



# Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING  
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RACHELLE M. RESNICK  
CLERK OF THE COURT

KATHLEEN E. KEMPLEY  
CHIEF DEPUTY CLERK

September 6, 2007

**RE: RULE 16(d) OF THE ARIZONA RULES OF CIVIL PROCEDURE**  
Arizona Supreme Court No. R-06-0011

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on August 27, 2007, in regard to the above-referenced cause:

**ORDERED: [Petition to Amend Rule 16(d) of the Arizona Rules of Civil Procedure] = ADOPTED as modified, effective January 1, 2008.**

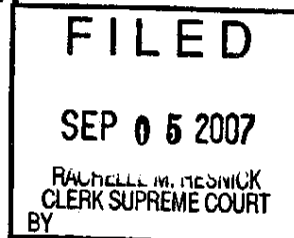
Rachelle M Resnick, Clerk

TO:

Robert B Van Wyck, Chief Counsel, State Bar of Arizona  
Juanita Mann, President, Arizona Association of Superior Court Clerks  
Final Rule Distribution List  
cf

**IN THE SUPREME COURT OF THE STATE OF ARIZONA**

Supreme Court No. R-06-0011



ORDER AMENDING  
RULE 16(d), RULES OF CIVIL PROCEDURE

IT IS ORDERED that Rule 16(d), Rules of Civil Procedure, be amended in accordance with the attachment hereto\*, to be effective as of January 1, 2008.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 5<sup>th</sup> day of September, 2007.

For the Court:

  
RUTH V. MCGREGOR  
Chief Justice

\* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

## RULE 16(d) RULES OF CIVIL PROCEDURE

~~(1) Upon the initiative of counsel for the plaintiff, Counsel or the parties~~ who will try the case and who are authorized to make binding stipulations shall confer and prepare a written joint pretrial statement, signed by each counsel, ~~to be filed by the plaintiff within the time set by the court in the particular case, or by the applicable Local Rules of Practice, or if no time is set, then not less than five judicial days prior to the date of trial.~~ Such pretrial statement or party, that shall be filed five days before the date of the final pretrial conference, or if no conference is scheduled, five days before trial. Plaintiffs shall submit their portion of the joint pretrial statement to all parties no later than twenty days before the statement is due. All other parties shall submit their portion of the joint pretrial statement to all parties no later than fifteen days before the statement is due.

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

~~(1) The uncontested facts deemed material;~~

~~(2) Such contested issues of fact and law as counsel can agree are material or applicable;~~

~~(3) A separate statement by each party of other issues of fact or law which that party believes to be material;~~

(A) Stipulations of material fact and law;

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

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

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

~~(5) A list of the exhibits which each party intends to use at trial, specifying exhibits which the parties agree are admissible at trial, or if not in agreement, a list of the objections and the specific grounds for each objection that a party will make if the exhibit is offered at trial. Specific objections or grounds not listed in the pretrial statement may be deemed waived at the discretion of the trial judge;~~

~~(6) A statement by each party indicating any depositions intended to be offered by that party at the trial, indicating with respect thereto the portions to be offered and the party or parties against whom they will be offered. If any deposition or portion thereof is so offered and such deposition was not transcribed stenographically, a stenographic transcript of the pertinent portions of the deposition testimony shall be prepared and submitted by the person so offering the deposition.~~

~~(7) A statement by each party on how a verbatim record of the trial will be made.~~

~~The parties shall certify that all exhibits listed have been exchanged or made available to all other parties for inspection and copying. No exhibits shall be used during the trial other than those listed, except for good cause shown.~~

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

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

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

(H) Technical equipment needed or interpreters requested;

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

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

(K) A brief description of settlement efforts.

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

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

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

~~If counsel have failed to file a joint pretrial statement in accordance with this subsection, the court shall, upon the request of either party, or may, upon its own motion, fix a time for a meeting in its presence, at which time the pretrial statement shall be prepared.~~

(6) Any final pretrial conference scheduled by the court shall be held as close to the time of trial as reasonable under the circumstances.—The trial judge shall review the pretrial statement and ascertain whether counsel have complied with the requirements of

~~this Rule. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence.~~ The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

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