

CHAPTER 3: CIVIL RULES UPDATE

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

ARIZONA SUPREME COURT

The Arizona Supreme Court changed the terms “notary” and “notary public” to “notarial officer” across all courts. *See, e.g.,* Ariz.R.Civ.App.P. 4.2; Ariz.R.Civ.P. 5.2, 80. The amendment became effective on January 1, 2023.

ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

Rule 4(g). Effective January 1, 2023, a party is no longer required to file a certificate of service five days after filing a document.

Rule 4.2. The amendment made by the Arizona Supreme Court changing the terms “notary” and “notary public” to “notarial officer” applies to this rule.

Rule 21. Effective January 1, 2024, new subsection (a)(3) will require a party opposing a claim of attorney fees made in an opening or answering brief to do so in their answering or reply brief. Additional provisions address specific rules for responding to a claim of attorney fees made in a petition for review, a cross-petition, or in a response to either.

ARIZONA RULES OF CIVIL PROCEDURE

Rules 16 and 47. Amendments made on an emergency in January 2022 to deal with the elimination of peremptory challenges were made permanent as of August, 29, 2023. These include:

Rule 16(e): At the trial-setting conference, the court may discuss “the areas of inquiry” and “specific questions” that the court and the parties will address 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 to be tried to the jury, the parties must file—in addition to a joint pretrial statement, “agreed-on set of jury instructions,” “additional jury instructions,” “verdict forms,” and “questions for oral voir dire”— newly added “questions for a case-specific written questionnaire” which the parties agree on, as well as any additional questions.

Rule 47(b): Amendments describe in detail the duties of the clerk in safeguarding the confidentiality jurors’ personal information, including case-specific written questionnaires. The rule further directs the court or the clerk to provide the parties with the written questionnaires before oral voir dire. The parties may not disclose to the public at all, and may disclose them in the context of the trial “only to the extent necessary for the proper conduct of the case.”

Rule 47(c): 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, potential hardship, and whether they could render a fair and impartial verdict. The court must conduct voir dire orally.

Rule 47(d): 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.

Rule 17. A number of changes were made to Arizona Rule of Civil Procedure 17, effective January 1, 2023. The amendments alter the procedural rules for actions brought on behalf of minors, incompetent persons, and adults in need of protection.

Rule 17(a). This new subsection contains definitions for the following terms, in accordance with their statutory definitions: "adult in need of protection," "conservator," "guardian," "incapacitated person," "joint legal decision-making," "legal decision-making," "legal parent," "personal representative," and "sole legal decision-making."

Rule 17(b). An executor and an administrator may no longer sue in their own names without joining the person or entity for whose benefit the action is brought; but a conservator may do so, effective January 1, 2023.

Rule 17(c). Now titled "Actions by or Against a Decedent; Setting Aside Judgment," this subsection was amended to replace the phrase "an executor, administrator or guardian" with the phrase "a personal representative" throughout. In addition, the phrase "the testator or intestate" was replaced with the phrase "a decedent" throughout.

Rule 17(g)(1) addresses actions by or against minors. Previously a general guardian, conservator, or "similar fiduciary" had an equal ability to bring or defend a law suit. Now, however, if a conservator has been appointed, only the conservator may bring an action; if the court has not appointed a conservator, but the minor has a guardian, then only the guardian may represent do so. A GAL may represent the minor's interests if the minor does not have a conservator or guardian and the court has granted the GAL authority to do so. Further rules are provided for parents depending on their marital status and the status of their parental rights. Subsection (g)(1)(H) of the rule limits the amount of a judgment that a parent of a minor may receive per annum to \$10,000 unless the court orders otherwise.

Rule 17(g)(2) addresses actions by or against an incapacitated person or an adult in need of protection. It limits the persons who may sue on behalf of such an individual to the conservator, if one has been appointed, or the guardian, if a conservator has not been appointed. The court may appoint a GAL anytime it has reasonable grounds to believe that a party is incapacitated or an adult in need of protection and that person does not have a conservator or guardian. Finally, neither the parents, conservator, or guardian of a

minor or incapacitated person may be liable for “the taxable costs incurred by any party in an action by or against the minor or adult in need of protection.”

Rule 17.1 was added, effective January 1, 2023, addressing the appointment of GALs for incapacitated persons or adults in need of protection. Any party in a civil proceeding may request that a GAL be appointed, or the court may do so on its own initiative upon a finding of reasonable cause. The rule also sets qualifications for a GAL and specifies the scope and duration of their role and authority; associated privilege rules; requirements for the GAL’s report to the court; and their entitlement to fees for their work. On motion by the GAL or on its own initiative, the court may order an evaluation of the subject person to determine whether they are an incapacitated person or an adult in need of protection.

Rule 30(b)(3)(b) was amended to require that, if a deposition will be recorded by audiovisual means, the notice of deposition “must state the method and manner of audiovisual recording and the person or company that will conduct such recording.” Subsection (5)(b) was amended to require that “[t]he camera should squarely face the witness and avoid depicting other persons.” Accordingly, a subsection was removed which used to require that a notice of recording testimony identify the placement of cameras. In addition, subsection (5)(b) was amended to add that the deponent’s and attorney’s appearance, voice and demeanor may not be distorted through “later editing,” in addition to the existing requirement that the same not be done through recording techniques. These amendments were effective as of January 1, 2023.

Rule 32(d)(3). As of January 1, 2023, a party’s failure to designate an alternate method of recording as required by Rule 30(b)(3)(C) “does not waive any party’s right to object to the admissibility or use of any recording made by any designated method.”

Rule 35. Effective January 1, 2024, new subsections (b) and (c) clarify that a person undergoing an independent medical examination may have a representative present during the examination and may audio- or video-record the examination *unless* doing so would adversely affect the outcome of the examination. Other amendments reorganize, clarify, and revise the procedures governing requests for physical and mental examinations.

Rule 56(c). Amendments effective January 1, 2024, clarify the procedures for filing a statement of facts in support of a motion for summary judgment and the opposing party’s responsive statement of facts, including by more specifically outlining the required content of both. The amendments also clarify that a reply statement of facts by the movant is not allowed, that any new evidence necessitated by the opposing party’s responsive statement is to be attached to the reply itself, and that objections to evidence in the opposing statement must be stated in the reply.

Rule 76. Effective January 1, 2024, parties to an arbitration will have 15 days after a notice of decision is filed to submit a verified request for costs and attorney’s fees. If the notice of decision becomes the arbitrator’s award, a prevailing party seeking costs and fees will have 90 days from the filing of the notice of decision to submit a motion to alter or amend the award to include costs and fees.

Rule 80. Effective January 1, 2024, new subsection (a)(3) allows parties an additional method for making and memorializing binding agreements. For the first time, agreements made before a mediator or judicial officer and memorialized by a court reporter or by audio or visual recording are binding. Additional conditions apply to mediated agreements in order to enable court approval.

FEDERAL RULES OF APPELLATE PROCEDURE

Fed. R. App. P. 2. As of April 2023, the United States Supreme Court amended Federal Rule of Appellate Procedure 2, which addresses situations in which an appellate court may suspend the Rules of Appellate Procedure. The amendment added a subsection addressing conditions for emergency suspension. The new subsection states that the Judicial Conference of the United States may declare “an Appellate Rules emergency” when “extraordinary circumstances relating to public health or safety, or affecting physical or electronic access to a court, substantially impair the court’s ability to perform its functions in compliance with the[] rules.” The new rule specifies the requirements for such a declaration and gives the court the ability to suspend all or part of the rules in the affected portion of a circuit and to order alternative proceedings. Applying the rules flexibly during the COVID-19 pandemic enabled the courts to continue their operations, and the new rule seeks to broaden the courts’ ability cope with future emergencies.

Fed. R. App. P. 26 and 45. The Supreme Court also included Juneteenth as a legal holiday in FRAP 26 for purposes of calculating deadlines and in FRAP 45, addressing court closures.

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

C.R. 3-1 was amended to provide specific rules regarding tax and bankruptcy appeals.

C.R. 29-2. A motion for leave to file an amicus brief now must be accompanied by the recitals provided for in C.R. 29-3, in addition to those of Fed. R. App. P. 29(a)(3).

C.R. 32-1 now specifies that images such as photographs and tables may be reproduced in briefs “using any method that results in a good copy of the original.” If images are taken from the record, they must be accompanied by the appropriate record citation, and any words or numbers intended to be read by the court must be legible. Images are still subject to the margin one-inch margin requirements for briefs.

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

The District Court has not published an updated set of local rules since December 2021.

FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 6, on computing time, was amended to include Juneteenth as a legal holiday for purposes of calculating deadlines.

Fed. R. Civ. P. 7.1 was amended to create new disclosure requirements for intervenors and for early determination of diversity jurisdiction.

Fed. R. Civ. P. 87. This new rule, similar to the new Fed. R. App. P. 2(b) discussed *supra*, allows the Judicial Conference of the United States to declare a “Civil Rules emergency” when conditions relating to public health or safety or affecting access to the courts impair the court’s ability to function in accordance with the rules. The rule sets the requirements for such a declaration and creates several specific emergency rules relating to service and extensions of time and their effect on appeals.

If you have questions regarding the information in this chapter, please contact the author or any JSH attorney.

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