

REFERENCE GUIDE TO LAW

VERSION 26

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Our Reference Guide covers many areas of Arizona law, highlighting the most common issues associated with civil litigation. This resource is intended to provide a general overview of the subject matter, and is a supplement to the personal service we provide to our clients. It should not be relied upon as the sole source of information, and should not be substituted for competent professional legal advice for a particular situation. Should you have any questions, we encourage you to contact the authors listed at the end of each chapter or any JSH attorney.

CHAPTER 3: CIVIL RULES UPDATE

Here are the new and updated Rules from the last year.

ARIZONA SUPREME COURT

The Supreme Court changed the term “court reporter” to either “certified reporter” or “authorized transcriber” across all courts. *See, e.g.*, Ariz. Sup. Ct. R. 30 (Verbatim Recording of Judicial Proceedings); Ariz. R. Civ. P. 43(g)(2) and 75(f); ARCAP 10.

ARIZONA RULES OF CIVIL PROCEDURE

Rule 4.1(l)(1) (service of process within Arizona) and 4.2 (outside of Arizona): For service by publication, the serving party must now additionally file a motion with the court supported by affidavit that sets forth the serving party’s reasonably diligent efforts to serve the person, and show that the service provided by Rule 4.1(c) through 4.1(k)—including an alternative means of service—is impracticable. Then, then court may, on the motion and without notice to the person to be served, order that service be accomplished by publication under the conditions described in the rule. A serving party may initiate the service by publication procedure described in Rule 4.1(l)(2) prior to moving for such an order or while the motion is pending.

Rule 47(e) and (f): Regarding peremptory challenges, peremptory strikes in jury selection were abolished effective January 1, 2022.

Rule 68(g): Regarding the amount of sanctions for a rejected offer of judgment, “[a] party who rejects an offer, but does not obtain a more favorable judgment, must pay as a sanction twenty percent of the difference between the amount of the offer and the amount of the final judgment.” This is an increase from 10% previously.

Rules 16 and 47 were further amended on emergency basis in accordance with the elimination of peremptory challenges, effective January 1, 2022, and will be reviewed for permanent adoption in August 2022. The emergency amendments include:

Rule 16(e): During scheduling and management of actions, the court may discuss at the Trial-Setting Conference “the areas of inquiry” and “specific questions” the court and the parties will ask during voir dire, including limitations on oral or written examination and whether to give brief pre-voir dire opening statements.

Rule 16(f): If a case is tried to the jury, the parties must file—in addition to a Joint Pretrial Statement,—not only the usual “agreed-on set of jury instructions,” “additional jury instructions,” “verdict forms,” and “questions for oral voir dire,” but also newly added “questions for a case-specific written questionnaire” which the parties agree on as well as any additional questions.

Rule 47(b): Regarding juror information, the court added a detailed description of duties of the clerk to safeguard confidentiality of eligibility (for purposes of jury selection), biographical information, and case-specific written questionnaires. The rule further directs the court or the clerk to provide the parties with the written questionnaires “[b]efore conducting oral voir dire,” which the parties must not disclose to the public and may disclose “only to the extent necessary for the proper conduct of the case.”

Rule 47(c): Regarding voir dire oath and procedure, each juror must swear or affirm the answers to the case-specific written questionnaires are truthful. At the beginning of examination, the court must explain voir dire, how prospective jurors’ information will be used, and who may have access to it. The written questionnaires should include questions about the prospective juror’s qualifications to serve, hardship, and whether he or she could render a fair and impartial verdict. The court must conduct voir dire orally.

Rule 47(d): Regarding challenges for cause, the party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. In making its determination, the court must consider the totality of a prospective juror’s conduct and answers given during voir dire.

ARIZONA RULES FOR THE FAST TRIAL AND ALTERNATIVE RESOLUTION (FASTAR) PILOT PROGRAM

Pima County Amendments adopted in December 2021:

Rule 108: Parties are not required to file a joint report or proposed scheduling order per Rule 16(c), Ariz. R. Civ. P.

Rule 117: Arizona Rules of Evidence apply, but certain medical bills described by the rule are admissible unless there is a specific legal objection in the joint pretrial statement.

Rule 121(b)(G): An arbitrator will make all legal rulings except on newly added “motions concerning disclosure and discovery.”

Rule 122: Discovery limits in an alternative resolution proceeding are the same as in FASTAR Rule 112(b) (90 days).

ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

Rule 2: “Authorized transcriber” has the same meaning as set forth in Supreme Court Rule 30(a)(2).

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

The court republished its rules of procedure on March 23, 2022. The rules show no changes.

U.S. DISTRICT COURT (ARIZONA) LOCAL RULES – CIVIL

LRCiv 56.1: Amended the motion for summary judgment rule to add a new subparagraph (g) which provides: “The Court may modify the foregoing procedures in its discretion.”

LRCiv 79.1: Sensitive exhibits, whether or not received as evidence, remain in the custody of the arresting or investigating agency or its designee throughout the proceedings, unless otherwise ordered by the Court.

LRCiv 83.10: This rule requires litigants to consider using Alternative Dispute Resolution (ADR) at an appropriate stage in each litigation matter; maintain confidentiality of the ADR proceedings unless otherwise ordered by the presiding judge or magistrate judge; 28 U.S.C § 455 applies to any magistrate judge referred for ADR. Further, the amendment prohibits a litigant from offering to engage in ADR as a reason to delay the processing of the case under the Rule 16 scheduling order.

FEDERAL RULES OF CIVIL PROCEDURE

In April 2022, Justice Roberts submitted to Congress an amendment to Federal Rule of Civil Procedure 7.1, which addresses disclosure statements. The proposed amendment would require non-governmental corporations who are parties or *intervenors* to identify any parent corporation or publicly held corporation owning 10% or more of its stock. It also specifies that a party or an intervenor must file a disclosure statement in a diversity case, and identify the name and citizenship of any individual or entity whose citizenship is attributed to that party or intervenor when the action is either filed or removed, or when a later event occurs that could affect the court’s diversity jurisdiction.

FEDERAL RULES OF APPELLATE PROCEDURE

In April 2021, Justice Roberts, Jr., submitted to the Congress an amendment to Federal Rule of Appellate Procedure 3 (Appeal as of Right-How Taken) and FRAP 6 (Appeal in a Bankruptcy Case), rules which the Supreme Court had already adopted effective December 1, 2021. The old rule required a party to file a notice of appeal identifying the "judgment, order, or part thereof" that it is appealing. Some courts interpreted that language strictly to hold that a party who named a specific order waived their right to appeal other orders. The revised rule fixed that issue to prevent parties from inadvertently waiving their rights.

The new rule and commentary also address a number of other, similar pitfalls, such as when a party inadvertently refers to the final decision as an "order" rather than a "judgment," or appeals a final order dismissing all claims but the Court later issues a separate final judgment.

COURTS ADMINISTRATIVE ORDERS DUE TO COVID-19

U.S. Supreme Court

In July 2021, the Court rescinded orders related to COVID-19 subject to clarifications. See 2021 US Order 0061.

Ninth Circuit

As of 2/23/2022, oral in-person arguments will be permitted beginning March 1, 2022. Attorneys retain the option to appear remotely by video without a motion. The court urged counsel to review the in-person hearing protocols and Amended Vaccination Order. Panels will continue to exercise their discretion under the rules to submit cases without argument; to hold hearings remotely; or to postpone argument to a later date. When in-person or remote argument is held, it will be live streamed to facilitate public access.

Arizona District Court

In March 2022, the court rescinded its requirement to wear face coverings in district court and bankruptcy court.

Arizona Supreme Court

As of July 15, 2021, our Supreme Court directed that the statewide court health emergency plan is now in Phase III, and courts may modify their practices and operations accordingly.

If you have questions regarding the information in this chapter, please contact the author.

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