# CHAPTER 3: CIVIL RULES UPDATE

There have been no significant changes to Arizona's state court rules in the past year. The updates that went into effect on January 1, 2024, are reviewed below. The federal rules have undergone several updates in the past year, and additional proposed amendments would go into effect later in 2025 and in 2026 if adopted.

## ARIZONA SUPREME COURT

Effective January 1, 2024, the Arizona Supreme Court amended various state court rules of procedure to regulate the use and acceptance of electronic signatures and notarized documents. *See* Ariz.R.Civ.App.P. 4.2; Ariz.R.Civ.P. 5.1, 5.2, 11. The Court also amended the rules pertaining to motions for summary judgment, post-arbitration procedures, and agreements between parties. *See* Ariz.R.Civ.P. 56(c), 76, 80(a)(3).

## ARIZONA RULES OF CIVIL APPELLATE PROCEDURE

**Rule 4.2:** This rule now allows for a scanned signature on an electronically filed document, as an alternative to the filer's typed name preceded by the /s/ symbol.

## ARIZONA RULES OF CIVIL PROCEDURE

**Rule 5.1(f):** This subsection, newly added as part of the 2024 rule updates, specifies that the clerk must accept any document that purports to have a signature, including documents that appear to be electronically signed or notarized. In the event of a dispute over the authenticity or sufficiency of such a signature or notarization, a judicial officer will make the necessary determination under applicable law.

**Rule 5.2(c)(2)(C):** This subsection was amended to account for electronically notarized documents, as distinct from scanned copies of physical notarized documents, which now may be filed electronically as well.

**Rule 11(a)(2):** This rule now states that a scanned signature may be used on an electronically filed document, as an alternative to a typed signature preceded by the /s/ symbol.

**Rule 56(c):** As of January 1, 2024, the Arizona Supreme Court placed new limits on statements of facts in support of and in opposition to motions for summary judgment and clarified the procedure for objecting to evidence presented by either party on a motion for summary judgment. Changes included the following:

> **Rule 56(c)(3)(A)–(B), (D):** The rule now emphasizes that the parties may cite only admissible evidence their statements of fact and state only facts cited in their memoranda. In Tier 1 and 2 cases, a moving party's statement of facts may not exceed 11 pages exclusive of attachments,

and an opposing party's statement may not exceed 17 pages exclusive of attachments, without leave of the court. A further amendment to Rule 56(c)(3)(D) clarifies that, if the parties agree to a joint statement of facts, the joint statement does not count
against the page limits on any separate statement of facts that either party may file in addition to the joint statement under subsections (c)(3)(A)–(B).

**Rule 56(c)(3)(C):** This new subsection clarifies the procedure by which a movant may present evidence in response to the opposing party's statement of facts. The rule states that no reply statement of facts is permitted, but if the opposing party raises new facts in its response, the movant may attach to its reply any admissible evidence necessary to show that these new facts do not create a triable issue of fact.

**Rule 56(c)(4):** Amendments to this subsection specify that a party's objections to the admissibility of evidence presented in support of or in opposition a motion for summary judgment may be stated by an opposing party in their statement of facts or memorandum in opposition to the motion or by the moving party in their reply. Parties must identify the legal basis for the objection.

**Rule 76:** Amendments to the rules on post-arbitration hearing procedures were amended as follows.

**Rule 76(b)(1), (3)–(4):** This rule now requires the parties to submit any verified request for taxable costs or motion for attorney's fees within 15 days after the arbitrator files a notice of decision. In addition, the period for an opposing party to object to a proposed form of award has been extended to 15 days (previously 5 days), and the opposing party must include its objection to any request for costs or motion for attorney's fees. The deadline for the arbitrator to rule on the objections is now 10 days from the deadline for filing a reply, not from the arbitrator's receipt of the objections.

**Rule 76(c):** An arbitrator's notice of decision now becomes final 75 days (previously 50 days) after it is filed with the court, unless an award or stipulation to another form of relief is filed. New subsections set out the procedure for a prevailing party to seek costs and fees if the notice of decision becomes the arbitrator's final award through a motion to alter or amend the award to include such costs and fees. If the prevailing party files such a motion, the time for the opposing party to file a notice of appeal runs from the date of a decision on that motion.

**Rule 80(a)(3):** This new subsection adds a category of agreements that are binding on the parties to a case. In addition to agreements in writing or made in open court, parties are now bound by agreements made before a mediator or judicial officer and memorialized by a court reporter or by audio or visual recording. In the case of a mediated agreement, the rule now states that the agreement is binding only if the parties state that the terms of the agreement may be disclosed as necessary for a court to approve or enforce it.

## FEDERAL RULES OF APPELLATE PROCEDURE

**Fed. R. App. P. 29:** Proposed amendments would alter the procedure for filing amicus briefs, including by requiring amici to disclosure additional information regarding their identities and interest in the case. Non-governmental entities would be required to seek leave to file an amicus
brief based on the usefulness of the brief, ending the rule permitting such briefs based solely on the consent of the parties. In addition, non-governmental entity seeking to be an amicus would be required to disclose whether has has existed for less then twelve months—a measure aimed at identifying corporate amici created for the sole purpose of participating in the litigation. Other proposed amendments carry forward and rearrange current disclosure requirements regarding an amicus's relationship to the parties and add new requirements regarding certain financial relationships between them. Under the proposed amendments, if an amicus fails to make a disclosure, any party or counsel aware of the omission and the undisclosed information must disclose it. If adopted, these amendments would become effective on December 1, 2026.

**Fed. R. App. P. 39:** Proposed amendments to this rule reflect the United States Supreme Court's holding in *City of San Antonio v. Hotels.com*, 141 S. Ct. 1628 (2021), that the rule does not permit a district court to alter a Court of Appeals' allocation of the costs listed in subsection (c) and its suggestion that the rule could more clearly state the procedure for raising the issue of costs in the Court of Appeals. The proposed amendments specify that the Court of Appeals allocates costs and set default rules for doing so, which may be varied based on equitable considerations. In the case of mixed judgments, each party would presumptively bear their own costs. The proposed amendments also set a 14-day deadline for a motion for reconsideration of a cost award and specify that such a motion would not stay the mandate returning the case to the district court. Instead, the mandate would issue and the Court of Appeals would retain jurisdiction for the limited purpose of deciding the motion. The proposed amendment would codify the holding of *Hotels.com* by explicitly stating that the Court of Appeals' decision allocating costs is binding on the district court. Other proposed amendments address the types of costs that may be awarded and make other stylistic changes. The proposed effective date of these amendments, if adopted, is December 1, 2025.

## U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

**Rule 26.1-1:** Effective December 1, 2024, this new rule requires parties, intervenors, and amici in various cases, including civil cases involving non-governmental corporations, to file a corporate disclosure statement in an appeal and to disclose whether any Court of Appeals judge participated in any stage of the case. The disclosure obligation is ongoing, and disclosures must be updated if the filer learns of new information subject to disclosure.

## FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 16 and 26: Amendments to these rules pertaining to claims of privilege and attorney work product protection go into effect on December 1, 2025.

**Fed. R. Civ. P. 16(b)(3)(B)(iv):** This subsection now specifies that a scheduling order may include directions from the court on the timing and method for asserting claims of privilege or attorney work-product protection, as opposed to simply reflecting the parties' agreement regarding the same.

**Fed. R. Civ. P. 26(f)(3)(D):** The amendment to this subsection requires parties to discuss and include in their discovery plan a method for complying with the rule on asserting claims of privilege. It also requires parties to address in their discovery plan the time for complying with this requirement so that compliance issues can be identified and handled earlier in discovery.

## U.S. District Court (Arizona) Local Rules – Civil

After a number of largely technical amendments in 2024, the District of Arizona Local Rules have not been amended significantly. As a result of an amendment to **L.R. Civ. 72.2(a)(1)** last year, magistrate judges may now decide motions seeking sanctions and impose non-dispositive sanctions through a report and recommendation.

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

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