. The court shall provide materials suitable for this purpose. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall promptly destroy them.~~

~~**Rule 39.1. Trial of cases assigned to the complex civil litigation program**~~

~~The court should employ trial procedures as are deemed necessary or appropriate to facilitate a just, speedy and efficient resolution of the case, including, but not limited to, time limits and allocation of trial time, sequencing of evidence and arguments, bifurcation of issues or claims, advance scheduling of witnesses and other evidence, pre-trial admission of exhibits or other evidence, electronic presentation of evidence, jury selection and juror participation issues and other means of managing or expediting the trial of a complex case.~~

~~**Rule 40. Assignment of cases for trial**~~

~~The superior courts shall provide by rule for the placing of actions upon the trial calendar:~~

~~1. Without request of the parties, or~~

~~2. Upon request of a party and notice to other parties, or~~

~~3. In such other manner as the court deems expedient.~~

Rule 41. Dismissal of Actions

~~Rule 41~~(a)~~.~~ Voluntary ~~dismissal; by plaintiff or by order of court; effect~~Dismissal.

(1) *By the Plaintiff.*

~~-~~**(A)***On Notice or Order on Stipulation.* ~~1. Subject to the provisions of Rule 23(e), or Rule 66(c), or of any statute, an action may be dismissed (A) by the plaintiff without order of court~~ Subject to Rule 41(a)(1)(A)(iii), the plaintiff may dismiss an action:

(i) by filing a notice of dismissal ~~at any time~~ before ~~service by~~ the ~~adverse~~opposing party ~~of~~serves either an answer or ~~of~~ a motion for summary judgment~~, whichever first occurs,~~; or

(~~B~~ii) by order ~~of the court pursuant to~~based on a stipulation of dismissal signed by all parties who have appeared~~ in the action. Such an~~. The order may be signed by a judge, ~~a duly~~an authorized court commissioner, the ~~clerk of~~ court clerk or a deputy clerk.

Dismissals under this Rule 41(a)(1)(A) are subject to Rules 23(e), 23.1(c), 23.2, and 66(d) and any applicable statute.

(B) *Effect.* Unless the notice or order states otherwise~~ stated in the notice or order of dismissal~~, the dismissal is without prejudice. But if the plaintiff previously dismissed an action in any court based on or including the same claim,~~ except that~~ a notice of dismissal operates as an adjudication ~~upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim~~on the merits.

~~2.~~ **(2) *By Other Court Order; Effect.*** Except as provided in ~~paragraph 1 of this subdivision of this~~ Rule 41(a)(1), an action ~~shall not~~may be dismissed at the plaintiff~~'s instance save upon order of the court and upon such~~'s request only by court order, on terms ~~and conditions as~~that the court ~~deems~~considers proper. If a ~~counterclaim~~defendant has~~ been~~ pleaded ~~by a defendant prior to the service upon the defendant of~~a counterclaim before being served with the plaintiff~~'~~'s motion to dismiss, the action ~~shall not~~may be dismissed ~~against~~over the defendant~~'~~'s objection ~~unless~~only if the counterclaim can remain pending for independent adjudication~~ by the court~~. Unless ~~otherwise specified in~~ the order states otherwise, a dismissal under this ~~paragraph~~Rule 41(a)(2) is without prejudice.

~~Rule 41~~(b)~~.~~ Involuntary ~~dismissal; effect thereof~~~~For failure of~~Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or ~~any order of~~a court order, a defendant may move ~~for dismissal of an~~to dismiss the action or ~~of~~ any claim against ~~the defendant~~it. Unless the ~~court in its order for~~ dismissal order states otherwise~~ specifies, a~~

~~dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal~~, and excepting dismissals for lack of jurisdiction, ~~for~~ improper venue, or ~~for~~ failure to join a party under Rule ~~19,~~19:

(1) a dismissal under Rule 41(b) operates as an adjudication ~~upon~~on the merits; and

(2) any other dismissal not under Rule 41 operates as an adjudication on the merits.

~~Rule 41(c). Dismissal of counterclaim, cross-claim, or third-party claim~~

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. ~~The provisions of this Rule apply to the~~ This rule applies to a dismissal of any counterclaim, ~~cross-claim~~crossclaim, or third-party claim. A claimant's voluntary dismissal ~~by the claimant alone pursuant to paragraph 1 of subdivision (a) of this Rule shall be made~~ under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or~~,~~

(2) if there is ~~none~~no responsive pleading, before ~~the introduction of~~ evidence is introduced at ~~the trial or~~a hearing or trial.

~~Rule 41(d).~~ Costs of ~~previously dismissed action~~a Previously Dismissed Action. If a plaintiff who ~~has once~~previously dismissed an action in any court ~~commences~~files an action based ~~upon~~on or including the same claim against the same defendant, the court ~~:~~

(1) may ~~make such~~ order ~~for the payment of~~the plaintiff to pay all or part of the costs of ~~the~~that previous action ~~previously dismissed as it may deem proper and~~ ; and

(2) may stay the proceedings ~~in the action~~ until the plaintiff has complied ~~with the order~~.

Rule 42. Consolidation; Separate Trials~~; Change of Judge~~

~~Rule 42(a). Consolidation~~

(a) Consolidation. ~~When~~ If actions ~~involving~~before the court involve a common question of law or fact ~~are pending before~~, the court~~, it~~ may ~~order a joint~~:

(1) join for hearing or trial ~~of~~ any or all ~~the~~ matters ~~in~~at issue in the actions~~, or it may order all~~;

(2) consolidate the actions ~~consolidated, and it may make such orders concerning proceedings therein as may tend~~; or

(3) issue any other orders to avoid unnecessary cost~~s~~ or delay.

~~**Rule 42(b).**~~ **Separate ~~trials~~**~~The court, in furtherance of~~**Trials.** For convenience~~ or~~, to avoid prejudice, or ~~when separate trials will be conducive to expedition~~to expedite and ~~economy,~~economize, 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, cross-~~one or more separate issues, claims, crossclaims, counterclaims, or third-party claims. When ordering a separate trial,~~ or issues, always preserving inviolate~~ the court must preserve any right ~~of trial by~~to a jury trial.

Rule ~~42(f).~~ 42.1. Change of ~~judge~~*~~1. Change~~*Judge** as~~ *a Matter*~~ **of Right**

(a) When Available. ~~**A) Nature of Proceedings.**~~In any action ~~pending~~ in superior court, except an action ~~pending~~ in the ~~Arizona~~ Tax Court, each side is entitled as a matter of right to a change of one judge~~ and of one court commissioner~~. Each action, whether single or consolidated, ~~shall~~must be treated as having only two sides. ~~Whenever~~If two or more parties on a side have adverse or hostile interests, the presiding judge ~~or that judge's designee~~ may allow additional changes of judge as a matter of right, but each side ~~shall~~must have the right to the same number of such changes. ~~A party wishing to exercise that party's right to change of judge shall file a "Notice of Change of Judge." The notice may be signed by an attorney; it shall state the name of the judge to be changed; and it shall neither specify grounds nor be accompanied by an affidavit, such as required by subsection (f)(2) of this rule, but it shall contain a certification by the party filing the notice or by the attorney that (i) the notice is timely, (ii) the party has not waived the right under subsection (f)(1)(D) of the rule, and (iii) the party has not previously been granted~~The term "judge" as used in this rule refers to any judge, judge pro tem, or court commissioner. The term "presiding judge" as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.

(b) Notice Requirements. A party seeking a change of judge as a matter of right ~~in the case. A judge may honor an informal request for change of judge. When a judge does so, the judge shall enter upon the record the date of the request and the name of the party requesting change of judge. Such action shall constitute an exercise of the requesting party's right to change of judge.~~must either file a written notice, or make an oral request on the record, in the manner provided below:

(1) ***Written Notice.*** ~~**B) Filing and Service.** The~~ A written notice ~~shall be filed and copies~~of change of judge must be served on ~~the~~all other parties, the presiding judge, the noticed judge and the court administrator, if any, by any method provided in

~~accordance with Rule 5, Arizona Rules of Civil Procedure.~~Rule 5(c). The notice must not specify grounds, but must contain:

(A) the name of the judge to be changed;

(B) a statement that:

(i) the notice is timely under Rule 42.1(c);

(ii) no waiver has occurred under Rule 42.1(d); and

(iii) ~~**C) Time.** Failure to file a timely notice precludes~~ the party has not been granted a change of a judge as a matter of right previously in the action.

(2) ***Oral Notice.*** An oral request for change of judge must include the information required by Rule 42.1(b)(1)(A) and (B). When made, it is deemed to be an "oral notice of change of judge" for purposes of this rule. The judge must enter on the record the date of the oral notice, the name of the requesting party and the judge's disposition of the request. A party obtaining a change of judge based on an oral notice is deemed to have exercised its right to a change of judge under Rule 42.1(a). For purposes of this rule, an oral notice is deemed "filed" on the date that it is made on the record.

(c) Time Limitations. A party is precluded from changing judge as a matter of right~~. A notice is timely if filed sixty (60) or more days before the date set for trial. Whenever~~ unless timely notice is filed. The following time periods govern the timeliness of any notice of change of judge:

(1) Notice must be filed within 90 days after the party giving notice first appears in the case.

(2) If an assignment ~~is made which~~ identifies ~~the~~a judge for the first time ~~or which changes the judge within sixty (60) days of the date set for trial, a notice shall be~~after the time period set forth in Rule 42.1(c)(1) has expired, or fewer than 10 days before that time period will expire, a notice is timely if filed ~~as to the newly assigned judge if filed~~ within ~~ten (~~10~~)~~ days after ~~such~~the party receives notice of the new assignment, or within 10 days after the new judge is assigned, whichever is later.

(3) A notice of change of judge is ineffective if filed within ~~three (~~3~~)~~ days of a scheduled proceeding, unless the parties have received ~~less~~fewer than ~~five (~~5~~)~~ days~~'~~" notice of that proceeding or the judge's assignment~~ of the judge~~. The filing of ~~such~~ an ineffective notice neither requires a change of judge nor ~~precludes~~bars the party who filed it from ~~subsequently~~later filing a notice of change of judge that ~~otherwise~~ satisfies ~~the~~this rule's requirements~~ of this rule~~.

(d) Waiver. **D) Waiver.** After a judge is assigned to preside at trial or is otherwise permanently assigned to the action, a A party waives the right to change of that judge as a matter of right whena judge assigned to preside over any proceeding in the action, if:

(i1) the party agrees to the assignment; or

(ii) (aa) 2) after notice to the parties the judge rules on any contested issue; or, provided the party had an opportunity to file a written or oral notice of change of judge before the ruling is made;

(bb3) the judge grants or denies a motion to dispose of one or more claims or defenses in the action; or

(4) a scheduling, pretrial, trial-setting or similar conference begins;

(cc) the judge holds 5) a scheduled conference or contested hearing begins; or

(dd6) trial commencesbegins.

Such waiver is to apply only to such assigned judge.

(E) Casese) Actions Remanded Fromfrom an Appellate Courts. When an action isCourt. The right to a change of judge in actions remanded by an appellate court and the opinion or order requires a new trial on one or more issues, then all rights to change of judge are renewedis renewed, and no event connected with the first trial shall constituteconstitutes a waiver.:

(1) if the appellate decision requires a new trial or reverses summary judgment on one or more issues; and

(2) the party seeking a change of judge—or the side on which the party belongs—has not previously exercised its right to a change of judge in the action.

(f) Procedures on Notice.

(1) ***On Proper Notice.*** If a notice is timely filed and no waiver has occurred, the judge named in the notice or affidavit should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge also may perform the functions of the presiding judge.

(2) ***On Improper Notice.*** If the court determines that the party who filed the notice or affidavit is not entitled to a change of judge, then the judge named in the notice may proceed with the action.

(3) *Reassignment.*

(A) *On Stipulation.* **F) Assignment of Action.** At the time of the filing ofIf a notice of change of judge is filed, the parties shaoullld inform the court in writing if they have agreed uponon a judge who is available and is willing to heaver the action assigned to that judge. Anon. Such an agreement of all parties upon such judge may be honored and, if so, shall precludebars further changes of judge as a matter of right unless the judge agreed uponon becomes unavailable. If no judge has been agreed upon, then the presiding judge shall immediately reassign the action.If a judge to whom an action has beenis assigned by agreement later becomes unavailable because of a change of calendar assignment, death, illness or other legal incapacity, the parties shall be restored to their several positions andmay assert any rights under this rule as they existed immediately before the action's assignment of the action to suchthat judge.

(B) *Absent Stipulation.* If no judge is agreed on, the presiding judge must promptly reassign the action.

Rule 42.2. *2. Proceedings Based on* **Change of Judge for Cause.**

(a) Generally. **A) Grounds.** Grounds for proceedings based upon cause are stated in A.R.S. § 12-409 and proceedings under that statute shall be governed by this rule.This rule governs proceedings for a change of judge under A.R.S. § 12-409. The term "judge" as used in this rule refers to any judge, judge pro tem, or court commissioner. The term "presiding judge" as used in this rule refers to the presiding superior court judge in the county where the action is pending, or that judge's designee.

(b) Grounds. A party seeking a change of judge for cause must establish grounds by affidavit as required by A.R.S. § 12-409.

(Bc) Filing and Service. An The affidavit shallmust be filed and copies served on the parties, the presiding judge, the noticed judge and the court administrator, if any, by any method provided in accordance with Rule 5, Arizona Rules of Civil Procedure.5(c).

(Cd) Timeliness and Waiver. An affidavit shall be timely ifseeking a change of judge for cause must be filed and served within twenty20 days after discoverying that grounds exist for a change of judge. No event occurringCase events or actions taken before suchthat discovery shall constitute waiver of rights todo not waive a party's right to a change of judge based onfor cause.

(~~D~~c) Hearing and Assignment. If a party ~~makes proper service of~~timely files and serves an affidavit ~~that meets the requirements of A.R.S. § 12-409, the presiding judge or that judge's designee shall forthwith conduct or provide for~~complying with A.R.S. § 12-409:

(1) Within 5 days after the affidavit is served, any other party may file an opposing affidavit or a responsive memorandum of no more than two pages in length. No reply memorandum or affidavits are permitted unless authorized by the presiding judge.

(2) The presiding judge may hold a hearing to determine the issues ~~connected with the affidavit. The hearing judge shall~~raised in the affidavit, or may decide the issues based on any affidavits and memoranda filed by the parties.

(3) The judge named in the affidavit should proceed no further in the action except to make such temporary orders as are absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the request is decided and the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge may also perform the functions of the presiding judge.

(4) The presiding judge must decide the issues by the preponderance of the evidence. Under § 12-409(B)(5), the sufficiency of any "cause to believe" ~~shall~~must be determined by an objective standard, not by reference to the affiant~~'~~'s subjective belief. ~~Following the hearing~~If grounds for disqualification are found, the presiding judge ~~or that judge's designee shall expeditiously~~must promptly reassign the action to the original judge or make a new assignment~~, depending on the findings of the hearing judge. If a~~. Any new assignment ~~is to be made, it shall be in accordance with the provisions of~~must comply with A.R.S. § 12-411.

~~*3. Duty of Judge After Filing of Notice or Affidavit.*~~

(5) ~~**A)** When a notice or an~~ If the court determines that the party who filed the affidavit ~~for~~is not entitled to a change of judge~~ is timely filed~~, then the judge named in the notice ~~or affidavit shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge. However, if the named judge is the only judge in the county where the action is pending, that judge shall also perform the functions of the presiding judge.**~~**(B)** If the court determines that the party who filed the notice or affidavit is not entitled to a change of judge, then the judge named in the notice or affidavit shall~~may proceed with the action.

Rule 43. ~~Witnesses; Evidence~~ **Taking Testimony**

~~**Rule 43(a).**~~ **Definition of ~~witness~~Witness.** A witness is a person whose ~~declaration~~testimony under oath or affirmation is ~~received~~offered as evidence for any purpose, whether ~~such declaration is made on~~by oral examination~~ or by~~, deposition or affidavit.

~~**Rule 43(b).**~~ **Affirmation ~~in lieu of oath~~**~~Whenever under~~**Instead of Oath.** When these ~~Rules~~rules require an oath~~ is required to be taken~~, a solemn affirmation ~~may be accepted in lieu thereof~~suffices.

~~**Rule 43(c). Interpreters**~~

(c) Interpreter. The court may appoint an interpreter of its ~~own selection~~choosing and may ~~fix~~set the interpreter~~'~~'s reasonable compensation~~. The compensation shall~~, to be paid ~~out of~~from funds provided by law or by one or more ~~of the~~ parties~~ as the court may direct, and~~. The compensation may be taxed ~~ultimately~~ as costs~~, in the discretion of the court~~.

~~**Rule 43(d).**~~ **Limitation on ~~examination of witness; exception~~**~~Only~~**Examining Witness.** Except as allowed by the court, only one attorney ~~on~~for each ~~side shall conduct the examination of a witness until such examination is completed, except when the court grants permission for other attorneys to conduct the examination~~party may examine a witness.

~~**Rule 43(f). Form and admissibility of evidence**~~

(e) In Open Court. ~~In all trials the~~ At trial, witness testimony ~~of witnesses shall be taken orally~~must take place in open court, unless ~~otherwise provided by~~a statute, these rules, or the Arizona Rules of Evidence~~.~~ provide otherwise. For good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

~~**Rule 43(if).**~~ **Evidence on ~~motions~~**~~When~~**a Motion.** If a motion ~~is based~~relies on facts ~~not appearing of~~outside the record, the court may hear the matter on affidavits ~~presented by the respective parties, but the court may direct that the matter be heard~~or may hear it wholly or partly on oral testimony or on depositions.

~~**Rule 43(k). Preservation of verbatim recording of court proceedings.**~~

(g) Preserving Recording of Court Proceedings.

(1) ***Transcripts and Other Recordings.*** The official verbatim recording of any court proceeding is an official record~~s~~ of the court. The original ~~of such verbatim~~ recording ~~shall~~must be kept by the person who recorded it, a court-designated custodian, or the ~~Clerk of the Superior Court~~clerk, in ~~such~~a place ~~or places as shall be~~ designated by the court. ~~Unless the court specifies a different period for the retention of such verbatim~~The recording~~, it shall~~ must be retained according to the records retention and disposition schedules ~~and purge lists~~ adopted by the Arizona Supreme Court, unless the court specifies a different retention period.

(2) ***Transcription.*** If a court reporter~~'~~'s verbatim recording ~~has been delivered to the Clerk of the Superior Court or court-designated custodian and~~ is to be transcribed, the court reporter who made the recording ~~shall~~must be given the first opportunity to make the transcription, unless that court reporter ~~has been dismissed or has otherwise terminated the position as court reporter for the Superior Court~~no longer serves in that position or is unavailable for any other reason.

~~Rule 44. Proof Records; Determination of Foreign Law~~**Rule 44. Proving an Official Record**

~~**Rule 44(a). Records of public officials**~~

~~The records required to be made and kept by a public officer of the state, county, municipality, or any body politic, and copies thereof certified under the hand and seal of the public officer having custody of such records, shall be received in evidence as prima facie evidence of the facts therein stated.~~

(a) Authenticating an Official Record—Generally.

(1) ***Domestic Record.*** A record—or an entry in it—may be authenticated as an official record if it is kept within the United States, any state, district, or commonwealth, or any territory subject to the administrative or judicial jurisdiction of the United States and it is:

(A) an official publication of the record; or

(B) a copy attested by the officer with legal custody of the record—or by the officer's deputy—and accompanied by a certificate that the officer has custody. The certificate must be made under seal, or its equivalent:

(i) by a judge of a court of record in the district or political subdivision where the record is kept; or

(ii) by any public officer with a seal of office and with official duties in the district or political subdivision where the record is kept.

(2) *Foreign Record.*

(A) *Generally.* A record—or an entry in it—may be authenticated as a foreign official record if:

(i) it is an official publication of the record; or

(ii) the record—or a copy—is attested by an authorized person and is accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties.

(B) *Final Certification of Genuineness.* A final certification must certify the genuineness of the signature and official position of the attester or of any foreign official whose certificate of genuineness relates to the attestation or is in a chain of certificates of genuineness relating to the attestation. A final 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.

(C) *Other Means of Proof.* If all parties have had a reasonable opportunity to investigate a foreign record's authenticity and accuracy, the court may, for good cause, either:

(i) admit an attested copy without final certification; or

(ii) permit the contents of the record to be proved by an attested summary with or without a final certification.

~~Rule 44(k). Proof of appointment of executor, administrator, or guardian; letters or certificate~~

(b) Means of Proving Appointment of Guardian, Personal Representative, Administrator or Conservator. ~~Whenever it is necessary to make proof of the appointment and qualification of an executor~~ The appointment and qualifications of a guardian, personal representative, administrator or ~~guardian,~~conservator may be proved by the letters issued ~~in the manner~~as provided by law, or by a certificate of the ~~proper~~ clerk under official seal that the letters issued~~, shall be sufficient evidence of the appointment and qualification of the executor, administrator or guardian~~.

(c) Lack of a Record. A written statement that a diligent search of designated records revealed no record or entry on a specified topic is admissible as evidence that the records contain no such record or entry. For domestic records, the statement must be authenticated under Rule 44(a)(1). For foreign records, the statement must comply with Rule 44(a)(2)(C)(ii).

(d) Other Proof. A party may authenticate an official record—or an entry or lack of an entry in it—by any other method authorized by law.

~~**Rule 44(c). Proof of records of notaries public**~~

~~Declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received in evidence as prima facie evidence of the facts therein stated.~~

~~**Rule 44(m). Comparison of handwriting**~~

~~In any action comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting them may be submitted to the court and jury as evidence of the genuineness or otherwise of the writing in dispute.~~

Rule 44.1. ~~Determination of foreign law~~ Determining Foreign Law

A party who intends to raise an issue ~~concerning the law of~~about a foreign country~~ shall~~'s law must give~~ notice by pleadings or other~~ reasonable written notice~~. The~~, filed with the court~~, in~~. In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Arizona Rules of Evidence. The court~~'~~'s determination ~~shall~~must be treated as a ruling on a question of law.

Rule 45. Subpoena

(a)~~ Form; Issuance.~~ Generally.

(1)~~ *General*~~ *Requirements*~~.~~ ~~—~~*Generally.* Every subpoena ~~shall~~must:

(A) state the name of the Arizona court from which it ~~is~~ issued;

(B) state the title of the action, the name of the court in which it is pending, and its civil action number;

(C) command each person to whom it is directed to do the following at a specified time and place:

(i) attend and ~~give testimony~~testify at a deposition, hearing~~,~~ or trial~~, or deposition~~; or

(ii) produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things in that person~~'~~'s possession, custody or control; or

(iii) permit the inspection of premises; and

(D) be substantially in the form set forth in Rule 84, Form 9.

(2) ***Issuance by Clerk.*** The clerk ~~shall~~must issue a signed but otherwise blank subpoena to a party requesting it~~, and that~~. That party ~~shall~~must complete the subpoena before service. The State Bar of Arizona may also issue signed subpoenas on behalf of the clerk through an online subpoena issuance service approved by the Arizona Supreme Court~~ of Arizona~~.

(b)~~ For Attendance of Witnesses at~~ Subpoena for Deposition, Hearing~~,~~ or Trial~~ or Deposition~~; Duties; Objections.

(1) ***Issuing Court.*** A subpoena commanding ~~a person to attend and give testimony~~attendance at a hearing or trial ~~shall~~must issue from the superior court for the county ~~in which~~where the hearing or trial is to be held. Except as otherwise provided in Rule 45.1, a subpoena commanding ~~a person to attend and give testimony~~attendance at a deposition ~~shall~~must issue from the superior court for the county ~~in which~~where the ~~case~~action is pending.

(2) ***Combining or Separating a Command to Produce or to Permit Inspection.*** A command to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, may be ~~joined with a command to attend and give testimony at a~~included in a subpoena commanding attendance at a deposition, hearing, or trial, ~~or deposition,~~ or may be set out in a separate subpoena.

(3) ***Place of Appearance.***

(A) *Trial Subpoena.* Subject to Rule 45(e)(2)(B)(iii), a subpoena commanding ~~a person to attend and give testimony~~attendance at a trial may require the subpoenaed person to travel from anywhere within the state.

(B) ~~Hearing or~~ *Deposition or Hearing Subpoena.* A subpoena commanding a person who is neither a party nor a party's officer to attend ~~and give testimony at a hearing or~~a deposition or hearing may not require the subpoenaed person to travel to a place other than:

(i) the county ~~in which~~where the person resides or transacts business in person;

(ii) the county ~~in which~~where the person is served with a subpoena, or within forty miles from the place of service; or

(iii) such other convenient place fixed by a court order.

(4) ***Command to Attend a Deposition~~—~~; Notice of Recording Method.*** A subpoena commanding ~~a person to attend and give testimony~~attendance at a deposition ~~shall~~must state the method for recording the testimony.

(5) ***Objections; Appearance Required.*** Objections to a subpoena commanding ~~a person to attend and give testimony~~attendance at a deposition, hearing, or trial, ~~or deposition shall~~must be made by timely motion ~~in accordance with~~under Rule 45(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of this Rule~~,~~ 45, a person who is properly served with a subpoena ~~is required to~~must attend and ~~give testimony~~testify at the date, time and place specified in the subpoena.

(c) ~~**For Production of Documentary Evidence or for**~~ **Subpoena to Produce Materials or to Permit Inspection~~ of Premises~~; Duties~~ in Responding to Subpoena~~; Objections~~; Production to Other Parties~~.**

(1) ***Issuing Court.*** If separate from a subpoena commanding ~~a person to attend and give testimony~~attendance at a deposition, hearing, or trial~~ or deposition~~, a subpoena commanding a person to produce designated documents, electronically stored information or tangible things, or to permit the inspection of premises, ~~shall~~must issue from the superior court for the county ~~in which~~where the production or inspection is to be made.

(2) ***Electronically Stored Information.***

(A) *Specifying the Form for Electronically Stored Information.* A subpoena may specify the form or forms in which electronically stored information is to be produced.

(B) *Form for Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(1)(B) and (C). The court may specify conditions for the discovery.

(3) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless the subpoena also commands ~~the person to attend and give testimony at a hearing,~~attendance at a deposition, hearing or trial ~~or deposition~~.

(4) ~~*Production of*~~ ***Documents.*** A person responding to a subpoena to produce documents ~~shall~~must produce them as they are kept in the usual course of business or ~~shall~~ organize and label them to correspond with the categories in the demand.

(5) ***Objections.***

(A) *Form and Time for Objection.*

(i) A person commanded to produce documents, electronically stored information or tangible ~~items~~things, or to permit ~~the~~ inspection ~~of premises~~, may serve ~~upon the party or attorney serving the subpoena an~~a written objection to producing, inspecting, copying, testing or sampling any or all of the ~~designated~~ materials; to inspecting the premises; or to producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or cost. The objection ~~shall set forth~~must state the basis for the objection, and ~~shall~~must include the name, address, and telephone number of the person, or the person~~'~~'s attorney, serving the objection.

(ii) The objection ~~shall~~must be served upon the party or attorney serving the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(iii) ~~An objection also may be made to that portion of~~ A person served with a subpoena that com~~ma~~bin~~de~~s ~~the persona~~ command to produce ~~and~~materials, or to permit inspection, ~~copying, testing, or sampling if it is joined~~ with a command to attend ~~and give testimony at~~ a deposition, hearing~~, trial or deposition, but making such an objection does not suspend or modify a person's obligation to attend and give testimony~~ or trial, may object to any portion of the subpoena. A person objecting to the portion of a combined subpoena that commands attendance at a deposition, hearing or trial must attend and testify at the date, time and place specified in the subpoena, unless excused as provided in Rule 45(b)(5).

(B) *Procedure After* ~~an Objection Is Made~~*Objecting*.

(i) ~~If an objection is made, the party or attorney serving the subpoena shall not be entitled to compliance~~ A person objecting to a subpoena to produce materials or to permit inspection need not comply with those portions of the subpoena that are the subject ~~to~~of the objection, ~~except pursuant to an order of~~unless ordered to do so by the issuing court.

(ii) The party serving the subpoena may move ~~for an order~~ under Rule 37(a) to compel compliance with the subpoena. The motion ~~shall~~must comply with Rule 37(a)(2)(C), and ~~shall~~must be served on the subpoenaed person and all other parties ~~in accordance with~~under Rule 5(c).

(iii) Any order to compel entered by the court ~~shall~~must protect ~~any~~a person who is neither a party nor a party~~'~~'s officer from undue burden or expense resulting from ~~the production, inspection, copying, testing, or sampling commanded.~~compliance.

(C) *Claiming Privilege or Protection.*

(i) ~~When~~ A person withholding subpoenaed information ~~subject to a subpoena is withheld on~~under a claim that it is privileged or subject to protection as trial-preparation ~~materials, the claim shall be made expressly and shall be supported by a description of~~material must expressly make the claim and describe the nature of the withheld documents, communications, or tangible things ~~not produced that is sufficient to~~in a manner that, without revealing information itself privileged or protected, will enable the demanding party to ~~contest~~assess the claim.

(ii) If ~~a person contends that~~ information ~~that~~produced in response to a subpoena is subject to a claim of privilege or of protection as trial- preparation material ~~has been inadvertently produced in response to a subpoena~~, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has ~~and may~~; must not use or disclose the information until the claim is resolved; and must take reasonable steps to retrieve the information if the party disclosed it before being notified. A receiving party may promptly present the information to the court under seal for a determination of the claim. ~~If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it.~~ The person who produced the information must preserve the information until the claim is resolved.

(6) ***Production to Other Parties.*** Unless otherwise stipulated by the parties or ordered by the court, a party receiving documents, electronically stored information ~~and~~or tangible things ~~that are obtained~~ in response to a subpoena ~~shall be made~~must promptly make such materials available to all other parties ~~in accordance with Rule 26.1(a) and (b).~~for inspection and copying, along with any other disclosures required by Rule 26.1.

(d) Service.

(1) ***General Requirements; Tendering Fees.*** A subpoena may be served by any person who is not a party and is ~~not less than eighteen~~at least 18 years ~~of age~~old. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person~~'~~'s attendance, tendering to that person the fees for ~~one~~1 day~~'~~'s attendance and the mileage allowed by law.

(2) ***Exceptions to Tendering Fees.*** ~~When~~ Fees and mileage need not be tendered when the subpoena commands ~~the appearance of a party~~attendance at a trial or hearing~~,~~ or is issued on behalf of the state or any of its officers or agencies~~, fees and mileage need not be tendered~~.

(3) ***Service on Other Parties.*** A copy of every subpoena ~~shall~~and any proof of service must be served on every other party in accordance with Rule 5(c).

(4) ***Service ~~w~~Within the State.*** A subpoena may be served anywhere within the state.

(5) ***Proof of Service.*** ~~Proving service, when necessary, requires filing~~ Proof of service should not be filed except as allowed by Rule 5(g)(2)(A). Any such filing must be with the clerk of the court ~~of~~for the county ~~in which~~where the ~~case~~action is pending ~~a statement showing~~and must include the server's certificate stating the date and

manner of service and ~~of~~ the names of the persons served. ~~The statement must be certified by the person who served the subpoena.~~

(e) Protectio~~n~~ng ~~of~~ a Person~~s~~ Subject to ~~Subpoenas~~a Subpoena; Motion to Quash or Modify.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or an attorney responsible for ~~the service of~~serving a subpoena ~~shall~~must take reasonable steps to avoid imposing undue burden or expense on a person subject to th~~at~~e subpoena. The issuing court ~~shall~~must enforce this duty and may impose ~~upon the party or attorney who breaches this duty~~ an appropriate sanction~~,~~ —which may include~~, but is not limited to,~~ lost earnings and ~~a~~ reasonable ~~attorneys' fee~~attorney's fees—on a party or attorney who fails to comply.

(2) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On ~~the~~ timely ~~filing of a~~ motion ~~to quash or modify a subpoena~~, the ~~superior~~ court ~~of~~in the county ~~in which~~where the case is pending or from which a subpoena was issued ~~shall~~must quash or modify ~~the~~a subpoena if it:

(i) ~~it~~ fails to allow a reasonable time ~~for~~to compl~~iance~~y;

(ii) ~~it commands~~ requires a person who is neither a party nor a party~~'~~'s officer to travel to a location other than the places specified in Rule 45(b)(3)(B);

(iii) ~~it~~ requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) ~~it~~ subjects a person to undue burden.

(B) *When Permitted.* On ~~the~~ timely ~~filing of a motion to quash or modify a subpoena, and to protect a person subject to or affected by a subpoena~~motion, the superior court of the county ~~in which~~where the case is pending or from which a subpoena was issued may quash or modify ~~the~~a subpoena if:

(i) it requires disclosing a trade secret or other confidential research, development, or commercial information;

(ii) it requires disclosing an unretained expert~~'~~'s opinion or information that does not describe specific occurrences in dispute and results from the expert~~'~~'s study that was not requested by a party;

(iii) it requires a person who is neither a party nor a party~~'~~'s officer to incur substantial travel expense; or

(iv) justice so requires.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(e)(2)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions, including any conditions and limitations set forth in Rule 26(c), as the court deems appropriate:

(i) if the party or attorney serving the subpoena shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) if the person~~'~~'s travel expenses or the expenses resulting from the production are at issue, the party or attorney serving the subpoena assures that the subpoenaed person will be reasonably compensated.

(D) *Time for Motion.* A motion to quash or modify a subpoena must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.

(E) *Service of Motion.* Any motion to quash or modify a subpoena ~~shall~~must be served on the party or the attorney serving the subpoena~~ in accordance with Rule 5(e)~~. The party or attorney who served the subpoena ~~shall~~must serve a copy of any such motion on all other parties~~ in accordance with Rule 5(e).**(f)**~~

(f) Contempt. The issuing court may hold in contempt a person~~,~~ who, having been served, fails without adequate excuse to obey ~~a~~the subpoena or an order related to it. A failure to obey must be excused if the subpoena purports to require a person who is neither a party nor a party~~'~~'s officer to attend or produce at a location other than the places specified in Rule 45(b)(3)(B).

~~**(g) Failure to Produce Evidence.** If a person fails to produce a document, electronically stored information, or a tangible thing requested in a subpoena, secondary evidence of the item's content may be offered in evidence at trial.~~

Rule 45.1. Interstate ~~d~~Depositions and ~~d~~Discovery

(a) Definitions. In this ~~R~~rule:

(1) Foreign jurisdiction means a state other than ~~this state.~~Arizona;

(2) Foreign subpoena means a subpoena issued under ~~authority of a court of record of~~ a foreign ~~jurisdiction.~~court's authority;

(3)~~ Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other~~

~~legal or commercial entity.(4)~~ State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States~~.~~;

(~~5~~4) Subpoena means a document~~, however denominated,~~ issued under court authority ~~of a court of record~~ requiring a person to:

(A) attend and ~~give testimony~~testify at a deposition;

(B) produce and permit inspection ~~and~~, copying, testing, or sampling of designated ~~books,~~ documents, ~~records,~~ electronically stored information~~;~~, or tangible things in ~~the~~that person's possession, custody, or control ~~of the person~~; or

(C) permit the inspection of premises ~~under the control of the person~~.

(b) ~~**Issuance of**~~ **Issuing Subpoena.**

(1) ***Presenting the Foreign Subpoena.*** ~~To request issuance of~~ To obtain a subpoena under this ~~rule,~~Rule 45.1, a party must present a foreign subpoena to ~~a~~the court clerk ~~of court~~ in the county ~~in which~~where the discovery ~~is sought to~~will be conducted ~~in this state~~. The foreign subpoena must include the following phrase below the case number: "For the Issuance of an Arizona Subpoena Under Ariz. R. Civ. P. 45.1." A request for ~~the issuance of~~ a Rule 45.1 subpoena ~~under this rule~~ does not constitute an appearance in ~~the courts of this state~~an Arizona court.

(2) ***Clerk's Duties.*** ~~When a party presents~~ On receiving a foreign subpoena ~~to a clerk of court in this state~~under Rule 45.1(b)(1), the clerk ~~shall~~must promptly issue a signed but otherwise blank subpoena to the party requesting it, and that party ~~shall~~must complete the subpoena before service.

(3) ***Content of Subpoena.*** A subpoena under ~~subsection~~ Rule 45.1(b)(2) must:

(A) state the name of the issuing Arizona court ~~issuing it~~;

(B) bear the caption and case number of the out-of-state case to which it relates, identifying (before the case number) the foreign jurisdiction and court where the case is pending;

(C) accurately incorporate the discovery requested in the foreign subpoena;

(D) contain or be accompanied by the names, addresses, ~~and~~ telephone numbers and email addresses of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel;

(E) ~~comply with~~ be in the form ~~specified in~~required by Rule 45(a)(1) ~~and otherwise required in Rule 45~~; and

(F) ~~not request discovery exceeding the discovery authorized in Rule 45.~~**~~(c) Service of Subpoena~~** comply with Rule 45's other requirements.

(c) Service. A subpoena issued ~~by a clerk of court under subsection (b) of this rule~~as provided in Rule 45.1(b) must be served in compliance with Rule 45(d).

(d) Deposition, Production, and Inspection. Rule 45 applies to subpoenas issued under ~~subsection (b) of this rule. Depositions and other discovery~~Rule 45.1(b). Discovery taken ~~pursuant to~~under this rule ~~shall~~must be conducted consistent with, and subject to ~~the~~applicable limitations in, the Arizona Rules of Civil Procedure, ~~including but not limited to Rules 26, 28, 30, 31, and 32.~~except as follows:

(1) Rules 30(a)(1) ("Depositions Permitted") and 30(a)(2) ("Depositions by Plaintiff Fewer than 30 Days after Serving the Summons and Complaint") and 30(a)(4) ("Compelling Attendance of Deponent") do not apply; and

(2) Rule 30(c)(2) ("Objections") applies, but counsel participating in the foreign action may object in the manner required to preserve objections in the jurisdiction where the action is pending, if those requirements differ from Rule 30(c)(2)'s requirements.

(e) Objections; Motion ~~or Application to a Court.~~ ~~A motion or application to the court~~**to Quash or Modify; Seeking Protective Order.**

(1) ***Objections.*** Rule 45 governs the time and manner for objecting to subpoenas issued under this rule. Objections to a subpoena commanding attendance at a deposition must be made by timely motion under Rule 45(e)(2). Unless excused from doing so by the party or attorney serving a subpoena, by a court order, or by any other provision of Rules 45 or 45.1, a person who is properly served with a deposition subpoena must attend and testify at the date, time and place specified in the subpoena.

(2) ***Motions to Quash, Modify, Compel or for Protective Order.*** Motions to compel, or for a protective order, or to ~~enforce,~~ quash~~,~~ or modify a subpoena issued ~~by a clerk of court~~ under ~~subsection (b~~this rule:

(A) must comply with ~~the~~Rule 45 and other applicable Arizona rules ~~or~~and statutes ~~of this state and~~;

(B) must be filed with the court clerk in the county ~~in which~~where the discovery is to be conducted~~. Any such motion or application~~; and

(C) must be filed as a separate civil action bearing the same caption ~~that~~as appears on the subpoena. The following phrase must appear below the case number of the newly filed action: "Motion or Application Related to a Subpoena Issued Under

Ariz. R. Civ. P. 45.1." Any later motion or application relating to the same subpoena must be filed in the same action.

Rule 46. ~~Exceptions~~ Objecting to a Ruling or Order

A formal exception to a ruling or order is unnecessary~~Formal exceptions to rulings or orders of the court are unnecessary. It is sufficient that a party, at the time~~ to preserve a claim of error. When the ruling or order ~~of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor. If a party~~is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who has no opportunity to object ~~to a~~when the ruling or order ~~at the time it is made, the absence of an objection does not thereafter prejudice the party~~is made.

Rule 47. ~~Jurors~~ Jury Selection; Juror Information; Voir Dire; Challenges

~~Rule 47(a). Trial jury procedure; list; striking; oath~~

(a) Jury Selection. ~~1. When an action is called for trial by jury, the clerk shall prepare and deposit in a box ballots containing the names of the jurors~~ If an action is to be tried by jury, the initial jury panel for the action will consist of persons summoned for jury service who have appeared ~~and have not been excused. The clerk shall then draw from the box as many names of jurors as the court directs. If the ballots are exhausted before the jury is completed, the court shall order to be forthwith drawn in the manner provided for other drawings of jurors, but without notice and without the attendance of officers other than the clerk, as many qualified persons as necessary to complete the jury.2. Alternatively, in any court where data processing equipment is used and random selection of trial jurors can be accomplished by such equipment, the court may direct the jury commissioner to cause a list of jurors to be printed, at random, by the use of such equipment and delivered to the court. The clerk shall then read the names of jurors in the order printed. If the number of names appearing~~. The clerk will randomly select—either manually or by electronic means—a sufficient number of persons from this group for consideration as jurors in the action. The clerk will then prepare a list of these prospective jurors' names in random order, and deliver it to the court. The clerk will read the names of prospective jurors in the order in which they appear on the list until a jury is fully selected or the names on the list are exhausted. If the names on the ~~printed form is~~list are exhausted before ~~the~~a jury ~~selection is completed the court shall~~

~~order~~is fully selected, the clerk will prepare an additional list of prospective jurors ~~drawn~~ in the same manner as provided in this rule.

(b) Juror Information.

~~3.~~ **(1)** ***Personal Information.*** ~~After the jury is completed~~ Before jury selection and voir dire examination starts, the clerk ~~shall make a list thereof and deliver it to the parties for peremptory challenges. The parties shall exercise their challenges by alternate strikes, beginning with the plaintiff, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of remaining challenges but shall not deprive the other party of that other party's full number of challenges. The list shall then be delivered to the clerk who shall call the first eight names remaining on the list who shall constitute the trial jury, and to whom an oath or affirmation shall then be administered in substance as follows: Do you swear (or affirm) that you will give careful attention to the proceedings, follow the court's instructions, including the admonition, and render a verdict in accordance with the law and evidence presented to you, so help you God?" If a juror affirms, the clause "so help you God" shall be omitted.4. The court shall furnish counsel with the~~must provide the parties with the following information for each prospective juror: name, zip code, employment status, occupation, employer, residency status, education level, prior jury ~~duty~~ experience, and felony conviction status ~~of prospective jurors in writing before the voir dire examination is conducted on the day when jury selection is commenced within a specific time schedule as established by the court. The court shall keep all jurors' home and~~. The clerk must keep all prospective jurors' home, business and telephone numbers ~~and addresses~~ confidential and may not disclose them unless good cause is shown ~~to the court which would require such disclosure~~.

(2) ***Questionnaires.*** The court may order prospective jurors to complete a written questionnaire prepared by the parties and submitted to the court for approval before trial. Unless the court orders otherwise, the clerk must provide copies of any such juror questionnaire and answers to the parties and their respective counsel. Any party or counsel receiving a copy of the questionnaire and answers must keep the information strictly confidential and must not disclose the information to any other person. When jury selection is done, each recipient must return all copies of the juror questionnaires and answers to the clerk.

~~Rule 47(b). Voir dire oath; examination of jurors; brief opening statements~~

(c) Voir Dire Oath and Procedure.

~~1.~~ **(1)** ***Voir Dire Oath.*** ~~Prior to examination of jurors with respect to~~ The prospective jurors must take an oath administered by the clerk before they are examined about

their qualifications~~, an oath or examination shall be administered in~~. The oath's substance must be as follows: "You do solemnly swear (or affirm) that you will ~~well and truly~~truthfully answer all questions ~~touching~~about your qualifications to serve as a trial juror in ~~the cause now on trial~~this action, so help you God." If a ~~juror affirms~~prospective juror elects to affirm rather than swear the oath, the clause "so help you God" ~~shall~~must be omitted.

(2) ***Brief Opening Statements.*** Before voir dire begins, the court may allow or require the parties to present brief opening statements to the prospective jurors.

~~2. Upon request and with the court's consent, the parties may present brief opening statements to the entire jury panel, prior to voir dire. The court may require counsel to present such opening statements.~~

(3) ***Extent of Voir Dire.***

(A) *Questioning by Court and Parties.* The court must thoroughly question the jury panel to ensure that prospective jurors are qualified and are fair and impartial. The court must permit each of the parties to ask the panel additional questions, but may impose reasonable limitations on the questioning. Written questions also may be used as provided in Rule 47(b)(2).

(B) *Extent of Questioning.* Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a peremptory challenge.

~~3. The court shall control voir dire and conduct a thorough oral examination of prospective jurors. Upon the request of any party, the court shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. In courts of record, voir dire shall be conducted on the record unless waived by the parties on the record. The court may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors. The court shall ensure the privacy of prospective jurors is reasonably protected. The court may terminate or limit voir dire on grounds of abuse. Nothing in this Rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination. The court may permit written questions to be submitted following review and approval by the court.~~

~~Rule 47(c). Grounds of challenge for cause~~

(d) Challenges ~~to jurors for cause in civil actions may be taken~~**for Cause.**

(1) ***Grounds.*** A party may challenge a prospective juror for cause on one or more of the following grounds:

~~1.~~ **(A)** ~~Want of any~~ The prospective juror lacks one or more of the required statutory qualifications ~~prescribed by statute to render a person competent as a juror.~~specified in A.R.S. § 21-211.

(B) The prospective juror is a party's:

(i) family member;

~~2.~~ **(ii)** ~~Standing in the relation of~~ guardian ~~and~~or ward~~,~~ ;

(iii) master ~~and~~or servant~~,~~ ;

(iv) employer ~~and clerk,~~ or employee;

(v) principal ~~and agent to either party, or being a member of a family of either party, or a partner in business with either party, or when a~~ or agent;

(vi) business partner; or

(vii) surety or obligee on a bond or obligation ~~for either party~~.

(C) The prospective juror was a witness or served as a juror in a previous trial between the same parties in the same action.

(D) The prospective juror has—by words or actions—shown bias or prejudice for or against any party or otherwise demonstrated that he or she is unfit to serve as a juror.

(2) ***Procedure.*** The court must rule on challenges for cause. A prospective juror who is challenged for cause may be examined under oath by the court or, with the court's permission, by a party.

~~3. Having served as a juror or been a witness on a previous trial between the same parties in the same action.~~

~~4. Having formed or expressed an unqualified opinion or belief as to the merits of the action or showing such a state of mind as will preclude the juror from rendering a just verdict, but in the trial of any action the fact that a person called as a juror has formed an opinion or impression based upon rumor or newspaper statements about the truth of~~

~~which that person has expressed no opinion shall not disqualify that person to serve as a juror in such action, if the person, upon oath, states that the person believes the person can fairly and impartially render a verdict therein in accordance with the law and evidence, and the court is satisfied of the truth of such statement.~~

~~5. The existence of a state of mind evincing enmity or bias for or against either party.~~

~~6. The presence of any grounds for disqualification specified in A.R.S. § 21-211.~~

~~Rule 47(d). Extent of examination; trial of challenge~~

~~The examination of the jurors touching their qualifications to serve shall not be restricted to the grounds of challenge for cause, but may extend to any legitimate inquiry which might disclose a basis for exercise of a peremptory challenge. Challenges for cause shall be tried by the court. Upon the trial of the challenge to an individual juror for cause the juror challenged and any other material witness produced by the parties shall be examined on oath by the court and may be so examined by either party.~~

~~Rule 47(e). Manner of challenging; number of peremptory challenges~~

(e) Peremptory Challenges.

(1) ***Procedure.*** When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.

(2) ***Number.*** Each side ~~shall be~~is entitled to ~~four~~4 peremptory challenges. For ~~the~~this rule's purposes~~ of this rule~~, each ~~case,~~ action—whether a single action or two or more actions consolidated ~~or consolidated~~ for trial~~, shall~~ must be treated as having only two sides. ~~Whenever~~If it appears that two or more parties on a side have ~~an~~ adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side ~~shall~~must have an equal number of peremptory challenges. If the parties on a side are unable to agree ~~upon the~~

~~allocation of~~on how to allocate peremptory challenges among ~~themselves, the allocation shall be determined by the court. Any individual party, without consent of any other party, may challenge for cause~~them, the court must determine the allocation.

~~Rule 47~~(f)~~.~~ Alternate ~~jurors~~Jurors.

(1) ***Generally.*** The court may ~~direct~~order that ~~not more than six~~up to 6 additional jurors ~~in addition to the regular jury be called and impanelled to sit as alternate jurors. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. If alternate jurors are impanelled, their identity shall not be determined until the end of trial. At the time of impanelment, the trial judge should inform~~be called and impaneled in the same manner as other jurors under this rule, to allow the court to later designate some of the jurors as alternates.

(2) ***Instructions.*** The court should explain to the jury why alternate jurors ~~that at the end of the case, the alternates will be determined by lot in~~are needed and how they will be selected at the end of trial.

(3) ***Selecting and Excusing an Alternate Juror.*** The court will determine the identities of the alternate jurors by a drawing held in open court~~. The trial judge shall also explain the need for alternate jurors and the procedure regarding alternates to be followed at the end of trial. The alternate, or alternates, upon being physically excused by the court at the end of trial, shall be instructed~~ after closing arguments and final jury instructions are given but before deliberations begin. If an alternate juror is excused, the court must instruct him or her to continue to observe the juror admonitions ~~to jurors~~ until ~~they are informed that~~ a verdict ~~has been~~is returned or the jury is discharged.~~ In the event~~

(4) ***Substituting an Alternate Juror.*** If a deliberating juror is ~~excused due to inability or disqualification~~disqualified or unable to perform the required duties, the court may substitute an alternate juror~~, choosing from among the alternates in the order previously designated, unless disqualified, to join in the deliberations~~ in the juror's place. If an alternate juror joins the deliberations, the ~~jury shall be instructed to begin deliberations anew. Each side is entitled to 1 peremptory challenge in addition to those~~court must instruct the jury to start over in its deliberations.

(5) ***Additional Peremptory Challenges.*** In addition to the peremptory challenges otherwise allowed by law~~ if 1 or 2~~, each side is entitled to one peremptory challenge

if one or two alternate jurors ~~are to~~will be ~~impanel led, 2~~impaneled, two peremptory challenges if 3 or 4 alternate jurors ~~are to~~will be ~~impanel led~~impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors ~~are to~~will be ~~impanel led~~impaneled.

~~**Rule 47(g). Juror notebooks**~~ [Redlining note: The substance of current Rule 47(g) has been moved to Rule 40(f)]

~~In its discretion, the court may authorize documents and exhibits to be included in notebooks for use by the jurors during trial to aid them in performing their duties.~~

Rule 48. ~~**Juries of less than eight; majority verdict**~~ **Stipulations on Jury Size and Verdict**

(a) Jury Size. The parties may stipulate ~~that the~~to a jury ~~shall consist of any number less~~of fewer than ~~eight~~8 but not ~~less than three, or~~fewer than 3 members, exclusive of any alternate jurors who are permitted to deliberate.

(b) Verdict. The parties may stipulate that a verdict or a finding of a stated ~~majority~~number of ~~the~~ jurors ~~shall~~ be taken as the verdict or finding of the jury.

Rule 49. Special ~~and General Verdicts and Interrogatories~~**Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict**

(a) Special Verdict.

(1) ***Generally.*** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) ***Instructions.*** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) ***Issues Not Submitted.*** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not

demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.

~~**Rule 49(g). Special verdicts and interrogatories**~~ [Redlining Note: The substance of current Rule 49(g) has been moved to 49(a)]

~~The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence, or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding, or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.~~

(b) General Verdict With Answers to Written Questions.

(1) ***Generally.*** The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.

(2) ***Verdict and Answers Consistent.*** If the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.

(3) ***Answers Inconsistent With the Verdict.*** If the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:

(A) approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;

(B) direct the jury to further consider its answers and verdict; or

(C) order a new trial.

(4) ***Answers Inconsistent With Each Other and the Verdict.*** If the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.

~~**Rule 49(h). General verdict accompanied by answer to interrogatories**~~[Redlining Note: The substance of current Rule 49(h) has been moved to Rule 49(b)]

~~The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.~~

(c) Written Questions in Actions Seeking Equitable Relief. If a jury is demanded in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.[2]

[2] Redlining Note: The substance of Rule 39(n) has been moved to Rule 49(c).

(d) Return of Verdict.

(1) ***Number of Jurors Who Must Agree.*** Subject to any stipulation of the parties under Rule 48, if a jury has 8 members, 6 or more members must agree on the verdict.

(2) ***Return of Verdict.*** If the jurors unanimously agree on a verdict, it must be signed by the foreman and returned to the court. If the jurors do not unanimously agree on a verdict, but a sufficient number agree to support the verdict, those jurors who agree must each sign the verdict and return it to the court.

~~**Rule 49(a). Return of a verdict by six or more jurors; presentation in court**~~ [Redlining Note: The substance of Rule 49(a) has been moved to Rule 49(d).]

~~When eight jurors have been impaneled to try the action, and if there has been no stipulation as provided in Rule 48 entered in the minutes of the trial as provided by A.R.S. § 21-102, the concurrence of six or more jurors shall be sufficient to render a verdict therein. When the eight jurors unanimously agree upon a verdict, the verdict shall be signed by the foreman and returned into court. When the jurors do not unanimously agree upon a verdict, but six or more agree, the jurors who agree shall each sign the verdict agreed upon, then notify the court of that fact, and thereupon the jury shall be returned into court and deliver to the court the verdict so signed. The court shall receive and cause the verdict to be read and recorded, and judgment shall be entered thereon.~~

~~**Rule 49(b**~~**(be)**~~**.**~~ **Proceedings on ~~r~~Return of ~~verdict~~Verdict.**

(1) ***Generally.*** The following procedures apply once a verdict is returned:

(A) ~~When the jurors have agreed upon a verdict, they shall be conducted into court by the officer having them in charge. The clerk shall~~ the clerk must read the verdict and ~~shall~~ inquire of the jury, or jurors agreeing, if it is their verdict~~. If~~;

(B) if any ~~such~~ juror disagrees ~~as to the~~that it is their verdict, the jury ~~shall again~~must retire to consider the case further~~, but~~ ; and

(C) if no juror disagrees, and subject to reformation under Rule 49(f), the court sh~~a~~oul~~l~~d receive the verdict and order it to be entered in the minutes, and discharge the jury ~~shall be discharged. Where a verdict is rendered by six or more jurors the verdict shall be received unless a juror signing the verdict disagrees therewith~~.

(2) *Polling the Jury.* After the jury returns a verdict but before the court discharges the jury, the court must on a party's request, or may on its own, poll the jurors individually. The court must not identify the individual jurors by name during polling, but should use other methods or form of identification as is appropriate to ensure that the poll is accurate and to accommodate the jurors' privacy. If the poll reveals a lack of unanimity or lack of assent by the required number of jurors, the court may direct the jury to deliberate further or may order a new trial.

Rule 49(f). Polling jury; procedure [Redlining Note: The substance of Rule 49(f) is moved to Rule 49(e)(2).]

When the verdict is announced either party may require the jury to be polled, which shall be done by the clerk asking each juror separately if the verdict returned is that juror's verdict. If any juror answers in the negative, the jury shall again be sent out for further deliberation, but if each juror concurs in the verdict it shall be received and noted in the minutes, except as provided by subdivision (c) of this Rule, and the jury shall be discharged.

When polling a jury at verdict, the judge and clerk shall not identify the individual jurors by name, but shall use such other methods or form of identification as may be appropriate to ensure an accurate record of the poll and to accommodate the jurors' privacy.

(f) Form of Verdict.

(1) *Defective, Informal, or Nonresponsive Verdict.* On request of a party or on its own, the court may order that an informal or defective verdict be reformed. Any such reformation of the verdict should take place before the jury is discharged and with their assent. If the verdict is not responsive to the issue submitted to the jury, the court should inform the jury of the issue and require further deliberations.

Rule 49(e). Special form of verdict not required

(2) *No Special Form of Verdict Required.* Where there has been a No special form of verdict is required. If the jury's verdict is in substantial compliance with the law in rendering a verdict, the court should enter judgment shall be rendered and entered thereon, notwithstanding a defect in the form of the verdict. form.

(3) *Fixing Net Recovery Amount.* If two opposing parties have claims against each other for the recovery of money, and each of those parties obtains a jury verdict awarding

money, the jury must separately find the amount of recovery on each claim. The court may enter judgment for the party who has the greater recovery, in an amount reflecting the difference in the amounts awarded to the two parties.

Rule 49(c). Defective or nonresponsive verdict [Redlining Note: The substance of Rule 49(c) has been moved to Rule 49(f)(1).]

If the verdict is informal or defective, the court may direct it to be reformed at the bar, and where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar, and the verdict may, if the jury assents thereto, be reformed in accordance with such computation. If the verdict is not responsive to the issue submitted to the jury, the court shall call the jurors' attention thereto, and send them back for further deliberation.

Rule 49(d). Fixing amount of recovery[Redlining Note: The substance of Rule 49(d) has been moved to Rule 49(f)(3).]

When a verdict is found for the plaintiff in an action for recovery of money, and for the defendant upon a counterclaim or cross-claim for recovery of money, the jury shall find the amount of recovery on each claim, and the court shall render judgment in favor of the party entitled thereto for the difference in the amounts of such verdicts.

Rule 50. Judgment as a mMatter of lLaw in actions tried by jury; alternative motion forA Jury Trial; Related Motion for a nNew tTrial; eConditional rRulings

(a) Judgment as a Matter of Law.

(1) If during a trial by jury ***Generally.*** If a party has been fully heard on an issue and there is noduring a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis for a reasonable jury to find for thate party on that issue, the court may determine:

(A) resolve the issue against the party; and may

(B) grant a motion for judgment as a matter of law against thate party with respect toon a claim or defense that cannot, under the controlling law, can be maintained or defeated withoutonly with a favorable finding on that issue.

(2) ***Motion.*** ~~Motions~~ A motion for judgment as a matter of law may be made at any time before ~~submission of~~ the case is submitted to the jury. ~~Such a~~The motion ~~shall~~must specify the judgment sought and the law and ~~the~~ facts ~~on which the moving party is entitled~~that entitle the movant to the judgment.

(b) Renewa~~l~~ing ~~of~~ the Motion ~~for Judgment~~ After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court~~'~~'s later deciding the legal questions raised by the motion. ~~Such a motion may be renewed by service and filing not~~No later than 15 days after the entry of judgment~~. A motion for a new trial under Rule 59 may be joined with a renewal of the~~—or if the trial ends without a verdict or with an incomplete verdict that does not decide an issue raised by the motion, no later than 15 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law~~, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of~~ and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:

(1) allow ~~the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion,~~ judgment on the verdict, if the jury returned a verdict;

(2) order a new trial; or

(3) direct the entry of judgment as a matter of law ~~or may order a new trial~~.

(c) ~~**Same:**~~ **Granting the Renewed Motion; Conditional Rulings on ~~Grant of~~a Motion for ~~Judgment as a Matter of Law~~a New Trial.**

(1) ***Generally.*** If the court grants a renewed motion for judgment as a matter of law ~~is granted, the court shall~~, it must also conditionally rule on ~~the~~any motion for a new trial~~, if any,~~ by determining whether ~~it~~a new trial should be granted if the judgment is ~~thereafter~~later vacated or reversed~~, and shall specify~~. The court must state the grounds for conditionally granting or denying the motion for ~~the~~a new trial. ~~If~~

(2) ***Effect of a Conditional Ruling.*** Conditionally granting the motion for a new trial ~~is thus conditionally granted, the order thereon~~ does not affect the ~~finality of the judgment. In case the motion for new trial has been conditionally granted and~~judgment's finality; if the judgment is reversed ~~on appeal~~, the new trial ~~shall~~must proceed unless the appellate court ~~has~~orders otherwise ~~ordered~~. ~~In case~~If

the motion for a new trial ~~has been~~is conditionally denied, the appellee ~~on appeal~~ may assert error in that denial; ~~and~~ if the judgment is reversed~~ on appeal, subsequent proceedings shall be in accordance with the order of~~, the case must proceed as the appellate court orders.

(~~2)~~ d)Time for a Losing Party's New-Trial Motion. ~~The~~ Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law ~~has been~~is rendered ~~may serve a motion for a new trial pursuant to Rule 59 not~~must be filed no later than 15 days after the entry of the judgment.

(~~d)~~ e)~~Same: Denial of~~ Denying the Motion for Judgment as a Matter of Law~~.~~; Reversal on Appeal. If the court denies the motion for judgment as a matter of law~~ is denied~~, the prevailing party~~ who prevailed on that motion~~ may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion~~ for judgment~~. If the appellate court reverses the judgment, ~~nothing in this rule precludes it from determining that the appellee is entitled to~~it may order a new trial, ~~or from directing~~direct the trial court to determine whether a new trial sh~~a~~oul~~l~~d be granted, or direct the entry of judgment.

Rule 51. Instructions to the Jury; Objections; ~~Arguments~~Preserving a Claim of Error

~~**Rule 51(a). Instructions to jury; objection**~~

(a) Requests.

(1) ***Before or at the Close of the Evidence.*** Before trial and, as the court permits, during trial, a party may file written requests for the jury instructions it wants the court to give.

(2) ***After the Close of the Evidence.*** After the close of the evidence, a party may:

(A) file requests for instructions on issues that could not reasonably have been anticipated by any earlier filing deadline ordered by the court; and

(B) with the court's permission, file untimely requests for instructions on any issue.

(b) Instructions.

(1) ***Generally.*** Jury instructions should be as readily understandable as possible by individuals unfamiliar with the legal system. Each juror must be provided with a copy of the court's preliminary and final instructions on the law before they are read to the jury and before the jury retires to deliberate.

(2) *Preliminary Instructions.* ~~Immediately after~~ After the jury is sworn, the court sh~~a~~oul~~l~~d instruct the jury ~~concerning~~ on:

(A) its duties~~, its~~ and conduct~~,~~;

(B) the order of proceedings~~,~~;

(C) the procedure for submitting written questions ~~of~~to witnesses or ~~of~~to the court~~ as set forth in Rule 39(b~~;

(D)~~(10),~~ the procedure for note-taking~~,~~;

(E) the nature of the evidence and its evaluation~~,~~;

(F) any issues to be addressed~~,~~; and

(G) the~~ elementary~~ legal principles that will govern the ~~proceeding. The instructions shall be provided in a manner that makes them as readily understandable as possible by individuals unfamiliar with the legal system. Prior to the commencement of a jury trial or at such other time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Counsel shall be deemed to have waived request for other instructions except those which could not reasonably have been anticipated prior to trial. The court shall inform counsel~~trial.

(3) *Final Instructions.* The court:

(A) may give an instruction as proposed, refuse to give the instruction, or modify the instruction, indicating on the record the modifications made;

(B) must inform the parties of its proposed instructions and proposed action ~~upon the requests prior to their arguments to the jury. The court, at its election,~~ on the requests before instructing the jury and before final jury arguments;

(C) must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered;

(D) may instruct the jury at any time before ~~or after argument, or both. No party may assign as error the giving~~the jury is discharged; and

(E) must make a record of its rulings.

(c) Objections.

(1) *How to Make.* A party who objects to an instruction or the failure to give an instruction ~~unless that party objects thereto before the jury retires to consider its verdict~~must do so on the record, stating distinctly the matter objected to and the

grounds ~~of the objection. Opportunity shall be given to make the objection out of hearing of the jury~~for the objection.

(2) ***When to Make.*** An objection is timely if:

(A) a party objects at the opportunity provided under Rule 51(b)(3)(C); or

(B) a party was not informed of an instruction or action on a request before having an opportunity to object under Rule 51(b)(3)(C), and the party objects promptly after learning that the instruction or request will be, or has been, given or refused.

(d) Assigning Error; Fundamental Error.

(1) ***Assigning Error.*** A party may assign as error:

(A) an error in an instruction actually given, if that party properly objected; or

(B) a failure to give an instruction, if that party properly requested it and—unless the court rejected the request in a definitive ruling on the record—also properly objected.

(2) ***Fundamental Error.*** A court may consider a fundamental error as allowed by law, even if the error was not preserved.

(e) Record.

(1) ***Jury Communications.*** All communications between the court and members of the jury panel ~~shall~~must be in writing or on the record.

(2) ***Preliminary and Final Instructions.*** The court's preliminary and final instructions on the law must be in writing and filed.

~~**Rule 51(b). Instructions to jury; notations; filing transcript**~~

~~1. The court shall either give or refuse the instruction as requested, or shall modify the instruction, indicating on the record the modifications made and give it as modified. The court's instructions may be used by the parties in the argument to the jury.~~

~~2. The written instructions shall be filed among the papers in the action and constitute a part of the record. At the request and cost of either party, the entire instructions given by the court shall be transcribed by the certified court reporter or authorized transcriber and~~

~~filed with the clerk.~~

~~3. The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring from deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court. In limited jurisdiction courts, the court may record jury instructions electronically and provide these instructions to the jury for their use during deliberations.~~

Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings

~~Rule 52(a).~~ (a) ~~Effect~~ Findings and Conclusions.

(1) ***Generally.*** ~~In all actions~~ In an action tried ~~upon~~on the facts without a jury or with an advisory jury~~, the court~~, if requested before trial, ~~shall~~the court must find the facts specially and state ~~separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact~~its conclusions of law separately. The findings and conclusions ~~of law are~~may be stated ~~orally and recorded in open court following~~on the record after the close of the evidence or may appear in an opinion ~~or~~, minute entry or memorandum of decision filed by the court. ~~Findings of fact and conclusions of law are unnecessary on decisions of motions~~Judgment must be entered under Rule 58.

(2) ***For an Interlocutory Injunction.*** In granting or refusing an interlocutory injunction, the court must state the findings and conclusions that support its action as provided in Rule 52(a)(1).

(3) ***For a Motion.*** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion ~~except as provided in subdivision (c) of this rule~~.

(4) *Effect of a Master's Findings.* A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses.

~~Rule 52(b). Amendment~~

(b)Amended or Additional Findings. ~~Upon motion of~~ On a party~~ made not~~'s motion filed no later than 15 days after the entry of judgment, the court may amend its findings —or make additional findings —and may amend the judgment accordingly. The motion may ~~be made with~~accompany a motion for a new trial ~~pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the superior court an objection to such findings or has made a motion to amend them or a motion for judgment.~~under Rule 59.

~~Rule 52~~(c)~~.~~ Judgment on ~~partial findings~~Partial Findings. If ~~during a trial without a jury~~ a party has been fully heard on an issue during a nonjury trial and the court ~~after determining the facts~~ finds against the party on that issue, the court may enter judgment ~~as a matter of law~~ against that party ~~with respect to~~on a claim or defense that~~ cannot~~, under the controlling law, can be maintained or defeated ~~without~~only with a favorable finding on that issue~~, or the~~. The court may, however, decline to render any judgment until the close of ~~all~~ the evidence. ~~Such a~~A judgment ~~shall~~on partial findings must be supported by findings of fact and conclusions of law if requested as required by ~~subdivision (a) of this rule~~Rule 52(a).

~~Rule 52~~(d)~~.~~ Submission on ~~agreed statement of facts~~Agreed Statement of Facts. The parties ~~to an action~~ may submit ~~the~~a matter in controversy to the court ~~upon~~on an agreed statement of facts, signed by them and filed with the clerk~~ and the~~. The court ~~shall~~must render ~~judgment thereon as in other cases. The~~its decision based on the

agreed statement~~, certified by the court to be correct, and the judgment shall constitute the record of the action~~ unless it finds the statement to be insufficient.

Rule 53. Masters

~~Rule 53~~(a)~~.~~ Appointment.

(1) ***Scope.*** Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact and conclusions of law on issues to be decided ~~by the court~~ without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and post-trial matters that cannot be ~~addressed~~ effectively and timely addressed by an available superior court judge in the county in which the court sits.

(2) ***Disqualification; Affidavit.***

(A) A master ~~shall~~must not have a relationship to the parties, ~~counsel~~attorneys, action, or court that would require disqualification of a judge under Rule 81 of the Rules of the Supreme Court of Arizona, unless the parties ~~consent~~, with the court~~'~~'s approval, consent to the appointment ~~of a particular person~~ after ~~disclosure of~~the master discloses any potential grounds for disqualification.

(B) Promptly on receiving notice of an appointment or a prospective appointment, and before accepting the appointment, the prospective appointee must file an affidavit disclosing whether there is any ground for disqualification under Rule 53(a)(2)(A).

(3) ~~*Objection.*~~ ***Possible Expense or Delay.*** In appointing a master, the court ~~shall~~must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) *Notice.* Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

~~4) *Notice*. The court shall give the parties notice and an opportunity to be heard before appointing a specific master. A party may suggest candidates for appointment.~~

(2) *Objection.* If one or more parties object to the appointment of a master or to a proposed appointee, the court may~~, after providing notice and an opportunity to be heard~~:

(A) decline to make the appointment; or

(B) appoint a master based ~~upon~~on a finding on the record stating the reasons that:

(i) one or more of the circumstances for the appointment specified in ~~paragraph~~ Rule 53(a)(1) are present;

(ii) the benefit to the parties and the court outweighs the likely expense; and

(iii) the appointment is warranted after considering the parties~~'~~' respective abilities to pay the likely expense.

~~**Rule 53(b). (**~~**(3) *Contents.*** ~~**Order appointing master**(1) *Contents.*~~ The appointing order ~~appointing a master shall~~must direct the master to proceed with all reasonable diligence and must state:

(A) the master~~'~~'s duties, including any investigation or enforcement duties, and any limits on the master~~'~~'s authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master~~'~~'s activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master~~'~~'s orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master~~'~~'s compensation under Rule 53(~~i~~g).

~~(2) *Acceptance of Appointment*. Before accepting an appointment as a master, the prospective appointee shall file an affidavit or declaration disclosing whether there~~

~~is any ground for disqualification under Rule 81 of the Rules of the Supreme Court of Arizona. If a potential ground for disqualification is disclosed, the prospective appointee shall not proceed with the appointment unless the parties have consented (with the court's approval) to waive the ground for disqualification.~~[3]

~~(3) *Amendment*.~~

(4) *Amending.* The order ~~appointing a master~~ may be amended at any time after notice to the parties and an opportunity to be heard.

~~**Rule 53**~~

(5) *Providing Master With Copy of Order.* When a master is appointed, the clerk must provide the master with a copy of the appointing order in a timely manner.

(c)~~.~~ Master'~~s authority~~'s Authority.

(1) *Generally.* Unless the appointing order ~~expressly~~ directs otherwise, a master ~~has authority to~~ may:

(A) regulate all proceedings ~~and~~ ;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently ~~the assigned duties.~~; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) *Sanctions.* The master may by order impose ~~upon~~on a party any noncontempt sanction provided ~~by Rules 37~~in Rule 37 or ~~45,~~45, and may recommend a contempt sanction against a party and sanctions ~~(including contempt)~~ against a nonparty.

~~**Rule 53(d). Meetings and evidentiary hearings**~~

(~~1)~~ **3) *Meetings.*** ~~*Meetings*. When a master is appointed, the clerk shall forthwith furnish the master with a copy of the appointing order. Upon receipt thereof, unless~~ Unless the court orders otherwise, on receiving the appointing order ~~otherwise provides,~~ the master ~~shall forthwith~~must promptly set a time and place for the first meeting of the parties or their attorneys~~, to~~. The first meeting should be held within ~~twenty~~20 days after the date of the appointing order~~, and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order~~

[3] Redlining Note: The substance of this subdivision has been moved to Rule 59(a)(2), above.

~~requiring the master to speed the proceedings and, if applicable, make the report~~. If a party fails to appear at the ~~time and place appointed~~scheduled meeting, the master may proceed ex parte or, in the master~~'~~'s discretion, ~~adjourn the proceedings to a future day, giving~~reschedule the meeting with notice to the ~~absent party of the adjournment~~parties.

(~~2) *Evidentiary hearings*. Unless the appointing order expressly directs otherwise, a master conducting an evidentiary hearing may exercise the power of the appointing court to compel, take, and record evidence.~~

(4) *Master to Proceed With Reasonable Diligence.* The master must proceed with reasonable diligence. Either party, after notice to the parties and master, may apply to the court for an order requiring the master to expedite the proceedings and, if applicable, make the report.

~~Rule 53(e~~d~~).~~ Master~~'~~'s ~~orders~~Orders. A master who ~~makes~~issues an order ~~shall~~must file ~~the order~~it and promptly serve a copy on each party. The clerk ~~shall~~must enter the order on the docket.

~~Rule 53(f). Draft reports~~

~~Before filing a report, a master may submit a draft of the report to the parties for the purpose of receiving comments.~~

~~Rule 53(g). Master's reports~~

(e) Master's Reports. A master ~~shall~~must report to the court as required by the appointing order~~ of appointment~~. The master ~~shall~~must file the report and promptly serve a copy ~~of the report~~ on each party, unless the court ~~directs~~orders otherwise.

~~Rule 53(h~~f~~).~~ Action on ~~master's order, report, or recommendations~~the Master's Order, Report, or Recommendations.

(1) *Opportunity to Object; Action Generally.* In acting on a master's final order, report, or recommendations, the court:

(A) must consider and rule on any objections and motions filed by the parties; and

(B) may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) ***Time to*** *~~object or move.~~* ***Object or Move to Adopt or Modify.*** A party may file objections to~~-~~ or a motion to adopt or modify~~-~~ the master~~'~~'s final order, report, or recommendations no later than 10 days ~~from the time~~after the master~~'~~'s final order, report, or recommendations are served, unless the court sets a different time.

(~~2)~~ 3) ***Reviewing Factual Findings.*** *~~Fact findings.~~* The court ~~shall~~must decide all objections to findings of fact made or recommended by a master under the clearly erroneous standard, unless the parties stipulate with the court~~'~~'s consent that:

(A) the master~~'~~'s findings will be reviewed de novo~~,~~; or

(B) the findings of a master will be final.

(~~3)~~4) ***Reviewing Legal*** *~~conclusions.~~* ***Conclusions.*** The court ~~shall~~must decide de novo all objections to conclusions of law made or recommended by a master.

(~~4)~~5) ***Reviewing Procedural*** *~~m~~* ***Matters.*** Unless the appointing order ~~of appointment~~ establishes a different standard of review, the court may set aside a master~~'~~'s ruling on a procedural matter only for an abuse of discretion.

~~(5) *Action*. In acting on a master's final order, report, or recommendations, the court shall consider and rule upon any objections and motions filed by the parties, and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.~~

(g) Compensation.

~~**Rule 53(i). Compensation**~~

(1) ***Fixing Compensation.*** *~~Fixing compensation~~*~~. The court shall fix the master's compensation before~~ Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order~~ of appointment~~, but the court may set a new basis and terms after ~~providing~~giving notice ~~to the parties~~ and an opportunity to be heard.

(2) ***Payment.*** The compensation~~ fixed under Rule 53(i)(1)~~ must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court~~'~~'s control.

(3) ~~*Allocation*~~ ***Allocating Payment*.** If a master~~'~~'s compensation is to be paid by a party or the parties, the court ~~shall~~must allocate payment ~~of the master's compensation~~ among the parties ~~and may consider~~after considering the nature and amount of the controversy, the parties' means ~~of the parties~~, and the extent to which any party is more responsible than other parties for the reference to ~~or use of~~ a master, and any other factor the court deems relevant. An interim allocation may be amended by the court to reflect a decision on the merits after providing notice to the parties and an opportunity to be heard.

VII. JUDGMENT

Rule 54. Judgment~~Rule 54. Judgments~~; Costs; ~~Attorneys'~~Attorney's Fees

~~**Rule 54(a).**~~ **Definition; ~~form~~Form.** "Judgment" as used in these ~~R~~rules includes a decree and ~~an~~any order from which an appeal lies. A judgment sh~~a~~oul~~l~~d not ~~contain a recital~~include recitals of pleadings, ~~the report of~~ a master's report, or ~~the~~a record of ~~prior~~earlier proceedings.

~~**Rule 54(b). Judgment upon multiple claims or involving multiple parties**~~When **Judgment on Multiple Claims or Involving Multiple Parties.** If an action presents more than one claim for relief ~~is presented in an action,~~ whether as a claim, counterclaim, ~~cross-claim~~crossclaim, or third-party claim~~,~~ or ~~when~~if multiple parties are involved, the court may direct ~~the~~ entry of a final judgment as to one or more, but fewer than all ~~of the~~, claims or parties only ~~upon an express determination~~if the court expressly determines that there is no just reason for delay ~~and upon an express direction for the entry of judgment. In the absence of such~~. If there is no such express determination ~~and direction~~, any order or other ~~form of~~ decision, however designated, ~~which~~that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties ~~shall~~is not ~~terminate the action~~a final judgment as to any of the claims or parties, and the~~at~~ order or ~~other form of~~ decision ~~is subject to revision~~may be revised at any time before ~~the~~ entry of a final Rule 54(c) judgment ~~adjudicating all the claims and the rights and liabilities of all the parties. For purposes of this subsection, a claim for attorneys' fees may be considered a separate claim from the related judgment regarding the merits of a cause~~. If a final judgment is entered under this rule and a timely motion is filed under Rule 54(g), the court retains jurisdiction to award attorney's fees with respect to that judgment.

~~**Rule 54(c).**~~ **Judgment ~~upon~~as to All Claims and Parties.** A judgment as to all claims and parties~~A judgment shall~~ is not ~~be~~ final unless the ~~court states~~judgment recites that

no further matters remain pending and that the judgment is entered ~~pursuant to~~under Rule 54(c).

~~Rule 54(d).~~ Demand for ~~judgment~~Judgment; Relief to Be Granted. A ~~judgment by~~ default ~~shall~~judgment must not ~~be different~~differ in kind from, or exceed in amount ~~that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every~~, what is demanded in the pleadings. Every other final judgment sh~~a~~oul~~l~~d grant the relief to which ~~the~~each party ~~in whose favor it is rendered~~ is entitled, even if the party has not demanded ~~such~~that relief in ~~the party's~~its pleadings.

~~Rule 54(e).~~ Entry of ~~judgment after death of party~~Judgment After Party's Death. Judgment may be entered ~~after the death of a party upon~~on a verdict or decision ~~upon~~after a party's death on an issue of fact rendered ~~in~~while the party~~'s lifetime~~ was alive.

~~Rule 54(f).~~ Costs.

(1) ***Statement of Costs.*** A party ~~who claims~~claiming costs ~~shall~~must file a statement of costs ~~and serve a copy thereof on the opposing party. The statement shall be filed and served within ten~~within 10 days after judgment is entered, unless the court extends the time for good cause ~~shown the time is extended by the court. At any time within five days after receipt of the copy of the statement of costs, the~~. An opposing party may file objections ~~to~~within 5 days after the statement ~~serving a copy thereof on the party claiming such costs~~of costs is served. The court ~~shall pass upon the~~must rule on any objections and ~~by its~~may order ~~correct~~corrections to the statement of costs ~~to the extent that it requires correction.~~as appropriate.

(2) ***Expert Witness Fees as Costs.*** In medical malpractice ~~cases only, witness fees, set forth in~~actions only, a party may claim as a taxable cost under A.R.S. § 12-332(a)(1) ~~as taxable costs in the Superior Court, shall include~~the reasonable fees paid to expert witnesses for testifying at trial.

~~Rule 54(g). Attorneys' fees~~

(g) Attorney's Fees.

(1) ~~*Claims for Attorneys' Fees.*~~ ***Generally.*** A claim for ~~attorneys'~~attorney's fees ~~shall~~must be made in the pleadings~~.~~ or in a Rule 12 motion filed before the movant's responsive pleading.

(2) ***Time for Filing Motion—Rule 54(c) Judgments.*** If a decision adjudicates all claims or rights of all of the parties and judgment is to be entered under Rule 54(c), any motion for attorney's fees must be filed within 20 days after the decision is filed.

~~*Time of Determination*. When attorneys' fees are claimed, the determination as to the claimed attorneys' fees shall be made after a decision on the merits of the cause. The motion for attorneys' fees shall be filed within 20 days from the clerk's mailing of a decision on the merits of the cause, unless extended by the trial court.~~

(3) ***Time for Filing Motion—Rule 54(b) Decisions or Judgments.***

(A) If a decision adjudicates all claims or rights pertaining to a party or parties and a party either moves for entry of a final judgment under Rule 54(b) or includes Rule 54(b) language in a proposed form of judgment:

(i) a motion seeking fees must be filed within 20 days after service of the motion or proposed form of judgment seeking Rule 54(b) treatment, or by such other date as the court may order; and

(ii) if the court does not include Rule 54(b) language in the judgment, a motion for attorney's fees may be brought at any time permitted under Rule 54(g)(3)(B).

(B) For any other decision or judgment under Rule 54(b), a prevailing party may move for attorney's fees at any time after the decision is filed, but must move for attorney's fees by the earlier of the time prescribed in Rule 54(g)(2) or the date of the action's dismissal.

(4) ***Motion and Proceedings.*** Unless a statute or court order provides otherwise, a motion for attorney's fees must be supported by affidavit and is governed by Rule 7.2. If the court so orders, the movant must disclose the terms of any agreement about fees for the services for which the claim is made.

~~*Method of Establishing Claim*.. A motion for attorneys' fees may be supported by affidavit, and exhibits or, at the discretion of the court, by testimony. If the motion is contested, opposing parties may respond to the motion, and a hearing may be granted in the discretion of the court. In addition, the court may refer issues relating to the value of services to a special master under Rule 53.~~

(5) ***Scope.*** ~~The provisions of subparagraphs~~ Rules 54(g)(1) through (~~3~~4) do not apply to claims for fees and expenses that may be awarded as sanctions ~~pursuant to~~under a statute or rule, or ~~to causes in which~~if the substantive law ~~governing the action provides for the recovery of such fees~~requires fees to be proved at trial as an element of damages. ~~to be proved at trial.~~

Rule 55. Default; Default Judgment

(a) Entering a Default.

~~Rule 55. Default~~

~~**Rule 55(a). Application and entry**~~

~~When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules, the clerk shall enter that party's default in accordance with the procedures set forth below. All requests for entry of default shall be by written application to the clerk of the court in which the matter is pending.~~

(1) ***Generally.*** ~~*Notice.*~~ If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules, the clerk must enter the party's default in accordance with the procedures set forth below.

(2) ***Application for Default.*** A party must request entry of default by written application to the court clerk. The filing of the application for default constitutes the entry of default. An application for default must:

(A) identify the party against whom default is sought;

(B) state that the party has failed to plead or otherwise defend within the time allowed by these Rules;

(C) provide a current mailing address for the party claimed to be in default or, if none is known, so state;

(D) identify any attorney known to represent the party claimed to be in default in the action in which default is sought or in a related matter, or state that no such attorney is known; and

(E) attach a copy of the Rule 4(g) proof of service, establishing the date and manner of service on the party claimed to be in default.

(3) *Notice*. For any default entered under Rule 55(a)(1), notice must be provided as follows:

(~~i~~A) *To the Party*. ~~When~~ If the party requesting the entry of default knows the whereabouts of the party claimed to be in default~~ are known by the party requesting the entry of default~~, a copy of the application for entry of default ~~shall~~must be mailed or otherwise delivered to the party claimed to be in default~~,~~ even if the party is represented by an attorney who has entered an appearance in the action.

(~~ii~~B) *To the Attorney for a Represented Party*. ~~When a party claimed to be in default is known by~~ If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is sought or in a related matter, a copy of the application also must be mailed or otherwise delivered to the attorney, whether or not that attorney has formally appeared~~, a copy of the application shall also be sent to the attorney for the party claimed to be in default. Nothing herein shall be construed to create any obligation to undertake any affirmative effort~~ in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of ~~counsel~~an attorney representing the party claimed to be in default.

(~~iii~~ C) *Location* ~~Whereabouts~~ *of Unrepresented Party Unknown.* If the party requesting the entry of default does not know the whereabouts of a party claimed to be in default ~~are unknown to the party requesting the entry of default and~~or the identity of ~~counsel for~~ that party~~ is also not known to the requesting party,~~'s attorney, then the application for entry of default ~~shall~~must so state.

(~~iv~~D) *To Other Parties*. ~~Nothing in this Rule relieves a party requesting~~ An application for entry of default ~~from the requirements of Rule 5(a) as to service on~~must be served on all other parties who have appeared in the action, as provided in Rule 5(a).

~~(2) *Entry of Default*. The acceptance by the clerk of the filing of the application for entry of default constitutes the entry of default.~~

~~(3) *Effective Date of Default*. A default entered by the clerk shall be effective ten (10) days after the filing of the application for entry of default.~~

(4) ***A Default's Effective Date.*** The clerk's entry of default is effective 10 days after the application for entry of default is filed.

(5) ***Effect of Responsive Pleading.*** A default ~~shall~~will not become effective if the party claimed to be in default pleads or otherwise defends as provided ~~by~~in these ~~Rules prior to the expiration of ten (10)~~rules within 10 days ~~from the filing of~~after the application for entry of default is filed.

~~(5) *Applicability*. The provisions of this rule requiring notice prior to the entry of default shall apply only to a default sought and entered pursuant to this rule.~~

~~Rule 55~~(b) Default Judgment.

(1) ***Default Judgment by*** ~~**default**~~***Motion Without Hearing.***

~~Judgment by default may be entered as follows:~~

~~**1.**~~ **(A)** *Generally.* ~~***By motion.*** When~~ If the plaintiff~~'~~'s claim ~~against a defendant~~ is for a sum certain or ~~for~~ a sum ~~which~~that can ~~by computation~~ be made certain by computation, the ~~Court upon motion of~~court—on the plaintiff ~~and upon~~'s motion, with an affidavit ~~of~~showing the amount due~~,~~ and without a hearing~~, shall~~—may enter judgment for that amount and costs against ~~the~~a defendant~~, if the defendant~~ who has been defaulted for ~~failure to plead or otherwise defend and is not an infant or incompetent person. If~~not appearing and who is neither a minor nor an incompetent person.

(B) *Fee Award—Specific Amount Stated.* A default judgment entered under Rule 55(b)(1) may include an award of reasonable attorney's fees if the claim states a specific sum of ~~attorneys'~~attorney's fees ~~which~~that will be sought ~~in the event~~if judgment is rendered by default, and ~~if such~~:

(i) the amount of the award ~~is allowed by law and~~ is supported by ~~the affidavit, the judgment may include an award of reasonable attorneys' fees not to~~affidavit;

(ii) the award is allowed by law; and

(iii) the award does not exceed the amount ~~of~~demanded in the ~~demand therefor~~claim.

(C) *Fee Award—No Specific Amount Stated.* If the claim requests an award of ~~attorneys'~~attorney's fees, but ~~fails to~~does not specify the amount of ~~such~~ fees that

will be sought ~~in the event~~if judgment is rendered by default, ~~the~~a default judgment entered under Rule 55(b)(1) may include an award of ~~attorneys'~~reasonable attorney's fees~~, if such an award is allowed by law and~~ only if:

(i) an affidavit establishes the reasonable amount ~~therefor is established by affidavit, where~~ of the fee award;

(ii) the defendant has not entered an appearance in the action; and

(iii) the award is allowed by law.

(2) ***Default Judgment* by *Hearing.***

~~**2.**~~ **(A)** *Generally.* ~~***By hearing.*** In all other cases~~ If Rule 55(b)(1) does not apply, the party ~~entitled to a judgment shall~~must apply to the court ~~therefor, but no judgment by default shall~~for a default judgment.

(B) *Default Against a Minor or an Incompetent Person.* A default judgment may be entered against ~~an infant~~a minor or incompetent person ~~unless~~only if the person is represented ~~in the action~~ by a general guardian, conservator, or other ~~such representative~~like fiduciary who has appeared ~~therein~~.

(C) *Notice.* If the party against whom default judgment ~~by default~~ is sought has appeared ~~in the action, that party or, if appearing~~personally or by a representative, that party~~'s~~ or its representative~~, shall~~ must be served with written notice of the application ~~for judgment~~ at least ~~three~~3 days ~~prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to~~ before the hearing.

(D) *Hearings and Referrals.* The court may conduct hearings or make referrals—preserving any right to a jury trial—when, to enter or effectuate judgment, it needs to:

(i) conduct an accounting;

(ii) determine the amount of damages~~ or to~~;

(iii) establish the truth of any ~~averment~~allegation by evidence; or~~ to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when required by law.~~

(iv) investigate any other matter.

(3) ***Conformity With the Demand.*** A judgment by default must not be different in kind from, or exceed in amount, that prayed for in a pleading's demand for judgment.

~~Rule 55(c). Setting aside default~~

(c) Setting Aside a Default or a Final Default Judgment. ~~For good cause shown the~~The court may set aside an entry of default for good cause, and~~, if a judgment by default has been entered, may likewise set it aside in accordance with~~ it may set aside a final default judgment under Rule 60(c).

(d) Judgment Against the State. A default judgment may be entered against the State of Arizona, a state officer, or a state agency only if, after a hearing, the claimant establishes a claim or right to relief by evidence that satisfies the court.

~~Rule 55(d~~e~~).~~ Plaintiffs, ~~counterclaimants, cross~~Counterclaimants and Cross-claimants. The provisions of ~~this~~ Rule 55 apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. ~~In all cases a judgment by default is subject to the limitations of Rule 54(d).~~

~~Rule 55(e). Judgment against the state~~

~~No judgment by default shall be entered against the state or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.~~

~~Rule 55(f). Judgment when service by publication; statement of evidence~~

~~Where service of process has been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in other cases, but a record of the proceedings, in a form approved by the court, shall be maintained by the clerk of the court unless designated otherwise by the court.~~

Rule 56. Summary Judgment

~~Rule 56(a).~~ Motion for ~~summary judgment or partial summary judgment~~Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense~~—~~or the part of each claim or defense~~—~~on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the ~~request~~motion.

~~Rule 56~~(b)~~.~~ Time to ~~f~~File a ~~motion~~Motion.

(1) ***Claimant.*** A claimant may move for summary judgment ~~with or without supporting affidavits~~only after:

(A) ~~after the expiration of 20 days from the service of process upon the adverse party, but no sooner than the date on which the answer is due, or~~ the date when a responsive pleading is due from the party against whom summary judgment is sought; or

(B) ~~after service~~ the filing of a Rule 12(b)(6) motion to dismiss or a ~~motion for~~ summary judgment motion by the ~~adverse~~ party against whom summary judgment is sought.

(2) ***Other Parties.*** Any other party may move for summary judgment~~, with or without supporting affidavits,~~ at any time after the action is commenced.

(3) ~~A~~ ***Filing Deadline.*** A summary judgment motion ~~by any party shall~~may not be filed ~~no~~ later than the dispositive motion deadline set by the court or local rule, or ~~in the absence of~~absent such a deadline, 90 days before the date set for trial.

~~Rule 56(c). Motion and proceedings~~

(c) Procedures.

(1) ***Hearings.*** ~~Upon~~ On timely request by any party, the court ~~shall set a time for~~must hold a hearing on the motion, ~~provided, however, that the court need not conduct a hearing if~~unless it determines that the motion should be denied or ~~if~~ the motion is uncontested. ~~If no request for a hearing is made, the court may, in its discretion, set a time for such hearing~~The court may hold a hearing on the motion even if no party requests one.

(2) ***Opposition and Reply.*** ~~A party~~ An opposing ~~the motion~~party must file its response and any supporting materials within 30 days after ~~service of~~ the motion is served. The moving party ~~shall have~~must serve any reply memorandum and supporting materials 15 days after ~~service of~~ the response ~~in which to serve a reply memorandum and any supporting materials~~is served. These time periods may be shortened or enlarged ~~by a filed stipulation of the parties or by court order; provided, however, that court approval is required for any stipulated extensions to a briefing schedule that would purport to make a reply or other memorandum due less than five days before a hearing date previously set by the court, or would require postponement of a scheduled hearing date or other modifications to an existing case scheduling order~~as provided in Rule 7.1(g).

(3) ***Supporting and Opposing Statements of Fact.***

(A) *Moving Party's Statement.* ~~Any party filing a motion for summary judgment shall~~ The moving party must set forth, in a statement separate from the supporting memorandum ~~of law~~, the specific facts relied ~~upon~~on in support of the motion. The facts ~~shall~~must be stated in concise, numbered paragraphs. ~~As to each fact, the~~The statement ~~shall refer to~~must cite the specific portion of the record where ~~the~~support for each fact may be found. ~~Any party~~

(B) *Opposing Party's Statement.* An opposing ~~a motion for summary judgment shall~~party must file a statement in the form prescribed by ~~this~~ Rule 56(c)(3), specifying ~~those~~:

(i) the numbered paragraphs in the moving party~~'~~'s statement ~~of facts which~~that are disputed~~,~~; and ~~also setting forth~~

(ii) those facts which establish a genuine ~~issue of material fact~~dispute or otherwise preclude summary judgment in favor of the moving party. ~~In the alternative, the movant and the party~~

(C) *Joint Statement.* In addition or as an alternative to submitting separate statements under Rule 56(c)(3)(A) and (B), the moving and opposing ~~the motion shall~~parties may file a joint statement in the form prescribed by this Rule, setting forth those ~~material facts as to which there is no genuine dispute~~facts that are undisputed. The joint statement may provide that any stipulation of fact is not ~~intended to be~~ binding for any purpose other than the ~~motion for~~ summary judgment motion.

(4) ***Objections to Evidence.*** Rule 7.1(f)(2) governs objections to the admissibility of evidence on ~~motions for~~ summary judgment ~~shall be governed by Rule 7.1(f)(2)~~motions, except that an objection may be included in a party~~'~~'s response to another party~~'~~'s separate statement of ~~material~~ facts in lieu of (or in addition to)

including it in the party~~'~~'s responsive memorandum. Any objection presented in the party~~'~~'s response to the separate statement of ~~material~~ facts must be stated concisely.

~~**Rule 56(d). Declining to grant all the requested relief**~~

~~If the court does not grant all the relief requested by the motion, or if on independent consideration pursuant to section (h) of this Rule judgment is not rendered on the whole case, the court may enter an order stating any material fact - including an item of damages or other relief - that is not genuinely in dispute and treating the fact as established in the case.~~

~~**Rule 56(e). Form of affidavits and depositions; further testimony; defense required**~~

~~(1)~~ **5)** ***Affidavits.*** An affidavit used to support or oppose a motion ~~shall~~must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If ~~a paper~~an affidavit refers to a document or part of a ~~paper is referred to in an affidavit~~document, a properly authenticated copy ~~shall~~must be attached to or served with the affidavit.

~~(2)~~**6)** ***Other Materials.*** Affidavits may be supplemented or opposed by ~~depositions, answers to interrogatories~~deposition excerpts, interrogatory responses, admissions, additional affidavits, or other materials that would be admissible in evidence.

~~(3) If all or part of a deposition is submitted in support of or in opposition to a motion for summary judgment, the offering party must submit a written transcript of the testimony. An electronic recording of the testimony may be submitted only if the offering party contends that the written transcript is erroneous.~~

(d) When Facts Are Unavailable to the Opposing Party; Request for Rule 56(d) Relief; Expedited Hearing.

(1) ***Requirements.*** If an opposing party cannot present evidence essential to justify its opposition, it may file a request for relief and expedited hearing under Rule 56(d). The request must be titled: "Request for Rule 56(d) Relief and for Expedited Hearing." The request must be accompanied by:

(A) a supporting affidavit establishing specific and adequate grounds for the request and addressing, if applicable, the following:

(i) the particular evidence beyond the party's control;

(ii) the location of the evidence;

(iii) what the party believes the evidence will reveal;

(iv) the methods to be used to obtain it; and

(v) an estimate of the amount of time the additional discovery will require.

(B) a certification of the party's efforts to resolve the matter as required by Rule 7.2(h).

(2) ***Effect.*** Unless the court orders otherwise, a request for relief under Rule 56(d)(1) does not by itself extend the date for an opposing party to file its responsive memorandum and separate statement of facts under Rule 56(c).

(3) ***Responses to Request.*** Unless the court orders otherwise, the party moving for summary judgment is not required to respond to a Rule 56(d) request for relief. If such a party elects to file a response, it must be filed no later than 2 days before any hearing scheduled to consider the requested relief.

(4) ***Expedited Hearing.*** The court must hold an expedited hearing, in person or by telephone, within 7 days after a request is filed in compliance with Rule 56(d)(1). If the court's calendar does not allow a hearing within 7 days, the court should set a hearing date at the earliest available time allowed by the court's calendar.

(5) ***Relief.*** When a request is filed in compliance with Rule 56(d)(1), the court may, after holding a hearing:

(A) defer considering the summary judgment motion and allow time to obtain affidavits or to take discovery before a response to the motion is required;

(B) deny the requested relief and require a response to the summary judgment motion by a date certain; or

(C) issue any other appropriate order.

(e) Failing to Properly Oppose a Motion. When a summary judgment motion is made and supported as provided in this ~~R~~rule, an opposing party may not rely merely on allegations or denials of its own pleading~~; rather, its response~~. The opposing party must, by affidavits or as otherwise provided in this ~~R~~rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

~~**Rule 56(f). When facts are unavailable to the nonmovant; request for Rule 56(f) relief and expedited hearing**~~

~~(1) If a party opposing summary judgment files a request for relief and expedited hearing under this Rule, along with a supporting affidavit showing that, for specified reasons, it cannot present evidence essential to justify its opposition, the court may, after holding a hearing:~~

~~(A) defer considering the motion for summary judgment and allow time to obtain affidavits or to take discovery before a response to the motion is required;~~

~~(B) deny the requested relief and require a response to the motion for summary judgment by a date certain; or~~

~~(C) issue any other appropriate order.~~

~~(2) Unless otherwise ordered by the court, the filing of a request for relief and affidavit under this section does not by itself extend the date by which the party opposing summary judgment must file a memorandum and separate statement of facts as prescribed in section (c) of this Rule.~~

~~(3) No request for relief will be considered and no hearing will be scheduled unless the request for relief is accompanied by a separate statement of counsel seeking the relief certifying that, after personal consultation and good-faith efforts to do so, the parties have been unable to satisfactorily resolve the matter.~~

~~(4)The party moving for summary judgment is not required to file a response to the request for relief or affidavit unless otherwise ordered by the court. If such a party elects to file a response, it must be filed no later than two days before the hearing scheduled to consider the requested relief.~~

~~(5) Except as provided in subsection (3), the court shall hold an expedited hearing concerning the requested relief, in person or by telephone, within seven days after the filing of a request for hearing by the party seeking the relief. If the court's calendar does~~

~~not allow a hearing within seven days, a later date may be set.~~

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmoving party, if the grounds for doing so are the same as those underlying the court's grant of summary judgment to another party;

(2) grant summary judgment on grounds not raised by a party; or

(3) consider granting summary judgment after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, or if judgment is not rendered on the whole case under Rule 56(f), the court may enter an order identifying any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

~~**Rule 56(g). Affidavits made in bad faith**~~

(h) Affidavit Submitted in Bad Faith. ~~If satisfied that an~~ If a Rule 56 affidavit ~~under this Rule~~ is submitted in bad faith or solely for delay, the court —after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, ~~it~~ incurred as a result, or may impose other appropriate sanctions. ~~The court shall allow notice and a reasonable time to respond before imposing any sanctions pursuant to this section.~~

~~**Rule 56(h). Judgment independent of the motion or based on materials not cited in the motion**~~

~~After giving notice and a reasonable time to respond, the court may:~~

~~(1) grant summary judgment for a nonmovant;~~

~~(2) grant the motion on grounds not raised by a party; or~~

~~(3) consider summary judgment after identifying for the parties material facts that may~~

~~not be genuinely in dispute.~~

Rule 57. Declaratory ~~j~~Judgments

~~The~~These rules govern the procedure for obtaining a declaratory judgment~~ shall be in accordance with these Rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rule 38 and subdivisions (a), (h), and (k) of Rule 39.~~. The existence of another adequate remedy does not preclude a ~~judgment for~~ declaratory ~~relief in cases where it is~~judgment that is otherwise appropriate. The court may order a speedy hearing of ~~an action for~~ a declaratory judgment ~~and may advance it on the calendar.~~action.

Rule 57.1. Declaration of ~~f~~Factual ~~i~~Innocence

(a~~.~~) Scope of Rule. This rule governs the determination of factual innocence of a person who claims ~~pursuant to~~under A.R.S. § 12-771 that the person~~'~~'s personal identifying information was taken, and, as a result, the person~~'~~'s name was used by another person who was arrested, cited, or charged with a criminal offense, or the person's name was later entered as of record in a judgment of guilt in a criminal ~~case~~action.

(b~~.~~) Filing. A petition brought under this rule ~~shall~~must be filed in the superior court in the county in which the other person was arrested for, or cited or charged with, a criminal offense. The petition ~~shall~~must be assigned a civil case number. If applicable, the petition sh~~a~~oul~~l~~d state the specific court location where the underlying charge was filed, or the judgment of guilt was entered, and the case number of that prior filing. The petition ~~shall~~must identify, as applicable, the names and mailing addresses of all persons and entities entitled under A.R.S. § 12-771(H) to notice of a finding of factual innocence. The petition sh~~a~~oul~~l~~d be captioned: In re: (name of petitioner).

(c~~.~~) Service. The petitioner ~~shall serve the petition in the manner prescribed by A.R.S. § 12-771 and by these rules~~must serve the petition on the individuals and entities identified in A.R.S. § 12-771(D) and (E). Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d~~.~~) Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying information such as the person~~'~~'s birth date, social security number, or financial account numbers, be filed or retained in redacted form or under seal.

(e~~.~~) Transmission of Records. If the petition is related to a charge filed in a justice of the peace court or a municipal court, the clerk of the superior court ~~shall~~must request the justice of the peace or presiding officer of the municipal court to transmit a copy of the file to the clerk~~'s office~~.

(f.) **Discovery and Disclosure.** Discovery may be conducted and disclosure under Rule 26.1 may be required only upon by stipulation of the parties, or by court order of the court.

(g.) **Evidence.** The petitioner must establish factual innocence by clear and convincing evidence.

(h.) **Hearing and Determination.**

1. (1) The court may hold a hearing to determine the petitioner's factual innocence.

2. (2) The court may enter an order pursuant to under this rule upon on submission of proof by affidavit.

3. (3) At any hearing, the victim of the offense identified in a judgment of guilt, or committed by the person arrested for, or cited or charged with, a criminal offense, has a right to be present and to be heard at the hearing.

(i.) **Order.** On a finding of factual innocence related to an arrest, citation, or charge, the court shall must notify the following persons, if applicable: the petitioner; the prosecuting agency which that filed the charge; the law enforcement agency which that made the arrest or issued the citation; and the defense attorney.

Rule 57.2. Declaration of factual improper party status Factual Improper Party Status

(a.) **Scope of Rule.** This rule governs petitions alleging factual improper party status pursuant to under A.R.S. § 12-772, if as a result of a person's personal identifying information being taken, the person's name was entered as of record in a civil action or judgment.

(b.) **Filing.** A petition brought under this rule shall must be filed in the superior court for the county in which the petitioner's name was entered as of record in a civil action or judgment because of alleged improper use of the petitioner's personal identifying information. The petition shall must be assigned a civil case number. The petition shall must state the specific court location where the underlying action was filed, and the case number of the prior filing. The petition shaould ld be captioned: In re: (name of petitioner).

(c.) **Service.** The petitioner shall must serve the petition in the manner prescribed by these rules on all parties in the civil action in which the petitioner's identity was allegedly used. Service must be made in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable.

(d.) Redacted Filings and Filings Under Seal. A person may request, and the court may order, that a filing containing potentially sensitive identifying information —such as the person's birth date, social security number, or financial account numbers, —be filed or retained in redacted form or be filed under seal.

(e.) Transmission of Records. If the petition is related to a casean action filed in a justice of the peace court, the clerk of the superior court shallmust request the justice of the peace to transmit a copy of the file to the clerk's office.

(f.) Discovery and Disclosure. Discovery proceedings may be conducted and disclosure under Rule 26.1 may be required only uponby stipulation of the interested parties, or by court order of the court.

(g.) Evidence. The petitioner must establish improper party status by clear and convincing evidence.

(h.) Hearing and Determination.

1. **(1)** The court may hold a hearing on the petition.

2. **(2)** The court may enter an order pursuant tounder this rule upon submission of proof by affidavit.

(i.) Order. The court shallmust provide notice of the court's findings to the petitioner and to all parties in the civil action in which the petitioner's identity was allegedly used.

Rule 58. Entry of Entering Judgment; Minute Entries

Rule 58(a). Service of form of judgment; entry

(a) Form of Judgment; Objections to Form.

(1) ***Proposed Forms of Judgment.*** Proposed forms of judgment shallmust be served upon all parties and counsel. Except as provided in Rule 54(b), a party seeking attorneys' fees shall provide in the form of judgment for an award of attorneys' fees in an amounton all parties and must comply with Rule 5(j)(1).

(2) ***Objections to Form.***

(A) A judgment may not be entered by the court. Except as provided in subsection (f) of this rule, all judgments shaluntil 5 days after the proposed form of judgment is served, unless:

(i) the opposing party endorses on the judgment its approval as to the judgment's form; or

(ii) the court waives or shortens the 5-day notice requirement for good cause; or

(iii) the judgment is against a party in default.

(B) An opposing party not in default may file an objection to the proposed form of judgment within 5 days after it is served. If an objection is made:

(i) the party submitting the proposed form of judgment may reply within 5 days after the objection is served; and

(ii) after that time expires, the court may decide the matter with or without a hearing.

(b) Entering Judgment.

(1) ***Written Document.*** Except as provided in Rule 58(b)(2)(B) regarding habeas corpus proceedings, all judgments must be in writing and signed by a judge or a court commissioner duly authorized to do so. ~~The filing with the clerk of the judgment constitutes entry of such judgment, and the~~

(2) ***Time and Manner of Entry.***

(A) *Generally.* A judgment is not effective before ~~such~~ entry, except that ~~in such circumstances and on such notice as justice may require, the~~a court may direct the entry of a judgment nunc pro tunc~~, and the reasons for such direction shall be entered of record. The entry of the judgment shall not be delayed for taxing costs.~~ in such circumstances and on such notice as justice requires, stating the reasons on the record. A judgment, including a judgment in the form of a minute entry, is entered when the clerk files it.

(B) *In Habeas Corpus Proceedings.* A judgment in habeas corpus proceedings need not be signed, and is final when set forth in a minute entry that is filed.

(3) ***Cost or Fee Awards.***

(A) *Fees.* Except as permitted by Rule 54(g)(3):

(i) a judgment may not be entered until claims for attorney's fees have been resolved and are addressed in the judgment; and

(ii) the judgment must include a blank in the form of judgment to allow the court to include an attorney's fees award.

(B) *Costs.* Entry of judgment must not be delayed nor the time for appeal extended to tax costs.

~~**Rule 58(b).**~~

(c) Notice of Entry of Judgment.

(1) ***Manner of Notice.***

(A) *By the Clerk.* Immediately upon the entry of a judgment, or the entry of a minute entry constituting a judgment, the clerk must:

(i) distribute notice, in the form required by Rule 58(c)(2), either electronically, by U.S. mail, or attorney drop box, to every party not in default for failing to appear; and

(ii) make a record of the distribution.

(B) *By Any Party.* In addition to the clerk's notice under Rule 58(c)(1)(A), any party may serve notice of entry of judgment in the manner provided in Rule 5.

(2) ***Form of Notice.*** Notice of entry of judgment must be in the following form:

(A) a written notice of the entry of judgment;

(B) a minute entry; or

(C) a conformed copy of the file-stamped judgment.

(3) ***Lack of Notice.*** Lack of notice of the entry of judgment by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the allowed time, except as provided in Rule 9(f), Arizona Rules of Civil Appellate Procedure.

(d) Remittitur~~; procedure; effect on right of appeal~~.

~~1.~~**(1)** ***Procedure.*** A party in whose favor a verdict or judgment has been rendered may, in open court, or in a writing filed with the ~~clerk~~court, remit any part of the verdict or judgment. A remittitur announced in open court ~~shall be entered in the minutes, and execution shall thereafter issue for the balance only~~must be set forth in a minute entry.

(2) ***Effect on Execution.*** After remitting a portion of a judgment or verdict, a party may execute on a judgment only for the balance of the judgment or verdict after deducting the amount remitted.

(3) ***Effect of Right of Appeal.*** The remittitur does not affect the rights of the opposing party to appeal from the judgment, and for purposes of appeal the amount of the original judgment must be considered the amount in controversy.

~~2. The remittitur shall not affect the right of the opposite party to appeal from the judgment, and for that purpose the amount of the original judgment shall be considered the amount in controversy.~~

(e) Clerk's Distribution of Minute Entries. The clerk must distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties.

~~**Rule 58(c). Enforcement of judgment; special writ**~~ [Redlining Note: The substance of Rule 58(c) has been moved to Rule 69(d).]

~~The court shall cause the judgment to be carried into execution. When the judgment is for personal property, and it is shown by the pleadings and found that the property has a special value to the plaintiff, or prevailing party, the court may award the plaintiff, or prevailing party, a special writ for the seizure and delivery of the property and may, in addition to the other relief granted, enforce its judgment in the manner provided by law.~~

~~**Rule 58(d). Objections to form**~~

~~1. In case of a judgment other than for money or costs, or that all relief be denied, the judgment shall not be settled, approved and signed until the expiration of five days after the proposed form thereof has been served upon opposing counsel unless the opposite party or that party's counsel endorses on the judgment an approval as to form. The five-day provision may be waived by the court only upon an express written finding by minute order or otherwise of necessity to shorten time or to enter judgment without notice.~~

~~2. If objection to the form of the judgment is made within the time provided in paragraph 1 of this subdivision, the party submitting the proposed form of judgment may respond to~~

~~the objection within five (5) days after service thereof, and the matter shall thereafter be presented to the court for determination, without oral argument, unless the court otherwise directs.~~

~~3. The requirements of this Rule shall not apply to parties in default.~~

~~Rule 58(e). Minute entries: notice of entry of judgments~~

~~The clerk shall distribute, either by U.S. mail, electronic mail, or attorney drop box, copies of all minute entries to all parties. Immediately upon the entry of a judgment as defined in Rule 54(a), the clerk shall distribute, either by U.S. mail, electronic mail, or attorney drop box, a notice of the entry of judgment stating the date of entry, in the manner provided for in Rule 5, to every party who is not in default for failure to appear, and shall make a record of the distribution. Any party may in addition serve a notice of such entry, in the manner provided in Rule 5 for the service of papers. In the case of a judgment in the form of a minute entry, the date of entry shall be the date on which the clerk affixes a file stamp on the minute entry. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as provided in Rule 9(f), Arizona Rules of Civil Appellate Procedure.~~

~~Notice of the entry of judgment shall be accomplished by any of the following:~~

~~1. a specifically designated notice form;~~

~~2. a minute entry;~~

~~3. a conformed copy of the file stamped judgment.~~

~~Rule 58(f). Entry of judgment in habeas corpus proceedings~~

~~A judgment in habeas corpus proceedings need not be signed, and shall be final when entered in the minutes of the court.~~

~~**Rule 58(g). Entry of judgment**~~

~~Except as provided in Rule 54(b), a judgment shall not be entered until claims for attorneys' fees have been resolved and are addressed in the judgment. Entry of judgment shall not be delayed nor the time for appeal extended in order to tax costs.~~

Rule 59. New Trial; ~~Amendment of~~Altering or Amending a Judgment

(a) Generally. This rule governs motions for a new trial or to alter or amend a judgment, following a trial, the grant of summary judgment, or other proceeding that results in a final judgment.

~~**Rule 59(a). Procedure; grounds**~~

(1) ***Grounds for New Trial.*** ~~A verdict, decision or judgment may be vacated and a new trial granted~~The court may, on motion, grant a new trial on all or some of the ~~aggrieved party for any of the following causes~~issues—and to any party—on any of the following grounds materially affecting that party~~'~~'s rights:

~~1.~~ **(A)** ~~Irregularity~~ any irregularity in the proceedings~~ of the court, referee, jury or prevailing party, or any order~~ or abuse of discretion~~, whereby~~ depriving the ~~moving~~ party~~ was deprived~~ of a fair trial~~.~~;

~~2.~~ **(B)** misconduct of the jury or prevailing party~~.~~;

~~3.~~ **(C)** accident or surprise ~~which~~that could not reasonably have been prevented~~ by ordinary prudence.~~;

~~4.~~ **(D)** ~~Material evidence,~~ newly discovered~~, which with reasonable diligence~~ material evidence that could not have been discovered and produced at the trial~~.~~ with reasonable diligence;

~~5.~~ **(E)** excessive or insufficient damages~~.~~;

~~6.~~ **(F)** error in the admission or rejection of evidence, error in ~~the charge to the jury, or in~~giving or refusing jury instructions~~ requested~~, or other errors of law ~~occurring~~ at the trial or during the ~~progress of the~~ action~~.~~;

~~7.~~ **(G)** ~~That~~ the verdict is the result of passion or prejudice~~.~~; or

~~8.~~ **(H)** ~~That~~ the verdict, decision, findings of fact, or judgment is not ~~justified~~supported by the evidence or is contrary to law.

~~**Rule 59(b). Scope**~~

~~A new trial may be granted to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury, for any of the reasons for which new trials are authorized by law or rule of court. On a~~

(2) ***Further Action After a Nonjury Trial.*** After a nonjury trial, the court may, on motion for a new trial ~~in an action tried without a jury, the court may open~~, vacate the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ~~findings and conclusions~~ones, and direct the entry of a new judgment.

~~**Rule 59(c). Contents of motion; amendment; rulings reviewable**~~

~~1.~~

(b)Time to File a Motion; Response and Reply.

(1) ***Motion.*** A motion for a new trial, along with any supporting affidavits, must be filed no later than 15 days after the entry of judgment. The motion ~~for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and~~ may be amended at any time before the court rules on it.~~it is ruled upon by the court.~~

(2) ***Response and Reply.*** Rule 7.2 governs responses and replies to a motion for new trial.

~~**Rule 59(g). On initiative of court**~~

(c) New Trial on the Court's Initiative or for Reasons Not in the Motion. ~~Not~~ No later than 15 days after the entry of judgment, the court ~~of~~, on its own ~~initiative,~~ may order a new trial for any reason ~~for which it might have granted a new trial on motion of a party~~set forth in Rule 59(a). After giving the parties notice and an opportunity to be heard ~~on the matter~~, the court may grant a ~~motion for a new trial,~~ timely ~~served,~~motion for a new trial for a reason not stated in the motion. In either ~~case, the court shall specify in the order the grounds therefor.~~event, the court must specify the reasons in its order.

~~2. Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.~~

~~3. Upon the general ground that the court erred in charging the jury and in refusing instructions requested, the court shall review the charge and the rulings refusing an~~

~~instruction requested.~~

~~4. Upon the general ground that the verdict, decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.~~

~~Rule 59(d). Time for motion~~

~~A motion for new trial shall be filed not later than 15 days after entry of the judgment.~~

~~Rule 59(f). Time for serving affidavits~~

~~When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.~~

(d) Motion to Alter or Amend a Judgment. A motion to alter or amend a judgment must be filed no later than 15 days after the entry of the judgment.

~~Rule 59(l). Motion to alter or amend a judgment~~

~~A motion to alter or amend the judgment shall be filed not later than 15 days after entry of judgment.~~

~~Rule 59(h). Questions to be considered in new trial~~

(e) Scope of New Trial. A new trial, if granted, ~~shall~~must be ~~only a new trial of~~limited to the question or questions ~~with respect to which the verdict or decision is found erroneous~~found to be in error, if separable. If a new trial is ordered solely because the damages are excessive or inadequate and ~~granted solely for that reason~~if the issue of damages is separable from all other issues in the action, the verdict ~~shall~~may be set aside only ~~in respect of the~~on damages, and ~~shall~~must stand in all other respects.

~~Rule 59(if).~~ Motion on ~~g~~Ground of ~~excessive or inadequate damages~~Excessive or Inadequate Damages.

(1) Conditional Grant of New Trial.

~~1.~~**(A)** *Generally.* When a motion for new trial is ~~made upon~~based on the ground that the ~~damages~~ awarded damages are either excessive or insufficient, the court may grant the new trial conditionally ~~upon the filing~~if, within ~~a fixed period of~~the time ~~of a statement~~set by the court, the party adversely affected by the reduction or increase ~~of~~in damages files a statement accepting th~~at~~e amount of damages ~~which~~as designated by the court ~~shall designate. If such a statement is filed within the prescribed time~~.

(B) *Effect on Grant or Denial of New Trial.* If the party adversely affected by the reduction or increase in damages files a statement as provided in Rule 59(g)(1)(A), the motion for new trial ~~shall be regarded as~~is deemed denied as of the date ~~of such filing. If no~~the statement is filed. If the party adversely affected does not file a statement, the motion for new trial ~~shall be regarded as~~is deemed granted as of the ~~date of the expiration of the time period within which a statement could have been filed~~deadline specified by the court for filing the statement. No further written order ~~shall be~~is required to make an order granting or denying the new trial final. If the conditional order of the court requires a reduction of or increase in damages, then the new trial ~~will~~may be granted ~~in respect of the~~only as to damages ~~only~~, and the verdict ~~shall~~must stand in all other respects.

~~2.~~**(2)** ***Effect on Appeal.*** If a statement of acceptance is filed by the party adversely affected by reduction or increase of damages, and the other party ~~thereafter perfects~~later files an appeal, the party filing such statement may ~~nevertheless cross-appeal and the perfecting of a cross-appeal shall be deemed to revoke the consent to the decrease or increase in damages~~cross-appeal and, at its election, seek review of the superior court's ruling that the awarded damages are either excessive or insufficient. If the court's ruling on damages is affirmed, the party's prior acceptance will remain in effect, unless the appeal's final disposition requires otherwise.

~~Rule 59(j).~~(g) Motion for New Trial After ~~s~~Service by ~~publication~~Publication.

~~1.~~**(1)** ***Generally.*** When judgment has been rendered on service by publication, and the defendant has not appeared, the court may grant a new trial ~~may be granted upon application of~~if the defendant ~~for good cause shown by affidavit, made~~ within

one year after ~~rendition~~entry of ~~the~~ judgment—files an application establishing good cause for a new trial.

~~2.~~**(2) *Bond Required to Stay Execution.*** Execution of ~~the~~ judgment sh~~a~~oul~~l~~d not be stayed unless the defendant ~~gives~~posts a bond~~, approved by the clerk,~~ in double the amount of the judgment or the value of the property ~~adjudged, payable to~~that is the ~~plaintiff in~~subject of the judgment~~,~~. The bond must be conditioned ~~that the party will prosecute~~on the defendant's prosecution of the application for new trial ~~to effect, and will satisfy such~~and on satisfaction of the judgment ~~as may be rendered by~~in full should the court ~~should its decision be against the defendant.~~deny the application.

~~**Rule 59(k**~~**h**~~**).**~~ **Number of ~~new trials~~**~~Not~~**New Trials.** No more than two new trials ~~shall~~may be granted to ~~either~~a party in the same action, except ~~when~~on the grounds of jury ~~has been guilty of some~~ misconduct or ~~has erred in matters~~errors of law.

~~**Rule 59(m). Specification of grounds of new trial in order**~~

(i) Order Specifying Grounds. ~~No~~ Any order granting a new trial ~~shall be made and entered unless the order specifies~~or altering or amending a judgment must specify with particularity the ground or grounds ~~on which~~for the ~~new trial is granted~~court's order.

Rule 60. Relief from Judgment or Order

~~**Rule 60(a). Clerical mistakes**~~

(a) Corrections Based on Clerical Mistakes; Oversights; and Omissions. ~~Clerical mistakes in judgments, orders, or other parts of the record and errors therein~~ A court may correct a clerical mistake or a mistake arising from oversight or omission ~~may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders. During pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal~~if one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and while it is pending in the appellate court, such a mistake may be ~~so~~ corrected only with the appellate court's leave ~~of the appellate court~~.

~~**Rule 60(b). Correction of error in record of judgment**~~

~~1. When a mistake in a judgment is corrected as provided by subdivision (a) of this Rule, thereafter the execution shall conform to the judgment as corrected.~~

~~2. Where there is a mistake, miscalculation or misrecital of a sum of money, or of a name, and there is among the records of the action a verdict or instrument of writing whereby such judgment may be safely corrected, the court shall on application and after notice, correct the judgment accordingly.~~

~~**Rule 60(c). Mistake; inadvertence; surprise; excusable neglect; newly discovered evidence; fraud, etc.**~~

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and ~~upon such~~just terms~~ as are just~~, the court may relieve a party or ~~a party's~~its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence ~~which by due~~that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(d);

(3) fraud (whether ~~heretofore denominated~~previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an ~~adverse~~opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged~~, or a prior judgment on which~~; it is based on an earlier judgment that has been reversed or~~ otherwise~~ vacated~~,~~; or ~~it~~applying it prospectively is no longer equitable~~ that the judgment should have prospective application~~; or

(6) any other reason justifying relief~~ from the operation~~.

(c) Timing and Effect of the ~~judgment. The~~**Motion.**

(1) ***Timing.*** A motion ~~shall~~under Rule 60(b) must be ~~filed~~made within a reasonable time~~,~~ and for reasons (1), (2) and (3) ~~not~~no more than ~~six~~6 months after the entry of the judgment or order ~~was entered~~ or date of the proceeding~~ was taken. A motion under this subdivision~~, whichever is later.

(2) *Effect on Finality.* The motion does not affect the judgment's finality ~~of a judgment~~ or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit the court's power ~~of a court~~ to :

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding~~, or to~~ ;

(2) grant relief to a defendant served by publication as provided ~~by~~in Rule 59(j); or ~~to~~

(3) set aside a judgment for fraud upon the court. ~~The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.~~

(e) Correction of Error in Record of Judgment.

~~**Rule 60(d).**~~ **(1)** After a mistake in a judgment is corrected as provided in Rule 60(a), execution must conform to the corrected judgment.

(2) On motion and after notice, the court must correct a judgment if there is a mistake, miscalculation, or misrecital of a sum of money, or a mistake about, or a misspelling of, a name.

(f) Reversed Judgment of Foreign State. If a judgment ~~**of foreign state**~~~~When a judgment has been~~was rendered ~~upon the~~on a foreign judgment ~~of~~from another state or ~~foreign~~ country~~,~~ and the ~~foreign judgment is thereafter reversed or set aside by a~~ court of such state or country reverses or sets aside the foreign ~~country~~judgment, the Arizona court ~~in which judgment was~~that rendered ~~in this state shall~~judgment must set aside, vacate, and annul its judgment.

Rule 61. Harmless ~~e~~Error

~~No~~Unless justice requires otherwise, an error in ~~either the admission or the exclusion of~~admitting or excluding evidence~~ and no error or defect in any ruling or order or in anything done or omitted~~—or any other error by the court or ~~by any of the parties is ground~~a party—is not grounds for granting a new trial~~ or~~, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order~~, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at~~. At every stage of the proceeding, the court must disregard ~~any error or defect in the proceeding which does~~all errors and defects that do not affect ~~the~~any party's substantial rights~~ of the parties~~.

Rule 62. Stay of Proceedings to Enforce a Judgment

~~Rule 62~~(a)~~. Stay in injunctions and receiverships~~ No Automatic Stay. ~~Unless~~ Except as provided in Rule 7 of the Arizona Rules of Civil Appellate Procedure or otherwise ~~ordered~~provided by ~~the~~ court order, an interlocutory or final judgment—including in an action for an injunction or ~~in~~ a receivership ~~action shall~~ is not ~~be~~ stayed ~~during the period~~ after ~~its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal~~being entered, even if an appeal is taken.

~~**Rule 62(b). Stay on motion for new trial or for judgment**~~

(b) Stay Pending the Disposition of a Motion. ~~In its discretion and on such conditions for the~~ On appropriate terms for the opposing party's security ~~of the adverse party as are proper~~, the court may stay the execution of a judgment—or any proceedings to enforce ~~a judgment~~ it—pending ~~the disposition of a motion~~disposition of any of the following motions:

(1) under Rule 50, for judgment as a matter of law;

(2) under Rule 52(b), to amend the findings or for additional findings;

(3) under Rule 59, for a new trial or to alter or amend a judgment ~~made pursuant to Rule 59, or of a motion~~;

(4) under Rule 60(a) and (c), for relief from a judgment or order ~~made pursuant to subdivisions (a) and (c) of Rule 60, or of a motion for judgment in accordance with a motion for judgment as a matter of law made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b), or~~ ; or

(5) when justice so requires in other ~~cases~~instances until such time as the court may fix.

~~Rule 62~~(c)~~.~~ Injunction ~~pending appeal~~ Pending an Appeal. ~~When~~While an appeal is ~~taken~~pending from an interlocutory order or final judgment ~~granting, dissolving, or denying~~that grants, dissolves, or denies an injunction, the court ~~in its discretion~~ may suspend, modify, restore, or grant an injunction ~~during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party~~on terms for bond, security or other conditions that preserve the opposing party's rights.

(d) Stay of Judgment Ordering Execution of an Instrument or Sale of Perishable Property.

Rule 62(f). (1) Stay of ***Judgment Directing Execution of Instrument.*** If a party is appealing a judgment or order directing **execution of instrument; sale of perishable property and disposition of proceeds**1. If the judgment or order appealed from directs the execution of a conveyance or other instrument, the execution of the judgment or order shallmay not be stayed by the appealunless and until the conveyance or other instrument is executed and deposited with the clerk of the superior court to abide the judgment of the supreme courtpending the appeal's outcome.

2.**(2)** ***Judgment Directing Sale of Perishable Property and Distribution of Proceeds.*** A judgment or order directing the sale of perishable property shallmay not be stayed pending appeal, but the proceeds of the sale shallmust be deposited with the clerk pending the outcome of the superior court to abide the appeal.

Rule 62(g). (e) Stay in favor of the state or Stay of a Judgment Against the State or Its aAgencyies or pPolitical sSubdivisions thereof.

(1) ***Money*** judgments***Judgments.*** If a money judgment is entered against the state or agencyState of Arizona or one of its agencies or political subdivision thereof, aresubdivisions, the judgment is automatically stayed whenupon the filing of an appeal is filed.

(2) ***Non-Money Judgments.*** If a judgment entered against the state or agencyState of Arizona or one of its agencies or political subdivision thereofsubdivisions and the judgment is other than a money judgments arejudgment, the judgment is not automatically stayed when an appeal is filed, but as to them, no bond can be required if a stay is ordered.upon the filing of an appeal. If a court grants a stay of such a judgment, it may not require a bond, obligation or other security.

Rule 62(if). Stay of judgment underJudgment Entered Under Rule 54(b) When a. A court has orderedmay stay the enforcement of a final judgment entered under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent until it enters a later judgment or judgments, and may prescribe such conditions as areterms necessary to secure the benefit thereof tooof the stayed judgment for the party in whose favor the judgment isit was entered.

Rule 62(j). Stay of judgments in rem

(g) Stay of a Judgment in Rem. ~~No execution or other process shall issue on judgments in rem disposing of an interest in property in connection with which a proper claim was timely filed and the claimant~~ If a claimant has filed a timely claim to the property and is not in default, a judgment in rem is not self-executing until 15 days after ~~the time for filing a notice of appeal begins. Within such 15 day period, no such judgment shall be self-executing~~its entry, and no execution or other process may issue on the judgment during that time.

Rule 63. ~~Disability of a judge~~ Judge's Inability to Proceed

If a ~~trial or~~judge conducting a hearing ~~has been commenced and the judge~~or trial is unable to proceed, any other judge may proceed with ~~it~~the hearing or trial upon certifying familiarity with the record and determining that the ~~proceedings in the case~~action may be completed without prejudice to the parties. In a hearing or a nonjury trial ~~without a jury~~, the successor judge ~~shall~~must, at ~~the~~a party's request ~~of a party~~, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge ~~may~~ also may recall any other witness.

VIII. ~~Provisional and Final Remedies and Special Proceedings~~ PROVISIONAL AND FINAL REMEDIES; SPECIAL PROCEEDINGS

Rule 64. Seiz~~ure~~ing ~~of~~ a ~~p~~Person or ~~p~~Property

(a) Remedies—Generally. At the commencement of and ~~during the course of~~throughout an action, ~~all remedies providing for~~every remedy authorized by law is available for the seizure of a person or property ~~for the purpose of securing~~to secure satisfaction of ~~the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies,~~ a potential judgment.

(b) Specific Kinds of Remedies. The remedies available under this rule include the following—however designated and regardless of whether the remedy is ancillary to ~~an~~the action or ~~must be obtained by~~requires an independent action:

(1) arrest;

(2) attachment;

(3) garnishment;

(4) replevin;

(5) sequestration; and

(6) other corresponding or equivalent remedies.

Rule 64.1. Civil Arrest Warrant

~~**Rule 64.1(a). Definition**~~

(a) Nature of Rule; Illustrative Uses. This rule does not create a substantive basis for the power of arrest. Rather, it sets forth the procedure for how a court may exercise its inherent power to command the attendance in court of persons who disobeyed a prior order to appear in a civil action. The procedure described in this rule can be used, for example, if a witness ignores a subpoena, a juror disobeys an order to report for jury duty, a judgment debtor fails to appear for supplemental proceedings, a person disobeys an order to appear for a deposition, or a person is in contempt of an order to report to jail as directed.

(b) Defined. A "civil arrest warrant" is ~~an~~a court order ~~issued~~ in a non-criminal matter, directed to any peace officer in the state, to arrest the individual named ~~therein~~in the order and to bring such person before the issuing court.

~~**Rule 64.1(b**~~**(c)**~~.~~ **When ~~issued~~Issued.** The court may, on motion ~~of a party~~ or on its own ~~motion~~, issue a civil arrest warrant if it finds that the person for whom the warrant is sought has failed to appear:

(1) ~~Having been ordered by~~ after the court ordered the person to appear ~~personally~~ at a specific time and location, and ~~having~~after the person received actual notice of such order, including a warning that failure to appear ~~may~~might result in the issuance of a civil arrest warrant~~, has failed to appear as ordered~~; or

(2) ~~Having been~~ after the person was served personally with a subpoena to appear in person, at a specific time and location, which contain~~s~~ed a warning that failure to appear ~~may~~might result in the issuance of a civil arrest warrant~~, has failed to appear~~.

~~**Rule 64.1(c**~~**(d)**~~.~~ **Content of ~~warrant~~Warrant.**

(1) ***Identification of the Person to Be Arrested.*** The ~~civil arrest~~ warrant ~~shall be issued by the court. It shall~~must contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty. ~~It shall~~

(2) *Command to Appear.* The warrant must command that the person named be brought before the issuing judge or, if the judge is absent or unable to act, the nearest or most accessible judge in the same county.

(3) *Bond.* The warrant ~~shall~~must set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or an order that the arrested person be held without bond until ~~the arrested person is~~they are seen by a judge.

~~**Rule 64.1(d**~~**(e)**~~**.**~~ **Time and Manner of Execution.** A civil arrest warrant is executed by the arrest of the person named ~~therein~~in it. The arrested person ~~shall~~must be brought before the issuing judge, or the nearest available judge, ~~as soon as practicable but in any event~~ within 24 hours ~~of the execution of~~after the warrant is executed or sooner if practicable.

~~**Rule 64.1(e**~~**(f)**~~**.**~~ **Duty of ~~court after execution of warrant~~Court After Execution of Warrant.** The judge ~~shall~~must advise the arrested person of the nature of the proceedings, release the arrested person on the least onerous terms and conditions ~~which~~that reasonably guarantee the required appearance, and set the date of the next court appearance.

~~**Rule 64.1(f**~~**(g)**~~**.**~~ **Forfeiture of ~~bond~~Bond.** The procedure for the forfeiture of bonds in criminal ~~cases shall apply~~actions applies.

Rule 65. Injunctions and Restraining Orders

~~**Rule 65**~~**(a)**~~**.**~~ **Preliminary ~~injunction; notice~~Injunction or Temporary Restraining Order.**

(1) *Notice.* ~~No~~ Except as provided in Rule 65(b), the court may issue a preliminary injunction ~~shall be issued without~~or a temporary restraining order only with notice to the adverse party.

(2) ~~*Consolidation of hearing with trial on merits*~~ ***Consolidating the Hearing With the Trial on the Merits*.**

(A) Before or after ~~the commencement of~~beginning the hearing ~~of an application~~on a motion for a preliminary injunction, and with reasonable notice to the parties, the court may ~~order~~advance the trial ~~of the action~~ on the merits ~~to be advanced and consolidated with the hearing of the application. Even when this~~and consolidate it with the hearing on the motion.

(B) If consolidation is ordered after the preliminary injunction hearing begins, the court may continue the matter if necessary to allow adequate time for the parties to complete discovery, and may make other appropriate orders.

(C) Even if consolidation is not ordered, ~~any~~and subject to any party's right to a jury trial, evidence that is received ~~upon an application for a preliminary injunction which~~on the motion and that would be admissible ~~upon the~~at trial ~~on the merits~~ becomes part of the trial record ~~on the trial~~ and need not be repeated ~~upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.~~at trial.

~~**Rule 65(c). Motion to dissolve or modify**~~

(3)*Motion to Dissolve or Modify.* ~~Motions~~ After an answer is filed, a party may file a motion to dissolve or modify a preliminary injunction ~~may be heard after an answer is filed, upon~~with notice to the ~~opposite party. If, upon hearing the motion, it appears that there is~~opposing party. Unless the motion is unopposed, the court must hold a hearing and allow the parties to present evidence. If the court determines that there are not sufficient grounds for the injunction, ~~it shall be dissolved, or if it appears~~or that ~~the injunction is too broad, it shall be modified. A denial of the material allegations of the complaint shall not be sufficient ground for dissolution of a preliminary injunction unless the answer denying the allegations is verified~~it is overbroad, the court may dissolve or modify the preliminary injunction.

~~Rule 65(d~~b~~).~~ Temporary ~~restraining order; notice; hearing; duration~~Restraining Order Without Notice.

~~A~~**(1)** ***Issuing Without Notice.*** The court may issue a temporary restraining order ~~may be granted~~ without written or oral notice to the adverse party ~~or that party's attorney~~ only if ~~(1) it clearly appears from~~ :

(A) specific facts ~~shown by~~in an affidavit or ~~by the~~a verified complaint clearly show that immediate and irreparable injury, loss or damage will likely result to the ~~applicant~~movant before the adverse party ~~or that party's attorney~~ can be heard in opposition, or that prior notice will likely cause the defendant to take action resulting in such injury, loss or damage; and

(~~2~~B) the ~~applicant'~~movant's attorney certifies ~~to the court~~ in writing ~~the~~any efforts~~, if any, which have been~~ made to give ~~the~~ notice or the reasons ~~supporting the claim that notice~~why it should not be required.

(2) *Contents.* Every temporary restraining order ~~granted~~issued without notice must:

(A) state the date and hour it was issued;

(B) describe the injury and state why it is irreparable;

(C) state why the order was issued without notice; and ~~shall be indorsed with the date and hour of issuance; shall be filed forthwith~~

(D) be promptly filed in the clerk~~'~~'s office and entered ~~of record; shall define the injury and state why it is irreparable and why the order was granted~~in the record.

(3) *Expiration.* A temporary restraining order issued without notice~~; and shall expire by its terms within such~~ expires at the time after entry~~, —~~not to exceed 10 days~~, as—~~that the court ~~fixes~~sets, unless ~~within~~before the~~at~~ time ~~so fixed~~ the ~~order~~court, for good cause~~ shown, is extended~~, extends it for a like period or ~~unless~~ the adverse party~~ against whom the order is directed~~ consents ~~that it may be extended for~~to a longer ~~period~~extension. The reasons for the extension ~~shall~~must be entered ~~of record. In case a temporary restraining order is granted~~in the record.

(4) *Expediting the Preliminary Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction ~~shall~~must be set ~~down~~ for hearing at the earliest possible time~~ and takes~~, taking precedence ~~of~~over all other matters except hearings on older matters of the same ~~and when the motion comes on for~~character. At the hearing, the party who obtained the ~~temporary restraining~~ order ~~shall~~must proceed with the ~~application for a preliminary injunction and~~,motion; if the party does not~~ do so~~, the court ~~shall~~must dissolve the ~~temporary restraining~~ order.

(5) *Motion to Dissolve.* On ~~2~~two days~~'~~' notice to the party ~~who obtained the temporary restraining~~obtaining the order without notice ~~—~~or on~~ such~~ shorter notice ~~to that party as~~set by the court~~ may prescribe, —~~the adverse party may ~~appear and move its dissolution or modification and in that event~~move to dissolve or modify the order. The court ~~shall proceed to~~must hear and ~~determine~~decide any such motion as ~~expeditiously as the ends of~~promptly as justice requires.

~~Rule 65~~(e~~c~~).~~ Security.

~~No restraining order or~~**(1)** ***Generally; On Issuance.*** The court may issue a preliminary injunction ~~shall issue except upon the giving of security by the applicant,~~or a temporary restraining order only if the movant gives security in such

~~sum~~amount as the court ~~deems~~considers proper~~, for~~ to pay the~~ payment of such~~ costs and damages ~~as may be incurred or suffered~~sustained by any party~~ who is~~ found to have been wrongfully enjoined or restrained. ~~No such security shall be required of the~~The State ~~or of an officer or agency thereof.~~of Arizona and its agencies, counties, municipalities, and other governmental entities—and their respective officers—are not required to give security. The provisions of Rule 65.1 apply to a surety ~~upon~~on a bond or undertaking under this rule.

~~**Rule 65(g). Security on injunction restraining collection of money; injunction made permanent**~~

(2) *Injunction Restraining Collection of Money.*

~~1.~~ **(A)** *On Dissolution Pending Trial.* ~~Upon~~ On dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court ~~shall~~must require the defendant to give security ~~to be approved by the court, and~~ payable to the plaintiff :

(i) in the amount previously enjoined and ~~such~~any additional amount ~~as~~ordered by the court ~~requires,~~; and

(ii) conditioned ~~upon~~on refunding to the plaintiff the amount of money, interest and costs ~~which~~that may be collected by the plaintiff ~~in the action in the event~~if a permanent injunction is ordered on final hearing.

~~2.~~**(B)** *Injunction Made Permanent.* If a permanent injunction is ordered on final hearing, ~~the court shall,~~ on ~~motion of~~ the plaintiff~~,~~'s motion, the court must enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

~~**Rule 65(h). Form and scope of injunction or restraining order**~~

(d) Contents and Scope of Injunction or Restraining Order.

(1) *Contents.* Every order granting an injunction and every restraining order ~~shall set forth~~must:

(A) state the reasons ~~for its issuance and shall be specific in terms. It shall~~ why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail~~,~~ and not by refer~~er~~in~~ee~~g to the complaint or other document~~,~~ the act or acts ~~sought to be restrained, and it is binding only upon the parties to the action, their~~restrained or required.

(2) ***Persons Bound.*** The order binds only the following who receive actual notice of it by personal service or otherwise:

(A) the parties;

(B) the parties' officers, agents, servants, employees, and attorneys~~,~~; and ~~upon those~~

(C) other persons who are in active concert or participation with ~~them who receive actual notice of the order by personal service or otherwise.~~anyone described in Rule 65(d)(2)(A) or (B).

~~**Rule 65(i). Writs of injunction; where returnable; several parties**~~

(e) Venue of a Requested Injunction or Order to Stay an Action or Stay Execution of a Judgment. ~~Writs of injunction granted~~ A motion or application seeking an injunction or order to stay ~~proceedings in~~ an action, or to stay execution of ~~a~~ judgment, ~~shall~~must be ~~returnable to and tried~~filed in the court where the action is pending or the judgment was rendered.

(f) Procedure for Obtaining Sanctions; Order to Show Cause.

(1) ***Generally.*** The court may issue sanctions for civil contempt, or for criminal contempt as allowed by law, against a party or person who violates an injunction.

(2) ***Application; Affidavit.*** A party alleging that any party or person has violated an injunction may file an application for an order to show cause. The application must be accompanied by a supporting affidavit describing the acts that violate the injunction.

(3) ***Order to Show Cause.*** The court may issue an order to show cause based on the application and supporting affidavit. The order to show cause:

(A) may set a date for any written response to the application, and

(B) before sanctions are ordered, must require the party or person alleged to have violated the injunction to appear and respond at the time and place ordered by the court.

(4) ***Service.*** No later than 10 days before any hearing, the party or person charged with contempt must be personally served with the order to show cause and a copy of the affidavit in the manner provided for service of a summons or pleading under Rules 4, 4.1 or 4.2, as applicable, or, if the party to whom the order is directed has entered an appearance in the action, in accordance with Rule 5.

(5) ***Hearing.*** At any order to show cause hearing, the court may consider affidavits and other evidence as allowed by Rule 43(i). The court need not hold an evidentiary hearing unless there is a genuine dispute of material fact, but a person or party charged with criminal contempt may be entitled to a jury trial as provided by law.

(6) ***Sanctions—Generally.*** If at the order to show cause hearing the court finds that a party or person violated the injunction, the court may set a separate hearing to determine appropriate remedies and sanctions under the law of civil and criminal contempt. Sanctions may include imposing a fine or jail. If the court orders a party or person to be fined or jailed for civil contempt and if the contempt can be purged by complying with the court's orders, the court must give that party or person the opportunity to purge the contempt by complying with the court's order or as otherwise ordered by the court.

(7) ***Sanctions for Failing to Appear.*** The following additional sanctions may be ordered for a party or person failing to appear at the order to show cause hearing:

(A) the court may issue a civil arrest warrant and, if the party or person is arrested, the court must set a reasonable bail to secure the party or person's appearance at any future hearing; and

(B) if the party or person charged with contempt is a corporation, the court may attach and sequester assets of the corporation pending further court order.

~~**Rule 65(j). Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment**~~

~~1. Disobedience of an injunction may be punished by the court as a contempt.~~

~~2. When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court which issued the injunction.~~

~~3. The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the order.~~

~~4. If such person fails or refuses to make return to the order to show cause a warrant of arrest may issue directing the sheriff or any constable of the county where the alleged contemnor resides or may be found, to arrest and bring the alleged contemnor before the court at a time and place directed by the court, and such person may be required to give bail for attendance at the trial and submission to the final judgment of the court.~~

~~5. If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.~~

~~6. Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the person enjoined has disobeyed the injunction that person may be committed to jail until that person is purged of the contempt as may be directed by the court or until that person is discharged by law.~~

Rule 65.1. ~~Security; proceedings against sureties~~ Proceedings Against Surety

When~~ever~~ these rules~~,~~ (including ~~the Injunction~~ Rule 65 and any other relating to security~~,~~) require or ~~permit the giving of~~allow a party to give security ~~by a party~~, and security is given ~~in the form of~~through a bond ~~or stipulation~~ or other undertaking with one or more sureties, each surety submits to the court's jurisdiction ~~of the court~~ and irrevocably appoints the clerk ~~of the court~~ as ~~the surety's~~its agent ~~upon whom~~for receiving service of any papers ~~affecting the surety's~~that affect its liability on the bond or undertaking ~~may be served~~. The surety~~'~~'s liability may be enforced on motion without ~~the necessity of~~ an independent action. The motion and ~~such~~any notice ~~of the motion as~~that the court ~~prescribes~~orders may be served on the clerk ~~of the court, who shall forthwith mail copies to the sureties if their addresses are~~, who must promptly mail or otherwise distribute a copy of each to every surety whose address is known.

Rule 65.2. Action ~~pursuant to~~Under A.R.S. § 23-212 or § 23-212.01

(a) Commencement of Action. ~~An action brought by the~~ The county attorney ~~pursuant to~~may bring an action under A.R.S. § 23-212 or § 23-212.01 ~~shall be commenced~~ by filing a verified complaint with the clerk ~~of the superior court~~. The attorney signing the complaint ~~shall~~must verify that ~~the attorney~~he or she believes the assertions in the complaint to be true based on ~~the basis of~~ a reasonably diligent inquiry.

(b) Contents of Complaint. ~~A~~ The complaint ~~filed under this Rule shall~~must include the following:

(1) The employer's name and address(es)~~ of the employer~~;

(2)~~ Specification of one or more~~ The employer's business licenses subject to suspension or revocation~~ under A.R.S. § 23-212 or § 23-212.01 that are held by the employer, and the identity and address of~~, and the licensing agency(ies)' identity and address, including the identity(ies) and mailing address(es) of the agency official(s) authorized to accept service~~ under this Rule~~;

(3) A statement of specific facts alleged to show that one or more employees are unauthorized aliens;

(4) A statement of specific facts alleged to show that the employer intentionally or knowingly employed one or more unauthorized aliens; and

(5)~~ In~~ If the ~~case of an~~ action is for a second violation~~ of A.R.S. § 23-212 or § 23-212.01, the case number of~~, the first action's case number and the date of the order or judgment~~ finding a first violation of A.R.S. § 23-212 or § 23-212. 01.~~. The complaint ~~shall~~must also ~~include as an attachment~~attach a copy of the court~~'~~'s order or judgment finding a first violation~~ of A.R.S. § 23-212 or § 23-212.01.~~.

(c) Nature of Proceedings. ~~An~~ The action ~~brought pursuant to A.R.S. § 23-212 or § 23-212.01 shall~~must be denominated as a civil action and assigned a specific sub-category code for ~~purposes of~~ case tracking~~. An action brought pursuant to A.R.S. § 23-212 or § 23-212.01 shall~~ purposes. It must be heard and decided by the court sitting without a jury, except as otherwise permitted ~~by~~under Rule 39(m).

(d)~~ **Venue.** An action brought pursuant to A.R.S. § 23-212 or § 23-212.01 shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. If the employee is or was employed by the employer in more than one county, the action shall be~~ **Venue.** Venue is proper in any county in which the employee is or was employed by the employer.

(e) Expedited Proceedings. The court ~~shall~~must expedite ~~an action brought pursuant to A.R.S. § 23-212 or § 23-212.01.~~the proceedings.

(f) Scheduling Conference. ~~Simultaneously with~~ At the ~~filing of~~same time the complaint ~~required by subsection (a) of this Rule~~is filed, the county attorney ~~shall~~must file an application and submit a form of order requiring the court to set a date for a scheduling conference to determine the schedule for expedited proceedings. A copy of the signed order ~~shall~~must be served ~~upon~~on the employer and may be served with the complaint. At the scheduling conference, the court may address~~ the matters set forth in~~ Rule 16(d)

matters and may set such additional hearings as it deems necessary. On or before the date of the scheduling conference, the employer ~~shall~~must file and serve a written disclosure ~~of the identity of~~identifying all business licenses that it holds in ~~this State~~Arizona.

(g) Evidentiary Hearing; Summary Judgment. The court may not ~~order~~suspend or revoke a license ~~suspension or license revocation pursuant to A.R.S. § 23-212 or § 23-212.01~~ without first affording the parties the opportunity for an evidentiary hearing~~,~~ unless all parties waive the hearing. Rule 56 ~~shall~~does not apply to these proceedings ~~except upon the agreement of~~unless all parties agree.

(h) Standard of Proof. ~~All~~ The court must determine all required factual issues ~~required to be determined by the court shall be determined~~ by a preponderance of the evidence.

(i) Applicability of Rules of Evidence. Except as provided in A.R.S. § 23-212(H) ~~or~~and § 23-212.01(H), the Arizona Rules of Evidence ~~shall~~ apply ~~to~~these proceedings ~~under this Rule~~.

(j) Enforcement of Court Orders.

(1) ***Application for Order to Show Cause.*** After ~~the entry of~~ an order finding a first violation under A.R.S. § 23-212(F)(1) or § 23-212.01(F)(1) ~~for a first violation~~, if ~~an~~the employer fails to file a timely sworn affidavit required by A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d), the county attorney ~~shall~~must file an application for an order to show cause why the employer~~'~~'s licenses with the appropriate licensing agencies should not be suspended beyond any period prescribed in any prior court order. The application ~~shall~~must be accompanied by an affidavit or other proof demonstrating that the employer ~~has~~ failed to file the required sworn affidavit and ~~shall~~must set forth the ~~identity and address of any~~ appropriate licensing agency's identity and address, including the identity and mailing address of the agency official authorized to accept service under this ~~R~~rule.

(2) ***Opposition.*** Within ~~five (~~5~~)~~ days after service of an ~~application for an~~ order to show cause application, the employer may file an opposition to the relief sought in the application and to any further license suspension on the ground that ~~the employer~~it has filed an affidavit meeting the requirements of A.R.S. § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If ~~such~~ an opposition is timely filed, the court ~~shall~~must hold a hearing and ~~shall~~may not order any further license suspension until it renders its decision on whether to grant the relief sought in the application. If no opposition is timely filed or if the court grants the relief sought in the application, the court ~~shall~~must order the appropriate licensing agencies to suspend indefinitely all applicable licenses held by the employer.

(3) ***Relief from License Suspension.*** After the entry of an order suspending a license for a first violation for failure to file a required sworn affidavit, the employer may, ~~by~~on motion or stipulation, seek relief from the order on the ground that the employer has filed a sworn affidavit required by A.R.S § 23-212(F)(1)(c) or § 23-212.01(F)(1)(d). If such a showing is made and subject to the completion of any term of license suspension ordered under A.R.S. § 23-212(F)(1)(d) or § 23-212.01(F)(1)(c), the court ~~shall~~must enter an order terminating any further license suspension.

(4) ***Distribution of Order.*** The clerk ~~of the superior court shall~~must distribute by any method authorized by Rule 58(e) a certified copy of any order suspending or revoking a license, or terminating a license suspension~~, entered under this Rule, or under A.R.S. § 23-212 or § 23-212.01,~~ to the parties, the Arizona Attorney General, and any licensing agency ordered to suspend an employer~~'~~'s license.

(k) Action for Second Violation. An action alleging a second violation under A.R.S. § 23-212(F)(2) or § 23-212.01(F)(2) ~~shall~~must be filed and served as a new action.

(l) Requirement of Electronic or Facsimile Service. After a party has appeared in a proceeding brought under this ~~R~~rule, any papers served on that party by mail under Rule 5(c) ~~shall~~ also must be served at the same time by electronic mail or by facsimile, or as agreed to by the parties, or ordered by the court. If the party on whom service is to be made does not have access to electronic mail or facsimile, then service ~~shall~~must be made as otherwise provided ~~by~~in Rule 5(c).

(m) Fees. The court ~~shall~~must assess such fees ~~in these proceedings~~ as may be prescribed ~~by~~under A.R.S. §§ 12-284, 12-284.01, and 12-284.02.

Rule 66. Receivers

~~Rule 66(a).~~ Application; ~~verification; service; notice; restraining order~~Service; Notice; Restraining Order.

(1) ***Application, Response, and Hearing.*** ~~An application for~~ A party seeking the appointment of a receiver ~~may be included in a verified complaint or may be made by separate and independent verified application after a complaint has been filed. No application shall be considered unless served upon the adverse party except where (A)~~ must file an application for the receiver's appointment, accompanied by an affidavit attesting to the facts supporting the application. Within 10 days after being served, the adverse party may file a response accompanied by one or more counteraffidavits attesting to facts relevant to the application. Except as provided in Rule 66(a)(3), the court must hold a hearing on the application. At the hearing, it may consider testimony and other evidence presented by the parties.

(2) *Service.* Service must be made on the adverse party in the same manner that a summons and pleading are served under Rules 4, 4.1, or 4.2, as applicable. The court may not consider an application that has not been served on the adverse party unless:

(A) at least ~~ten~~10 days after filing the application, the applicant files a sworn affidavit showing that all reasonable efforts hav~~ing~~e been made~~,~~ to serve the adverse party, and that personal service on the ~~adverse~~ party cannot be made within ~~the state~~Arizona or by direct service ~~out~~outside of ~~state~~Arizona; or

(B) ~~there is~~ the applicant shows that substantial cause exists for appointing a receiver before ~~service can otherwise be made. If application for appointment of a receiver without notice is made, the court shall~~the adverse party is served.

(3) *Appointment Without Notice.* If a party applies for appointment of a receiver without notice, the court may either grant the application or, if the adverse party is available to be served, order the applicant to serve the adverse party and set a hearing on the application to be held no later than 10 days after the order's entry.

(4) *Bond.* If the court grants an application for appointment of a receiver without notice, it must require and the applicant ~~shall~~must file ~~in the court~~ a bond in ~~such~~an amount ~~as~~ the court ~~shall fix~~fixes, with such surety as the court ~~shall approve,~~approves. The bond must be conditioned to indemnify the ~~defendant~~adverse party for ~~such~~ costs, and ~~all~~ damages ~~as may be~~ occasioned by the seizure, taking and detention of the ~~defendant's property; or, if the defendant is available for service, the court may order a hearing on the application in less than ten days. No~~adverse party's property.

(5) *Rule 65's Applicability.* The court may not consider an application for a receivership under this rule ~~shall be entertained where~~if Rule 65 ~~is applicable~~applies.

~~Rule 66~~(b)~~.~~ Appointment; ~~oath; bond; certificate~~Oath; Bond; Certificate.

~~1.~~ **(1) *Appointment.*** ~~The~~ Except as stated in this rule, the court ~~shall~~may not appoint as receiver a party, an officer or employee of a party, an attorney for a party, or a person interested in the action~~; provided, however, that after such notice as the court shall find is adequate, and if no party shall have objected, the court~~. The court, however, may appoint as receiver an employee of a party ~~or~~, an officer of a corporate party, or a person otherwise interested in the action, ~~in a case in which~~ if:

(A) the court finds that the property has been abandoned or that ~~duties of~~ the receiver's duties will consist chiefly of ~~physical preservation of~~physically preserving the property ~~(including crops growing thereon), collection of~~,

collecting rents, or the maturing, harvesting and disposition of crops then growing thereon. on it;

(B) notice is provided in a manner the court finds is adequate; and

(C) no party objects.

2. **(2) *Bond, Oath and Certificate of Appointment.*** Before entering upon Before performing the prescribed duties, the receiver shallmust file a bond to be approved byfor the court to approve. The bond must be in the amount fixed byset forth in the receiver's order of appointment, and must be conditioned thaton the receiver will faithfully discharge thedischarging his or her duties of the receiver in the action and obeying the court's orders of the court. The receiver shallmust make an oath to the same effect, which shallmust be endorsed on the bond. The clerk shall thereupon deliver to the receiverUpon the court's approval of the bond and the receiver making the required oath, the clerk must deliver a certificate of appointment to the receiver. The certificate shallmust contain a description of the property involved in the action.

Rule 66(c). Powers; termination; governing lawRemoval and Termination; Governing Law.

1. **(1) *Powers.*** The receiver may, subject to control of the court, commence and defend actions, subject to the court's control and supervision. The receiver shallmay take and keep possession of the property, receive rents, collect debts and perform such other duties respecting the property as authorized by the court orders.

2. **(2) *Suspension and Removal.*** The court may at any time suspend a receiver at any time and may, uponafter providing reasonable notice, remove a receiver and appoint another.

3. **(3) *Termination.*** A receivership may be terminated upon motion served with at least ten days notice upon all parties who have appeared in the proceedings. The court in the notice of hearing may require that Any party may move to terminate a receivership. Unless the parties stipulate otherwise, the court must hold a hearing on the motion but it may not be held sooner than 10 days after the motion's service. In scheduling the hearing, the court may order the receiver to file and serve a final account and report be filed and served, and may require the filing ofany objecting party to file and serve written objections thereto. InAt the termination proceedingshearing, the court shallmay take such evidence as is appropriate and shall make such order as ismay enter orders as are just concerning itsthe receivership's termination, including all necessary orders onregarding the receiver's fees and costs of the receivership.

4. **(4) *Equitable Principles Govern.*** In If applicable, principles of equity govern all matters relating to the appointment of receivers, to their powers, duties and liabilities, and to the court's power of the court, the principles of equity shall govern when applicable.

Rule 66(d). Procedure. An action wherein a receiverin which the court has been appointed shallla receiver may not be dismissed except by court order of the court. The practice in the administration of estates by receivers or by similar officers appointed by the court shall be in accordance with the practice heretofore followed. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by these rules.

Rule 67. Deposit ininto Court; Security for Costs

Rule 67(a). By leave of court By Leave of Court. In an action in which If any part of the relief sought in an action is a money judgment for a sum of money or the disposition of a sum of money or the disposition of anya sum of money or some other deliverable thing capable of delivery, a party, upon affording notice to every other party, and by leave of court, may deposit with the court all or any part of such sumthe money or thing., whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.

Rule 67(b). By order of court By Court Order. WhenA court may order that money or any other deliverable property be deposited with the court if it is admitted by the pleading or examination of a party that the party has in the party'sthe subject of an action and if a party admits to control or possession, or under of the party's control money or other things capable of delivery which are the subject of litigation, and held by the party as trustee for another party, or which belong or are due to another party, the courtmoney or property. The court also may order that the money or things to be deposited in court orproperty be delivered to suchthe party upon suchclaiming it on conditions as may be just and subject to the further order ofthat the court finds just.

Rule 67(c). Custody; duties of clerk

(c) Clerk's Duties. When If any money, debt, instrument of writing or other articleproperty is paid or deposited inwith the court to abide the result of legal proceedings, the clerk shall seal the article in a package, andmust deposit it in a safe or in a bank, subject to the control of the court, and enter in the records of the action a statement showing each item of money or property received, and the disposition

~~thereof. If the deposit is money~~court's control. If money is deposited, the court may order the clerk to deposit it with the county treasurer, who ~~shall~~must receive and hold it subject to ~~the order of the court~~further court order. The clerk must file a statement in the action identifying each item received by the court and its disposition.

Rule 68. Offer of ~~j~~Judgment

(a) Time for Making; Procedure. ~~At any time more than 30 days before the trial begins, any~~ Any party may serve ~~upon~~on any other party an offer to allow judgment to be entered in the action. ~~However, in cases subject~~

(1) *Trial.* An offer of judgment must be made more than 30 days before trial begins.

(2) *Arbitration.* In actions assigned to arbitration, no offer of judgment may be made during the time period beginning 25 days before the arbitration hearing and ending ~~upon the date of the filing of any~~when a Rule 77(a) notice of appeal ~~of an award pursuant to Rule 77(a).~~is filed.

(b) Contents of Offer ~~If any portion of an offer made under this Rule is for the entry of a monetary judgment, the monetary award to be made shall be set forth in the offer as a~~.

(1) *Money Judgment.* An offer that includes a money judgment must specifically ~~stated sum, which shall be~~state the sum of money to be awarded, inclusive of all damages, taxable court costs, interest, and ~~attorneys'~~attorney's fees, if any, sought in the ~~case. The offeror may choose to exclude an amount for attorneys' fees, but must specifically so state in the~~action.

(2) *Attorney's Fees.* If specifically stated, attorney's fees may be excluded from an offer. If ~~the offeror~~an offer that excludes ~~an amount for attorneys' fees in the offer, and the offeree accepts the offer, then either party may apply to the court for an award of attorneys' fees, if otherwise~~attorney's fees is accepted and attorney's fees are allowed by statute, contract, or otherwise, either party may seek an award of attorney's fees.

(3) *Apportionment.* The offer need not be apportioned by claim.

(c) Acceptance of Offer; Entry of Judgment. ~~If, while~~ To accept an offer ~~remains effective within the meaning of this rule~~, the offeree ~~serves~~must serve written notice —during the effective time period—that the offer is accepted~~, then~~. After either party ~~may file~~files the offer ~~together with~~and proof of acceptance, ~~and a~~the court must enter judgment ~~complying~~in accordance with ~~the requirements of~~ Rule 58(a) ~~shall be entered~~.

(d) Rejection of Offer; Waiver of Objections.~~.~~

(1) *Rejection of Offer.* An unaccepted offer ~~that is not accepted while it remains effective within the meaning of this Rule shall be deemed~~is considered rejected. Evidence of ~~the rejected~~an unaccepted offer ~~shall~~is not ~~be~~ admissible except in a proceeding to determine sanctions under this ~~Rule. If the~~rule.

(2) *Objections to Offer.* An offeree ~~has any objection(s)~~who objects to the validity of ~~the~~an offer~~, the offeree~~ must ~~serve upon the offeror, —~~within ~~ten~~10 days after ~~service of~~ the offer~~, written notice of any such objection(s). Unless the offeree notifies the offeror of any objection as provided under this subsection, the offeree waives the right to do so~~ is served—serve on the offeror written notice of the objections. The failure to serve timely objections waives the right to object to the offer's validity in any proceeding to determine sanctions under this rule.

(e) Multiple Offerors. Multiple parties may make a joint unapportioned offer of judgment to a single offeree.

(f) Multiple Offerees.

(1) *Unapportioned Offers.* Unapportioned offers may not be made to multiple offerees.

(2) *Apportioned Offers.* ~~However, one~~ One or more parties may make ~~to two or more other parties~~ an apportioned offer ~~of judgment that is~~to multiple offerees conditioned ~~upon~~on acceptance by all of the offerees. Each offeree may serve a separate written notice of acceptance of the offer. If fewer than all offerees accept, ~~then~~ the offeror may ~~nevertheless~~ enforce any ~~number~~ of the acceptances if :

(~~i~~A) the offer discloses that the offeror may exercise this option~~,~~; and

(~~ii~~B) the offeror serves written notice of final acceptance no later than 10 days after the ~~expiration of the effective period of the~~ offer expires.

The sanctions provided in this ~~R~~rule apply to each offeree who did not accept the apportioned offer.

(g) Sanctions. ~~If the offeree~~

(1) *Amount.* A party who rejects an offer ~~and~~, but does not ~~later~~ obtain a more favorable judgment ~~other than pursuant to this Rule, the offeree~~, must pay~~,~~ as a sanction~~,~~:

(A) the offeror's reasonable expert witness fees and double the taxable costs, as defined in A.R.S. § 12-332, incurred ~~by the offeror~~ after ~~making~~ the offer date; and

(B) prejudgment interest on unliquidated claims ~~to accrue~~accruing from the ~~date of the~~ offer date. ~~If the~~

(2) ***Taxable Costs and Attorney's Fees.*** To determine if a judgment that includes an award of taxable costs or ~~attorneys' fees,~~attorney's fees is more favorable than the offer, the court must consider only those taxable costs and ~~attorneys' fees determined by the court as having been~~attorney's fees that were reasonably incurred as of the ~~date the offer was made shall be considered in determining if the judgment is more favorable than the offer. The determination~~offer date.

(3) ***Arbitration.*** To determine whether to impose a sanction ~~should be imposed~~ after an arbitration hearing ~~shall be made by reference~~, the court must compare the offer to the final judgment ~~ultimately~~ entered~~, whether~~ either on the award ~~itself pursuant to~~under Rule 76(c) or after ~~an~~ appeal ~~of the award pursuant to~~under Rule 77.

(h) Effective Period of Offers; ~~Subsequent~~Later Offers; Offers on Damages.

(1) ***Effective Date.*** An offer of judgment ~~made pursuant to this Rule shall~~must remain effective for 30 days after it is served~~, except that (i~~ but:

(A) an offer made within 60 days after service of the summons and complaint ~~shall~~must remain effective for 60 days after ~~service, (ii~~the offer is served;

(B) an offer made within 45 days of trial ~~shall~~must remain effective for 15 days after ~~service,~~it is served; and

(~~iii~~C) in ~~a case~~an action subject to arbitration, ~~an offer that has not previously expired shall~~a pending and unexpired offer will automatically expire at 5:00 p.m. on the fifth day before the arbitration hearing.

If the court enlarges the effective period ~~is enlarged by the court~~, the offeror may withdraw the offer at any time after ~~expiration of~~ the initial effective period expires and ~~prior to acceptance of~~before the offer is accepted. ~~The fact that an offer has been~~

(2) ***Later Offers.*** A rejected offer does not preclude a ~~subsequent~~later offer.

(3) ***Offers on Damages.*** When ~~the liability of~~ one party's liability to another has been determined ~~by verdict or order or judgment,~~ but the ~~amount or~~ extent of ~~the~~ liability remains to be determined by further proceedings, any party may make an offer of judgment~~, which shall have the same effect as an offer made before trial if it is~~. It must be served within a reasonable time ~~not fewer than~~—but at least 10 days—before the ~~commencement of hearings~~date set for a hearing to determine the ~~amount or~~ extent of liability.

Rule 69. Execution

(a) Generally. ~~Process to enforce a~~ A money judgment ~~for the payment of money shall be~~is enforced by a writ of execution, unless the court ~~directs~~orders otherwise. ~~The procedure on execution,~~A party may execute on a judgment—and seek relief in proceedings supplementary to and in aid of ~~a~~ judgment~~, and in proceedings on and in aid of~~ or execution~~ shall be~~ —as provided ~~by~~in these rules, statutory remedies, and other applicable law.

(b) Special Writ. If a judgment is for personal property, and the court finds that the property has a special value to the prevailing party, the court may award the prevailing party a special writ for the seizure and delivery of the specific property, in addition to any other relief provided in these rules and other applicable law.

(c) Obtaining Discovery. In aid of the judgment or execution, the judgment creditor or a successor in interest ~~when that~~whose interest appears ~~of~~from the record~~,~~ may obtain discovery from any person~~,~~ —including the judgment debtor~~, in the manner~~—as provided in these ~~R~~rules ~~or~~and other~~wise by~~ applicable law.

Rule 70. Enforcing a Judgment for ~~specific acts; vesting title~~a Specific Act

~~1.~~**(a) A Party's Failure to Act; Ordering Another to Act.** If a judgment ~~directs~~requires a party to ~~execute a conveyance of~~convey land~~ or~~, to deliver ~~deeds~~a deed or other ~~documents~~document, or to perform any other specific act and the party fails to comply within the time specified, the court may ~~direct~~order the act to be done —at the ~~cost of the~~ disobedient party 's expense—by ~~some other~~another person appointed by the court ~~and~~. When done, the act ~~when so done~~ has ~~like~~the same effect as if done by the party. ~~On application of the party entitled to performance, the clerk shall issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.2.~~

(b) Vesting Title. If the real or personal property is within ~~the state~~Arizona, the court~~ in lieu~~—instead of ~~directing~~ordering a conveyance~~ thereof~~ —may enter a judgment divesting ~~the title of~~ any party's title and vesting it in others~~ and such~~. That judgment has the effect of a legally executed conveyance~~ executed in due form of law. When any order or judgment is~~.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the clerk must issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for the delivery of possession, the party in whose favor it is entered is entitled toclerk must issue a writ of execution or assistance upon application to the clerk..

(e) Holding in Contempt. The court also may hold the disobedient party in contempt.

Rule 70.1. Application to tTransfer sStructured sSettlement pPayment rRights

Every application for approval of the transfer of structured settlement rights filed pursuant to A.R.S. Sec. 12-2901 *et seq.* shallA party who files an Application for Approval of Transfer of Structured Settlement Rights under A.R.S. § 12-2901 *et seq.*, must include the following:

(a) A **Payee'''s Declaration.** A payee, as defined by A.R.S. § 12-2901, must submit a Declaration in Support of Application, that is signed under oath by the payee, that sets forthand contains the following information:

(1) The payee'''s name, address and age.

(2) The payee'''s marital status, and, if married or separated, the name of the payee'''s spouse.

(3) The names, ages, and place(s) of residence of the payee'''s minor children and other dependents, if any.

(4) The payee'''s monthly income and sources of income, and, if presently married, the monthly income and sources of income of the payee'''s spouse.

(5) Whether the payee is subject to any child support or spousal maintenance orders, and, if so, for each such order:

(A) The amount of the obligation, to;

(B) To whom it is payable, and whether;

(C) Whether there are arrearages, and, if so, the amount; and

(BD) The jurisdiction and name of the court that entered the order, the;

(E) The case number of the action in which the order was entered, the;

(F) The parties to such action,; and the

(G) The date when the order was entered.

(6) Whether the payee is subject to any orders in any civil, probate, or criminal case whichaction that requires the payee to pay money to any person, and, if so, for each such order:

(A) The amount of the obligation~~, to~~;

(B) To whom it is payable~~, and whether~~;

(C) Whether there are arrearages, and, if so, the amount; ~~and~~

(~~B~~D) The jurisdiction and name of the court that entered the order~~, the~~;

(E) The case number of the action in which the order was entered~~, the~~;

(F) The parties to such action~~,~~; and ~~the~~

(G) The date when the order was entered.

(7) Whether there has been any previous application to any court or responsible administrative authority ~~for approval of~~to approve a transfer of payment rights under the structured settlement that is the subject of the application, and, if so, for each such application:

(A) The jurisdiction and name of the court or responsible administrative authority that considered the application~~, the~~;

(B) The case number of the action in which the application was submitted~~, the~~;

(C) The parties to such action~~, and the~~;

(D) The date when the application was filed; ~~and~~

(~~B~~E) Whether the application was approved or disapproved~~, the~~;

(F) The date of the order approving or disapproving the transfer, and, if approved:

(i) The name of the transferee~~ and the~~;

(ii) The payment amount(s); ~~and~~

(iii) The due dates of the payments involved in the transfer; ~~and~~

(~~ii~~iv) The amount of money the payee received from the transferee for the transfer, if any~~,~~; and~~ the~~

(v) The manner in which the money was used.

(8) Whether the payee has ever transferred payment rights under the structured settlement without court approval or the approval of a responsible administrative authority, and, if so, for each such transfer:

(A) The name of the transferee~~ and the~~;

(B) The payment amount(s); ~~and~~

(C) The due dates of the payments involved in the transfer; ~~and~~

(~~B~~D) The amount of money the payee received from the transferee for the transfer, if any~~,~~; and ~~the~~

(E) The manner in which the money was used.

(9) The payee~~'~~'s reasons for the proposed transfer of payment rights and the payee~~'~~'s plans for using the proceeds from the transfer.

(10) Whether the payee intends to use the proceeds from the proposed transfer to pay debts, and, if so~~, the~~:

(A) The amount of each such debt~~, the~~;

(B) The name and address of the creditor to whom it is owed~~,~~; and~~, if~~

(C) If applicable, the rate at which interest is accruing on such debt.

(b) ~~A~~ **Transferee~~'~~'s Declaration.** A transferee, as defined by A.R.S. § 12-2901, must submit a Transferee's Declaration in Support of Application~~,~~ that is signed under oath ~~by the transferee, that~~and states ~~that~~the following:

(1) After making reasonable inquiry, the transferee is not aware of any prior transfers of structured settlement rights by the payee other than those disclosed in Payee~~'~~'s Declaration in Support of Application;

(2) The transferee has complied with its obligations under A.R.S. § 12-2901, *et seq.*; and

(3) To the best of the transferee~~'~~'s knowledge after making reasonable inquiry, the proposed transfer would not contravene any applicable law, statute, or the order of any court or other government authority.

~~Rule 71. Process in behalf of and against persons not parties~~Rule 71. Enforcing Relief For or Against a Nonparty

When an order ~~is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party, and, when obedience to an order may be lawfully~~grants relief for a nonparty or may be enforced against a ~~person who is not a party, that person is liable to the same process~~nonparty, the procedure for enforcing ~~obedience to~~ the order is the same as ~~if~~for a party.

IX. ~~Compulsory~~ COMPULSORY ARBITRATION

Rule 72. Suitability for Arbitration

~~Rule 72. Compulsory arbitration; arbitration by reference; alternative dispute resolution; determination of suitability for arbitration~~

(a) Decision to ~~Provide for~~Require Compulsory Arbitration. Rules 72 through 77 ~~of these rules shall~~ apply ~~when~~if the ~~S~~superior ~~C~~court in a county, by a majority vote of the judges ~~thereof~~in that county, decides to ~~provide for~~require arbitration of certain claims and establishes jurisdictional limits by local rule ~~of court pursuant to~~under A.R.S. § 12-133. Such a decision ~~to provide for arbitration shall~~must be incorporated into a ~~S~~superior ~~C~~court order~~, which shall be~~ that is filed with ~~the Clerk of~~ the Supreme Court clerk, ~~and~~with a copy ~~thereof shall be filed with the Clerk of the Superior Court of the applicable county. All other provisions of~~filed with the clerk in that county. Except when a rule is inconsistent with a specific provision in Rules 72 through 77, the Arizona Rules of Civil Procedure ~~that are not inconsistent with Rules 72 through 77 shall be applicable to all cases~~apply to all actions in arbitration.

(b) Compulsory Arbitration. ~~Civil cases which meet both of the following conditions~~

(1) *Generally.* Civil actions, except appeals from municipal or justice courts, ~~shall~~must be submitted to arbitration in accordance with ~~the provisions of~~ A.R.S. § 12-133 if:

(~~1~~A) No party seeks affirmative relief other than a money judgment; and

(~~2~~B) No party seeks an award in excess of the jurisdictional limit for arbitration set by applicable local rule of the ~~S~~superior ~~C~~court.

(2) *Definitions.* For this rule's purposes ~~of this provision~~, "award" and "affirmative relief" include punitive damages, but do not include interest, ~~attorneys'~~attorney's fees or costs.

(3) *Exception.* The court may waive the arbitration requirement if all parties stipulate to the waiver and show good cause for not arbitrating the action.

(c) Arbitration by Agreement of Reference. ~~Any~~ Whether or not an action is filed, any claim may ~~at any time, whether or not suit has been filed,~~ be referred to arbitration at any time by an Agreement of Reference signed by all parties or their counsel. If ~~suit~~an action has not been filed, the Agreement of Reference ~~shall~~must define the issues

involved for determination in the arbitration proceedings and may contain stipulations with respect to agreed facts, issues or defenses. In such ~~cases~~instances, the Agreement of Reference ~~shall take~~takes the place of the pleadings in the ~~case~~action and ~~shall~~must be filed and assigned a civil case number. Filing an Agreement of Reference ~~shall~~does not relieve any party from paying ~~the~~a required filing fee. Filing of an Agreement of Reference ~~shall have~~has the same effect on the running of the statute of limitations as the filing of a civil complaint.

(d) Alternative Dispute Resolution.~~(1) Compulsory arbitration under A.R.S. § 12-133 and these rules is not binding. Any party may appeal and all appeals are *de novo* on the law and facts. Therefore, before a hearing in accordance with Rule 75 of these rules is held, counsel for~~ Before a hearing is held under Rule 75, the parties~~,~~ or ~~the parties if not represented by~~their counsel~~, shall~~ may confer regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including ~~but not limited to~~ private mediation or binding arbitration ~~with a mediator or arbitrator agreed to by the parties.~~~~(2)~~ The court ~~shall~~may waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method selected by the parties. The stipulation ~~shall~~must identify the specific method selected for alternative dispute resolution ~~method selected. The court may waive the arbitration requirement for other good cause upon stipulation of all parties~~. If the alternative dispute resolution method selected under this ~~R~~rule fails, the ~~case shall be set for trial in accordance with~~action will proceed under the case management rules in Rule 16 ~~of these Rules~~ and ~~shall~~will not be subject to ~~the rules governing~~ compulsory arbitration.

(e) Procedure for Determining Suitability for Arbitration.

(1) ***Certificate on Compulsory Arbitration.*** ~~At the time of filing the~~ When a complaint is filed, the plaintiff ~~shall~~must also file with the clerk a separate certificate on compulsory arbitration ~~with the Clerk of the Superior Court~~ in substantially the following form:

"The undersigned certifies that he or she knows the dollar limits and any other limitations set forth by the local rules of practice for the applicable superior court, and further certifies that this ~~case~~action (is) (is not) subject to compulsory arbitration, as provided ~~by~~in Rules 72 through 77 of the Arizona Rules of Civil Procedure."

~~(i)~~ The certificate ~~on compulsory arbitration~~ must be served ~~upon~~on the defendant ~~at the time of service of~~when the complaint is served. ~~It, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented~~

~~by an attorney shall sign the party's certificate on compulsory arbitration or controverting certificate.~~

(2) ***Controverting Certificate.*** If the defendant disagrees with the plaintiff's assertion as to arbitrability, the defendant must file a controverting certificate that specifies the particular reason for the defendant's disagreement. The defendant's controverting certificate must be filed with the defendant's answer and a copy must be served under Rule 5 on the plaintiff and all other parties that have appeared in the action.

(~~ii)~~ **3)** ***Signing and Certification.*** ~~The signature of an attorney or party~~ The certificate and controverting certificate must be signed by the party or its counsel, and constitutes a certification by the signer that :

(A) the signer has considered the applicability of ~~both~~ the local rules ~~of practice for the appropriate superior court~~governing arbitration and Rules 72 through 77;~~ that~~

(B) the signer has read the certificate or controverting certificate on compulsory arbitration;

(C) after reasonable inquiry, the statements in the certificate or controverting certificate~~; that~~ are accurate to the best of the signer~~'~~'s knowledge, information and belief~~, formed after reasonable inquiry, it is warranted~~; and ~~that~~

(D) the allegation as to arbitrability is not set forth for any improper purpose.~~ The provisions of Rule 11(a) of these rules apply to every certificate on compulsory arbitration and controverting certificate filed under this rule.~~

~~(iii) The certificate on compulsory arbitration shall not be admissible at any hearing on the merits.~~

~~(2) If the defendant disagrees with the plaintiff's assertion as to arbitrability, the defendant shall file a controverting certificate that specifies the particular reason for the defendant's disagreement with plaintiff's certificate. The defendant's certificate shall be filed with the answer and a copy or copies shall be served upon the plaintiff.~~

(~~3)~~**4)** ***Conflicting Certificates.*** If conflicting certificates are filed, the matter ~~shall~~must be referred to the judge ~~to whom the case has been assigned for determination of the issues raised thereby. If the judge determines that the case~~assigned to the action to decide whether the action is subject to compulsory arbitration~~, it shall proceed to arbitration as provided in these rules~~.

(4) **5) *Amendment of Certificate.*** A party or attorney isand its counsel are under a duty to seasonably amend a prior certificate or controverting certificate on compulsory arbitration if the party or attorneycounsel obtains information upon the basis of which (a) the party or attorney knowsthat establishes that the certificate was incorrect when filed or (b) the party or attorney knows that the certificate, though correct when filed, is no longer trueaccurate.

(5) **6) *Motions.*** The court may, on its own motion, or upon the motion of either party at At any time after the close of the pleadings, the court may, on its own or on motion, determine that the casean action is subject to compulsory arbitration, and in that event, the court may order that the caseit proceed to arbitration as provided in these rules.

(6) At such time as the arbitrator renders a decision, should the arbitrator find that the appropriate award exceeds the limit for compulsory arbitration set by local rule or statute, the arbitrator shall enter an award for the full amount.

(7) If ***Sanctions.*** If, on its own or on motion, the court finds that an attorney ora party or its counsel has made an allegation as to arbitrability whichthat was not made in good faith or failed to amend seasonably as required, the court, upon motion or upon its own initiative, shallseasonably amend a prior certificate on compulsory arbitration, the court may make such orders with regard to such conduct as are just, including, among others, any action authorized an order under Rule 11(a) of these Rules.

Rule 73. Appointment of arbitratorsan Arbitrator

(a) **Lawyer or Non-Lawyer Arbitrators.** The parties, by **Mutually Agreed on Arbitrator.** If the parties agree on a person to serve as the arbitrator and the proposed arbitrator consents, the clerk or court administrator must assign the action to the arbitrator upon the filing of a written stipulation and byrequesting the person's appointment. The stipulation must include the written consent of the proposed arbitrator filed with the clerk of the court with, and a conformed copiescopy must be delivered to the court administrator, may agree that the case be assigned to a single lawyer or non-lawyer arbitrator named in the stipulation. All other cases subject to arbitration shall be heard by an arbitrator selected as provided below.

(b) **List Appointment of Arbitrators.** Except as**Arbitrator.** Unless the parties may stipulate under the provisions of section (a) of this Rule, theto the assignment of an

arbitrator ~~shall be appointed by~~under Rule 73(a), the clerk ~~of the court~~ or court administrator must appoint the arbitrator from a list of ~~persons, as provided by local rule, which shall include the following:~~eligible arbitrators as provided in local rule. The clerk or court administrator must randomly select and then assign to each action one arbitrator from the list.

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

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

(c)~~ Appointment~~ List of Eligible Arbitrators~~; Timing of Appointment; Notice of Appointment; Right to Peremptory Strike.~~~~(1) *Appointment of arbitrator from list.*~~ The clerk~~ of the court~~ or court administrator, under the supervision of the presiding superior court judge in the county or that judge~~'~~'s designee, ~~shall~~must prepare a list of arbitrators who may be designated by their area of concentration, specialty or expertise. The ~~clerk of the court or court administrator shall randomly select and then assign to each case one arbitrator from the list.~~list of eligible persons must include the following:

(1) all county residents who have been active members for the State Bar of Arizona for at least 4 years;

(2) all other members of the State Bar of Arizona residing in other counties who have agreed to serve as arbitrators in the county where the court is located; and

(3) all members of any other federal court or state bar who have agreed to serve as arbitrators in the county where the court is located.

On written motion showing good cause, the presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.

(~~2~~d) Timing of ~~*appointment.*~~ Appointment~~ of~~. The clerk or court administrator must appoint an arbitrator to ~~a case shall occur~~an action no later than 120 days after an answer is filed.

(~~3~~e) Notice of ~~*appointment of arbitrator*~~.**Appointment.** The clerk ~~of the court~~ or court administrator ~~shall~~must promptly ~~mail~~distribute written notice of the arbitrator ~~selected~~'s appointment to the parties and the arbitrator. The written notice ~~shall~~must advise the parties ~~that~~of the ~~time periods~~deadline specified in Rule 38.1(f) ~~of these Rules~~ for placing ~~a case~~an action on the Dismissal Calendar ~~shall apply~~.

(~~4~~) f) Change of Arbitrator as of Right. ~~*Right to peremptory strike*. Within ten~~In any action, each side is entitled as a matter of right to a change of one arbitrator. Each action, even if consolidated with another action, must be treated as having only two sides. A party waives the right to change of arbitrator if the right is not exercised within 10 days after the ~~mailing of the notice of appointment of arbitrator, or within ten days after the appearance of a party if the arbitrator was appointed before that party appeared, either side may peremptorily strike the assigned arbitrator and request that a new arbitrator be appointed. Each side shall have the right to only one peremptory strike in any one case~~date of the written notice of appointment. If a party enters an appearance after the arbitrator is appointed, that party waives the right to change of arbitrator if it is not exercised within 10 days after that party's appearance. A motion for recusal or motion to strike for cause ~~shall toll~~tolls the time to exercise a ~~peremptory strike~~change of arbitrator as of right.

(~~d~~) g)Disqualifying or Excusing an Arbitrator. ~~Disqualifications and Excuses.~~

(1) ***Disqualifying an Arbitrator.*** ~~Upon written~~ On motion ~~and a finding of good cause therefor, the presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.(2) An~~, the court may disqualify an appointed arbitrator~~, after appointment, may be disqualified~~ from serving in a particular ~~assigned case upon motion of either party to the judge assigned to the case, for~~action. The motion must be in writing and establish that the arbitrator has an ethical conflict of interest or that other good cause ~~shown as defined in~~exists under A.R.S. ~~§§~~§ 12-409 or ~~21-211,~~A.R.S. § 21-211. The motion must be submitted in accordance with the ~~procedure set out~~procedures provided in Rule 42(f)(2) ~~of these Rules.~~. The judge assigned to the action must hold a hearing on the motion.

(~~3~~) 2) ***Excusing an Arbitrator.*** ~~An arbitrator may be excused by the~~ The presiding superior court judge in a county or that judge~~'~~'s designee may excuse an arbitrator from serving in a particular ~~assigned case upon a~~action on the arbitrator's showing ~~by the arbitrator~~ that ~~such individual~~he or she has completed contested hearings and ruled as an arbitrator ~~pursuant to~~under these ~~R~~rules in two or more ~~cases~~actions assigned during the current calendar year ~~and shall be excused on a detailed showing that such individual has an ethical conflict of interest or other good cause~~

~~shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules~~.

(4) **3) *Replacement.*** ~~After an arbitrator has been disqualified or excused from a particular case under this section (d)~~If the court disqualifies or excuses an arbitrator, the clerk or court administrator must appoint a new arbitrator ~~shall be appointed in accordance with the procedure set forth in section (c) of this Rule.~~consistent with these rules.

Rule 74. ~~**Powers of arbitrator; scheduling of arbitration hearing; permitted rulings by arbitrator; time for filing summary judgment motion; receipt of court file; settlement of cases; offer of judgment**~~ **General Proceedings and Pre-Hearing Procedures**

(a) ~~**Powers of**~~ **An Arbitrator's Powers.** The arbitrator ~~shall have~~has the power to administer oaths or affirmations to witnesses, ~~to~~ determine the admissibility of evidence, and ~~to~~ decide the law and the facts ~~of the case submitted~~in an action.

(b) Scheduling ~~of~~an Arbitration Hearing. The arbitrator ~~shall fix~~must set a ~~time for~~ hearing~~, which hearing shall commence~~ date not ~~fewer~~earlier than ~~60,~~60 days nor ~~more than 120 days after the appointment of the arbitrator. The arbitrator shall, unless waived by the parties, give~~later than 120 days after the arbitrator's appointment. If good cause exists, an arbitrator may set a hearing date that is before or after this time period, or reschedule a noticed hearing date for a date later than 120 days after the arbitrator is appointed. The arbitrator must provide at least 30 days~~'~~' written notice ~~in writing to the parties~~ of the hearing's time and place~~ of the hearing. Subject to Rule 38.1 of these rules, the arbitrator may shorten or extend these time periods for good cause. No hearings shall~~, unless waived by the parties. Unless the parties agree otherwise, no hearings may be held on Saturdays, Sundays, legal holidays, or evenings~~,~~ except upon agreement by counsel for all parties and the arbitrator~~.

(c) Rulings by Arbitrator.

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

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

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

(C) motions to dismiss;

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

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

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

(2) ***Procedure.*** The parties ~~shall serve upon~~must deliver to the arbitrator copies of all documents requiring the arbitrator~~'~~'s consideration. ~~Telephonic~~The arbitrator may hear motions and testimony ~~are acceptable and appropriate~~by telephone.

(3) ***Discovery Motions.*** In ruling on ~~motions pertaining to~~ discovery motions, the arbitrator sh~~a~~oul~~l~~d consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive handling of small claims, and ~~shall~~may limit discovery when~~ever~~ appropriate to ~~insure compliance with the purposes of compulsory arbitration.~~accomplish this purpose.

(4) ***Interlocutory Appeal of Discovery Ruling.*** If an arbitrator makes a discovery ruling requiring the disclosure of matters that a party claims are privileged or otherwise protected from disclosure~~ under applicable law~~, the party may appeal the ruling by filing a motion with the judge assigned ~~trial judge~~to the action within ~~ten~~10 days after the arbitrator transmits the ruling to the parties. No party ~~shall be required to~~need respond to the motion unless ~~ordered to do so by~~ the court~~. No~~ so orders, but no such motion~~, however, shall~~ may be granted without the court ~~first~~ providing an opportunity for response. The arbitrator~~'~~'s ruling ~~shall be~~is subject to *de novo* review by the court. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, the court ~~shall~~must impose sanctions on the party filing the motion, including an award of reasonable ~~attorneys'~~attorney's fees incurred in responding to the motion. The time for conducting an arbitration hearing ~~set forth in Rule 74(b) shall be~~is tolled ~~during the pendency of any~~while such motion is pending.

(d) Time for Filing Summary Judgment Motion. ~~If a~~ A motion for summary judgment ~~is filed, the original shall~~must be filed ~~no fewer than~~at least 20 days ~~prior to~~before the date for hearing. A copy of the motion ~~shall~~must be ~~served upon~~delivered to the arbitrator and ~~trial~~ judge assigned to the action. The time for conducting an arbitration hearing is tolled while any such motion is pending. If the court finds that the motion is frivolous or was filed for the purpose of delay or harassment, ~~the court shall~~it must impose sanctions on the party filing the motion, including an award of reasonable ~~attorneys'~~attorney's fees incurred in responding to the motion. ~~The time for conducting an arbitration shall be tolled during the pendency of any such motion.~~

(e) Receipt of Court File. If the arbitrator believes ~~that~~ the court file contains materials needed to conduct the arbitration hearing, the arbitrator ~~shall~~may, within ~~four~~4 days

~~prior to the date of~~before the hearing, sign for and receive ~~from the Superior Court Clerk~~ the original superior court file from the clerk, if the file exists in paper form. If the clerk maintains an electronic court record, the arbitrator ~~shall~~must have access to the original ~~if available,~~ or to a certified paper or electronic copy of the file ~~either by print-outs of said documents or on alternative media~~. The clerk may deliver the documents electronically to any arbitrator who files a consent~~, either traditionally or electronically~~ in a form acceptable to the clerk. Alternatively, the arbitrator may order the parties to provide the arbitrator ~~with~~ those pleadings and other documents the arbitrator deems necessary ~~to complete the arbitration hearing~~.

(f) Settlement of ~~Cases~~Actions Assigned to Arbitration. If the parties settle an action assigned to ~~a case assigned to~~ arbitration ~~settle~~, they ~~shall~~must file with the court an appropriate stipulation ~~and order~~ for the entry of final judgment or a dismissal order, and ~~shall~~must mail or otherwise deliver a copy to the arbitrator. ~~Upon~~The arbitration terminates on entry of the judgment or order ~~the arbitration is terminated~~.

(g) Offer of Judgment. ~~Any~~ A party to an action ~~either~~ subject to ~~compulsory~~ arbitration ~~under A.R.S. § 12-133 and these rules or referred to arbitration by Agreement of Reference may serve upon any other party~~may serve an offer of judgment ~~pursuant to~~under Rule 68.

Rule 75. Hearing ~~p~~Procedures

(a) ~~Issuance of Subpoenas.~~ ~~The Clerk of the Superior Court shall issue subpoenas in matters assigned to an arbitrator, and the subpoenas shall be served and enforceable~~ **Issuing Subpoenas.** Subpoenas may be issued, served and enforced as provided by these rules or other law.

(b) Initial Disclosure. ~~Within 30 days of service of an answer, the plaintiff and answering defendant shall make the~~ Unless the parties agree or the arbitrator orders otherwise, the parties must make their initial ~~disclosure required by Rule 26.1.~~disclosures required under Rule 26.1 by no later than the deadline provided in Rule 26.1(b).

(c) Pre-~~h~~Hearing Statement. ~~Not fewer~~

(1) *Requirement.* No later than ~~ten~~10 days before the ~~date set for hearing, counsel who will present the case at the arbitration hearing shall, after conferring~~hearing, the parties or their counsel must confer, prepare, and submit to the arbitrator a joint written pre-hearing statement ~~which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. In~~

~~preparing the~~. In preparing this pre-hearing statement~~ required by this rule,~~, the parties and their counsel ~~shall~~must consider that the purpose of compulsory arbitration is to provide for the efficient and inexpensive ~~handling~~resolution of claims~~. Agreement on facts and issues is encouraged. No witness or exhibit shall be used~~ and the parties are encouraged to agree on facts and issues.

(2) ***Content.*** The statement must contain the following:

(A) a brief statement of the nature of each party's claims or defenses;

(B) a witness list including the subject matter of witness testimony for each witness who will be called to testify;

(C) an exhibit list; and

(D) the estimated time required for the arbitration hearing.

(3) ***Evidence Exclusion.*** Unless the parties agree otherwise or the offering party shows good cause, no witness or exhibit may be offered at the hearing other than those listed and exchanged~~, except for good cause shown or upon written agreement of the parties~~.

(d) Evidence. The Arizona Rules of Evidence ~~shall~~ apply to arbitration hearings~~.~~, except as provided in Rule 74(e). Certificates or controverting certificates are not admissible in evidence in any proceedings on the action's merits.

(e) Documentary Evidence. The arbitrator ~~shall~~must admit into evidence~~ without further proof~~ —and give them the weight to which the arbitrator deems they are entitled—the following documents without further proof, if relevant, and if listed in the pre-hearing statement, unless ~~it is shown that any such~~the document is not what it appears to be and ~~the~~an objection is ~~set forth~~stated in the pre-hearing statement:

(1) hospital bills, if on the hospital's official letterhead or billhead~~ of the hospital, when~~, dated, and itemized;

(2) bills of doctors and dentists, ~~when~~if dated and ~~containing a statement showing~~stating the date of each visit and the ~~charge therefor~~incurred charges;

(3) bills of registered nurses, licensed practical nurses, or physical therapists, ~~when~~if dated and ~~containing an itemized statement of the days~~stating the date and hours of service, and the incurred charges~~ therefor~~;

(4) bills for medicine, eyeglasses, prosthetic devices, medical belts, or similar items, ~~when~~if dated and itemized;

(5) property repair bills or estimates~~, when dated and itemized~~, setting forth the ~~charges~~costs or estimates for labor and material ~~(in the case of an estimate, the party intending to offer the estimate shall serve upon the adverse party a copy of the estimate, a statement indicating whether or not~~if dated, itemized, and stating whether the property was~~ repaired, and, if so, whether the~~, or is estimated ~~repairs were made~~to be, repaired in full or in part~~ and the cost thereof)~~;

(6)~~ testimony of any~~ a witness~~ given in a~~'s deposition ~~taken pursuant to these rules~~testimony, whether or not ~~such~~the witness is available to appear in person;

(7)~~ a~~ an expert's sworn written statement~~ by an expert~~, other than a doctor~~'~~'s medical report, whether or not ~~such~~the expert is available to appear in person, ~~provided that such~~but only if:

(A) the statement is signed by the expert and ~~contains a summary of~~summarizes the expert~~'~~'s qualifications~~ (if any such~~; and

(B) the statement contains the expert~~'~~'s opinions, ~~it shall also state the grounds for each such opinion, including a summary of~~and the facts ~~upon~~on which each opinion is based~~)~~;

(8) in ~~actions involving~~a personal injury~~, doctors' medical reports, which shall be given the weight to which the arbitrator deems them entitled, provided that a copy of said~~ action, a doctor's medical report, but only if a copy of the report ~~has been previously~~was disclosed at least 20 days ~~prior to the date of~~before the hearing, ~~except for~~unless the offering party shows good cause~~ shown~~;

(9) records of regularly conducted business activity ~~as contemplated by~~qualified under Rule 803(6) of the Arizona Rules of Evidence; and

(10) a sworn witness statement~~ of any witness, other than~~, except from an expert witness, ~~who is~~whether or not the witness is available to appear in person, but only if listed in the pre-hearing statement~~, whether or not such witness is available to appear in person~~.

(f)~~ Assessment of~~ **Assessing Damages Against Defaulted Parties.** In ~~cases~~actions involving ~~more than one defendant, where a~~multiple defendants, if default has been entered against one or more, but fewer than all, of the defendants ~~prior to~~before the

arbitration hearing, the arbitrator ~~shall~~must refer all further proceedings involving the defaulted defendant(s) to the ~~trial court~~judge assigned to the action. The arbitrator ~~shall~~must continue to serve and ~~shall~~ proceed with the arbitration for the remaining parties.

(g) Record of Proceedings. The arbitrator ~~shall~~is not ~~be~~ required to make a record of the ~~proceedings~~hearing. If any party ~~desires the presence of a~~wants a court reporter~~, such~~ to transcribe the hearing, the party ~~shall~~must pay for and provide the reporter. The reporter's charges ~~of the reporter shall~~are not ~~be~~ considered costs in the ~~case~~action.

(h) Failure to Appear or Participate in Good Faith at a Hearing. ~~Failure~~ Absent good cause, a party waives the right to appeal if the party fails to appear ~~at a hearing~~ or to participate in good faith at a hearing ~~which~~that has been set ~~in accordance with~~under Rule 74(b) ~~shall constitute a waiver of the right to appeal absent a showing of good cause. If the judge finds that further proceedings before the arbitrator are appropriate, the case shall be remanded to the assigned arbitrator.~~.

~~Rule 76. Notice of final disposition; failure of arbitrator to file award; judgment; dismissal; compensation of arbitrators~~Rule 76. Post-Hearing Procedures

(a) ~~Notice of~~ Decision ~~and Filing of Award or Other Final Disposition.~~of Arbitrator. Within ~~ten~~10 days after ~~completion of~~completing the hearing, the arbitrator ~~shall~~must:

(1) ~~render~~ make a decision;

(2) ~~return~~ if the original paper file was obtained from the superior court ~~file~~, return it to the clerk by messenger or certified mail ~~to the Superior Court Clerk~~;

(3) notify the parties that their exhibits are available for retrieval;

(4) notify the parties or their counsel of the decision in writing ~~(a letter to the parties or their counsel shall suffice)~~; and

(5) file ~~the~~a notice of decision with the court.

(b) Arbitrator's Award.

(1) *Submission of Proposed Award.* Within ~~ten~~10 days ~~of~~after the notice of decision is filed, either party may submit a proposed form of award to the arbitrator ~~a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs whether arising out of an offer of judgment, sanctions or otherwise, an affidavit in support of attorneys' fees if such fees are recoverable, and~~

~~a verified statement of costs~~. The proposed award may include a blank for requested amounts for attorney's fees and costs.

(2) ***Award Exceeding Limit.*** If an arbitrator finds that the appropriate award in an action exceeds the limit for compulsory arbitration set by local rule or statute, the arbitrator must render an award for the full amount.

(3) ***Objections to Proposed Award.*** Within ~~five~~5 days of ~~receipt of the foregoing, the~~receiving the proposed form of award, an opposing party may file objections.

(4) ***Final Award.*** Within ~~ten~~10 days of ~~receipt of~~receiving the objections, the arbitrator ~~shall pass upon~~must rule on the objections and file one signed original award ~~or other final disposition~~ with the ~~Clerk of the Superior Court and on~~clerk. On the same day ~~shall~~the arbitrator must mail or otherwise deliver copies ~~thereof~~of it to all parties or their counsel.

(~~b~~c) Failure of Arbitrator to File Award. ~~Unless a formal~~ If an award or stipulation for entry of another form of relief is not filed with the court within 50 days ~~from the date of filing~~after the notice of decision is filed, the notice of decision ~~shall~~will constitute the ~~award of the~~ arbitrator's award.

(d) Judgment. If no appeal is filed by the deadline for filing an appeal under Rule 77(b), any party may file a motion to enter judgment on the award.

~~**(c) Judgment.** Upon expiration of the time for appeal, if no appeal has been filed, any party may file to have judgment entered on the award.~~

~~**(d) Dismissal upon Failure to Apply for Entry of Judgment.** If no application for entry of judgment has been filed within 120 days from the date of the filing of the notice of decision, and no appeal is pending, the case shall be dismissed.~~

(e) Referral of ~~Case~~an Action to the Assigned Judge. If the arbitrator does not file an award ~~or other final disposition~~ with the ~~Clerk of the Superior Court~~clerk within the later of 145 days after the ~~first~~arbitrator's appointment ~~of an arbitrator, the Superior Court Clerk or the Court Administrator shall~~or 30 days after a noticed hearing, the clerk or the court administrator must refer the ~~case~~matter to the judge ~~to whom the case has been~~ assigned to the action for appropriate action.

(f) ~~Amount of~~ Compensation ~~for Arbitrators.~~of Arbitrator. An arbitrator assigned to ~~serve in a case subject to the provisions of Rules 72 through 77 of~~an action under these rules ~~shall~~is entitled to receive as compensation for services ~~in each case~~ a fee not to exceed the amount allowed by A.R.S. § 12-133(G) per day for each day, or part ~~thereof~~of a day, necessarily expended in ~~the~~ hearing ~~of~~ the ~~case~~action. For this rule's purposes ~~of this Rule 76(f), '~~, "hearing~~'~~" means any fact-finding proceeding or

oral argument ~~that results~~resulting in the filing of an award~~ or other final disposition~~, or at which the parties agree to settle and stipulate to ~~dismiss~~ the ~~case~~action's dismissal. The fee to be paid in each county ~~shall~~must be decided by a majority vote of the judges ~~thereof and the~~in that county. The amount ~~that is decided upon shall~~must be incorporated into a superior court order that is filed with~~ the Clerk of~~ the Supreme Court clerk, ~~and~~with a copy ~~thereof shall be~~ filed with the ~~Clerk of the Superior Court of the applicable~~clerk in that county. When more than one ~~case~~action arising out of the same transaction is heard at the same hearing or hearings, it ~~shall~~will be considered as one ~~case insofar as compensation of~~action for purposes of compensating the arbitrator ~~is concerned~~.

(g) Payment of Compensation. The arbitrator ~~shall~~is not ~~be~~ entitled to receive ~~the~~ compensation ~~prescribed in subparagraph (f) of this rule~~under Rule 76(f) until after an award ~~or other final disposition~~ is filed with the ~~Clerk of the Superior Court~~clerk, or, if the parties agree to settle and stipulate to dismiss the ~~case~~action at a proceeding before the arbitrator, until after the ~~case has been~~action is dismissed.

Rule 77. ~~Right of appeal~~ Appeal

(a) Filing a Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal ~~from the~~an arbitrator's award~~ or other final disposition~~ by filing a notice of appeal with the clerk~~ of the court within 20 days after the award is filed or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first~~. The notice of appeal ~~shall~~must be entitled "Appeal from Arbitration and Motion ~~to Set~~ for Trial Setting." ~~and shall~~It must request that the ~~case~~action be set for trial in the ~~Superior Court~~superior court, and must state whether a jury trial is ~~requested~~demanded and the estimated length of trial.

(b) Time for Filing a Notice of Appeal. To appeal an award, a party must file a notice of appeal no later than 20 days after (1) the award is filed or (2) the date on which the notice of decision becomes an award under Rule 76(b), whichever occurs first.

(c) Deposit on Appeal. At the time of filing the notice of appeal, ~~and as a condition of filing,~~ the appellant ~~shall~~must deposit with the clerk ~~of the court~~ a sum equal to one hearing day~~'~~'s compensation of the arbitrator~~, but not exceeding ten~~ or 10 percent of the amount in controversy~~. If the court finds~~, whichever is less. The court may waive the deposit only on a showing that the appellant is financially unable to make such ~~deposit by reason of lack of funds, the court shall allow the filing of the appeal without~~a deposit.

~~**(c) Appeals *De Novo*.** All appeals shall be *de novo* on law and facts. Any~~**d) Appeal *De Novo*.** Although the proceeding is denominated as an "appeal," the parties are entitled

to a trial on all issues determined by the arbitrator. The arbitrator's legal rulings and factual findings ~~made by the arbitrator shall~~are not ~~be~~ binding on the court or the parties~~, and any discovery had while the case was assigned to arbitration may be used in the superior court proceeding~~. If, however, the court finds that further proceedings before the arbitrator are appropriate, it may remand the action to the assigned arbitrator.

(e) Waiver of Right to Appeal. At any time ~~prior to~~before the entry of an award ~~or other final disposition~~ by the arbitrator, the parties may stipulate in writing that the award ~~or other final disposition~~ so entered ~~shall be~~is binding ~~upon~~on the parties. ~~No~~If the parties enter such as stipulation, no party may appeal or collateral~~l~~y attack ~~upon~~ the award ~~or other final disposition may be thereafter taken~~ except as allowed by A.R.S. § 12-1501, *et seq.*

(f)~~-~~Discovery and Listing of Witnesses and Exhibits on Appeal.

Any discovery conducted while the action was assigned to arbitration may be used on appeal. Additionally:

(1) Simultaneous with the filing of the notice of appeal, the appellant may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with the requirements of Rule 26.1.

(2) No later than 20 days after the Notice of Appeal is served, the appellee may serve a "List of Witnesses and Exhibits Intended to be Used at Trial" that complies with the requirements of Rule 26.1.

(3) If any party does not serve a timely "List of Witnesses and Exhibits Intended to be Used at Trial," that party's trial witnesses and exhibits will be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted under Rule 75(c).

(4) The parties have 80 days after the filing of the notice of appeal to complete discovery under Rules 26 through 37.

(5) For good cause, the court may extend the time to conduct discovery or to serve a supplemental list of witnesses and exhibits.

(g) Refund of Deposit on Appeal. ~~**(f) Costs and Fees on Appeal.** The deposit provided for in subparagraph (b) of this rule shall be refunded~~ The clerk must refund the deposit on appeal to the appellant if :

(1) the judgment on the trial *de novo* is at least ~~twenty-three~~23 percent ~~(23%)~~ more favorable than the monetary relief~~,~~ or ~~more favorable than the~~ other type of relief~~,~~ granted by the arbitration award; or ~~other~~

(2) there is no order from the court for the disposition of the deposit on appeal upon action's final disposition.

(h) Forfeiture of Deposit on Appeal; Sanctions on Appeal. If the judgment on the trial *de novo* is not more favorable by at least twenty-three23 percent (23%)more favorable than the monetary relief, or more favorable than the other type of relief, granted by the arbitration award or other final disposition, the court shallmust order that the deposit toon appeal be used to pay, or that the appellant pay if the deposit is insufficient, the following costs and fees unless the court finds on motion that the imposition of the costs and fees would create such a substantial economic hardship as not to be in the interests of justice:

(1) to the county, the compensation actually paid to the arbitrator;

(2) to the appellee, those costs taxable in civil actions together with reasonable attorneys'attorney's fees as determined by the trial judge for services necessitated by the appeal; and

(3) reasonable expert witness fees incurred by the appellee in connection with the appeal.

If the deposit is insufficient to pay those costs and fees, the court must order that the appellant pay them, unless the court finds on motion that the imposition of the costs and fees would create a substantial economic hardship that is not in the interests of justice.

Upon final disposition of the case and lacking an order from the court for the disposition of the deposit provided for in paragraph (b) of this rule, the clerk of court shall refund the deposit to the party making the deposit.

(i) Contact by Court. A court may contact an arbitrator regarding the arbitration award or other matters relating to the arbitration.

(g) Discovery and Listing of Witnesses and Exhibits. In all cases in which an appeal is taken from the arbitration award, the parties shall proceed as follows:

(1) The appellant shall simultaneously with the filing of the Appeal from Arbitration and Motion to Set for Trial referenced above also file a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these rules. If the appellant fails or elects not to file such a list of witnesses and exhibits together with the Appeal from Arbitration and Motion to Set for Trial, then the witnesses and exhibits intended to be used at trial by appellant shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to

~~Rule 75(c) of these rules.~~

~~(2) Within 20 days after service of the Appeal from Arbitration and Motion to Set for Trial, appellee shall serve a list of witnesses and exhibits intended to be used at trial that complies with the requirements of Rule 26.1 of these rules. If the appellee fails or elects not to file such a list of witnesses and exhibits, then the witnesses and exhibits intended to be used at trial by appellee shall be deemed to be those set forth in any such list previously filed in the action or in the pre-hearing statement submitted pursuant to Rule 76(e) of these rules.~~

~~(3) The parties shall have 80 days from the filing of the Appeal from Arbitration and Motion to Set for Trial to complete discovery, pursuant to Rules 26 through 37 of these rules.~~

~~(4) For good cause shown the court may extend the time for discovery set forth in subsection (3) above and/or allow a supplemental list of witnesses and exhibits to be filed.~~

X. ~~General Provisions~~ GENERAL PROVISIONS

Rule 78. ~~Abrogated Oct. 10, 2000, effective Dec. 1, 2000~~ [Reserved]

Rule 79. ~~Abrogated Oct. 10, 2000, effective Dec. 1, 2000~~ [Reserved]

Rule 80. General Provisions

~~Rule 80~~(a)~~.~~ Conduct in ~~trial~~Trial. Trials ~~shall~~must be conducted in an orderly, courteous, and dignified manner. ~~Arguments~~Counsel must address arguments and remarks ~~shall be addressed~~ to the court, ~~except that by~~but with the court's permission ~~of the court~~, counsel may ~~make proper inquiries~~properly inquire or ask questions of opposing counsel.

~~Rule 80(b). Exclusion of minors~~(b) Excluding Minors from ~~trial~~Trial. When trying an action or proceeding of a scandalous or obscene nature ~~is to be tried~~, the court or referee may exclude minors from the courtroom ~~minors whose~~if their presence —as parties or witnesses—is not necessary ~~as parties or witnesses~~.

~~**Rule 80(c). Deleted effective June 27, 1991; July 7, 1992**~~

~~**Rule 80(d**~~**c).** ~~**Agreement or consent of counsel or parties**~~~~No~~**Consent of Counsel or Parties.** If disputed, no agreement or consent between parties or attorneys in any matter is binding ~~if disputed~~, unless :

(1) it is in writing~~,~~; or

(2) it is made orally in open court~~,~~ and entered in the minutes.

~~**Rule 80(g). Officer of court or attorney as surety**~~

(d) Attorney or Officer of Court as Surety. ~~No officer or attorney of the court shall be accepted as surety upon an undertaking or bond in a judicial action or proceeding.~~ No attorney or court officer who is involved in an action or other judicial proceeding may be, or act on behalf of, a surety in the action or proceeding.

~~**Rule 80(i). Unsworn declarations under penalty of perjury**~~

(e) Unsworn Declarations Under Penalty of Perjury. ~~Wherever, under any of these rules, or under any rule, regulation, order, or requirement made pursuant to these rules, any matter is required or permitted~~ When these rules require or allow a matter to be supported, evidenced, established, or proved by ~~the~~a sworn written declaration, verification, certificate, statement, oath, or affidavit ~~of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like~~, the same may be unsworn—and have the same force and effect~~, be supported, evidenced, established, or proved by the unsworn written declaration, certificate, verification, or statement, subscribed by such~~—if it is:

(1) signed by the person as true under penalty of perjury~~, and~~ ;

(2) dated~~,~~ ; and

(3) in substantially the following form:

> "I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
>
> (Signature)."

This rule does not apply to a deposition, oath of office, or an oath required to be taken before a specified official other than a notary public.

(f) Lost or Destroyed Records.

(1) ***Motion to Substitute.*** If a court record is lost or destroyed, any party may file a motion to supply the court with an accurate copy of the record. The motion must identify the lost or destroyed record, be accompanied by an accurate copy of the record, and offer proof that the copy is accurate.

(2) ***Order and Further Proceedings.*** If the court finds that the copy is accurate, the court must order the copy substituted for the lost or destroyed record. If the court finds that the copy may not be accurate, it may take further evidence and direct the parties to prepare an accurate copy of the record based on that evidence.

(3) ***Filing and Effect.*** If the court enters an order substituting a copy for a lost or destroyed record, the moving party must file the copy with the clerk. Upon filing, the copy will constitute a part of the record in the action and will have the force and effect of the original record.

(g) Verified Pleadings. If a rule or statute requires a pleading to be verified, the pleading must be accompanied by an affidavit by the party—or a person acting on the party's behalf who is acquainted with the facts—attesting under oath that, to the best of the party's or person's knowledge, the facts set forth in the pleading are true and accurate.

~~**Rule 80(h). Lost records; method of supplying; substitution of copies; hearing if correctness denied**~~

~~1. When the records and papers of an action or proceeding, or part thereof, are lost or destroyed either before or after the trial or hearing, they may be supplied by either party on motion addressed to the court on three days notice to an adverse party. The motion shall be signed and verified, and shall state the loss or destruction of the records or papers, and shall be accompanied by certified copies of the originals, if obtainable, and if not, then copies duplicating the originals as nearly as possible.~~

~~2. If the adverse party admits the correctness of the copies and the court is satisfied that they are copies in substance of the original, the court shall order the copies substituted for the originals. If their correctness is denied, or if the court finds them not correct, it shall hear evidence and correct copies shall be made under the direction of the judge. The substituted copies shall be filed with the clerk and shall constitute a part of the record in the action or proceeding, and shall have the force and effect of the originals.~~

Rule 81. ~~**When rules applicable**~~ **Effective Dates; Applicability**

(a) Effective Date. These rules and any amendments take effect at the time specified by the Supreme Court.

(b) Applicability. Upon the effective date, a rule or amendment, governs:

(1) proceedings in an action commenced after its effective date; and

(2) proceedings after that date in a pending action unless:

(A) the Supreme Court specifies otherwise in its order adopting the rule or amendment; or

(B) ~~These Rules govern all actions or proceedings brought after they take effect and also all further actions or proceedings then pending, except to the extent that in the opinion of the court their application~~the court determines that applying the rule or amendment in a particular action ~~or proceeding pending when the rules take effect would not~~would be ~~feasible~~infeasible or ~~would~~ work an injustice, in which event the former rule or procedure applies.

Rule 81.1. Juvenile e~~E~~mancipation

~~Juvenile~~These rules apply to juvenile emancipation proceedings ~~shall conform to the provisions of these rules,~~ except as provided ~~for~~ in Part V, Rules of ~~Proc. Juv.~~Procedure for Juvenile Court.

Rule 82. Jurisdiction and ~~v~~Venue ~~u~~Unaffected

These ~~R~~rules ~~shall~~do not ~~be construed to~~ extend or limit the jurisdiction of the superior courts or the venue of actions ~~therein~~in those courts.

Rule 83. **Superior Court Local** ~~**rules by superior courts**~~**Rules**

(a) Promulgation. ~~With~~ The presiding superior court judge of a county may promulgate local rules with the approval of a majority of the superior court judges ~~of the county, the presiding judge shall supplement these rules by local rules, not inconsistent with the provisions of~~in the county.

(b) Approval. Local rules must be consistent with these ~~Rules, which shall be promulgated and published upon approval of~~rules, and must be approved by the Chief Justice of the Supreme Court.

(c) Publication. Local rules must be published.

Rule 84. Forms

The forms ~~contained~~ in the Appendix ~~of Forms are sufficient~~suffice under these rules and ~~are intended to indicate~~illustrate the simplicity and brevity ~~of statement which the~~these rules contemplate.

~~**Rule 85. Title**~~

~~These Rules may be known and cited as the Rules of Civil Procedure.~~

~~**Rule 86. Effective date**~~

~~These Rules shall take effect and be in force on and after twelve o'clock midnight December 31, 1955.~~

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Moved cell	
Split/Merged cell	
Padding cell	

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