

PREFACE TO THE 2025 EDITION

The Arizona Civil Rules Handbook, by Daniel J. McAuliffe, was first published in 1993. The years since that first publication have witnessed dramatic changes in the procedural requirements for the processing of civil actions in the Arizona courts. During this time period, the Arizona Supreme Court adopted ambitious and innovative rule changes as follows:

1992: Adopted innovative disclosure and discovery reforms.

1995: Adopted cutting edge jury reform amendments.

2000: Approved a major civil rules consolidation effort.

2014: Adopted new case management procedures.

2017: Abrogated in their entirety the Arizona Rules of Civil Procedure, and simultaneously adopted, substantively amended, restructured, renumbered and restyled versions of the former rules of civil procedure.

2018: Modernized the civil rules of procedure by adopting:

- Rule 5.4 [“Sealing and Unsealing Court Records”];
- Rule 26(b)(2)(B) [“Specific Limits on Discovery of Electronically Stored Information”]; and
- Rule 26.2 [“Tiered Limits to Discovery Based on Attributes of Cases”] along with various other rules, to implement yet another “new case management and discovery reform” system.

2019: Adopted a modest crop of rule amendments, at least in comparison to the last several years. The important 2019 rule revisions included the following:

- Adopted Rule 8.1 [“Assignment and Management of Commercial Cases”], as amended, on a permanent basis;
- Amended Rule 26(b)(4) [“Expert Discovery”] to conform with federal practice on the discoverability of draft expert reports and communications between parties’ attorneys and their experts;
- Amended Rule 38 [“Right to a Jury Trial”] to eliminate the jury demand requirement;
- Adopted Rule 39(c) [“If a Limited Waiver is Effective”] to address the procedure for waiving a jury trial; and
- Amended both Rule 62 [“Stay of Proceedings to Enforce a Judgment”], and Rule 69 [“Execution; Postjudgment Discovery”] and ARCAP 7 [“Stay of Proceedings to Enforce a Judgment”] to address issues that arise when a defendant successfully defeats a claim and is awarded attorney’s fees and/or sanctions.

2020: Amended a few rules to smooth out some rough spots.

2021: Adopted and/or amended several rules as follows:

- Adopted new Rule 16.3 [“Settlements of Claims for Minors and Adults in Need of Protection”];
- Adopted new Rule 12(j) [“Good Faith Consultation Certificate”];
- Amended Rule 23 [“Class Actions”] by adopting, in part, various aspects of Fed. R. Civ. P. 23; and
- Made technical amendments to various other rules.

2022: Amended and/or abolished several rules as follows:

- Amended Rule 4.1(*l*) [Service by Publication: Within Arizona] and 4.2(f) [Service by Publication: Outside Arizona] to require a party seeking to serve by publication either within or outside Arizona file a motion for a court order authorizing such service, supported by an affidavit setting forth the serving party’s “reasonably diligent efforts” to obtain service.
- Abolished Rule 47(e) [“Peremptory Challenges”] and renumbered former subdivision (f) [“Alternate Jurors”] as Rule 47(e).
- Amended Rule 47(c) to accommodate the abolition of Rule 47(e).
- Amended Rule 68(g) [“Sanctions”] to adopt a new sanctions formula of “twenty percent of the difference between the amount of the offer and the amount of the final judgment,” along with other revisions intended to make sanctions less punitive under the Rule.

2023: Adopted and/or amended several rules as follows:

- Amended Rule 5.2(c)(2)(C) [“Notarized Documents”] and Rule 80(c) [“Unsworn Declarations Under Penalty of Perjury”] on an emergency basis to revise the procedural rules to respond to various statutory amendments pertaining to notarization, which statutory amendments took effect on July 1, 2022.
- Adopted permanently, as modified, the amendments to Rule 16 [“Scheduling and Management of Actions”] and Rule 47 [“Jury Selection; Juror Information;”], effective December 8, 2021, on an emergency basis.
Such rules concern pre-trial and trial procedures relating to juror questionnaires, voir dire and challenges for cause.
- Amended Rule 17 [“Plaintiff and Defendant”] to:
 - (1) conform the language of the rule to that of current statutes,
 - (2) define appropriate parties to an action involving a minor, an incapacitated person and an adult person in need of protection, and

PREFACE TO THE 2025 EDITION

- (3) clarify who may bring and who may defend an action involving a minor, an adult incapacitated person and an adult person in need of protection.
- Adopted new Rule 17.1 [“Appointment of Guardian Ad Litem for an Alleged Incapacitated Person or Adult in Need of Protection”] to set forth the procedures for securing the appointment of a guardian ad litem when a party or the court has reasonable grounds to believe and adult party might be an incapacitated person or an adult in need of protection.
- Amended Rules 4.1, 4.2, 25, 27 and 55 to conform to the amendments to Rule 17 and the adoption of Rule 17.1.
- Amended Rule 30(b) [“Notice of Deposition;”], Rule 32(b) [“Using Depositions”], and Rule 30(d) [“Preservation and Waiver of Objections”] to clarify the notice that must be provided and the procedures that must be followed to video record a deposition.
- Amended Rule 37(a)(3)(B) [“Specific Motions: To Compel a Discovery Response”] to explicitly authorize a party to move for an order compelling the production of documents if a party fails to produce documents. *See* Ariz. R. Civ. P.37(a)(3)(B)(iv).

2024: Amended various rules as follows:

- Amended Rule 5.1(c)(2) [“Documents Not to Be Filed”] to remove subpoenas from the category of documents that may not be filed, such that the filing of subpoenas and related documents is now discretionary.
- Amended Rule 11(a)(2) [“Electronic Filings”] to expand the permitted use of electronic signatures in court filings. Related amendments to Rule 5.1(f) [“Electronic Signatures and Electronic Notarizations”] address the presumptive validity of electronic signatures.
- Amended Rule 35 [“Physical and Mental Examinations”] to reorganize its provisions and make extensive substantive and procedural changes. The 2024 amendments are tantamount to a total rewrite of Rule 35.
- Amended Rule 55(b)(1) [“Default Judgment by Motion Without Hearing”] to confirm that for liquidated damages claims, a default judgment may be entered on motion without a hearing, even if the defendant against whom default was entered appeared in the action before the entry of a default judgment.
- Amended Rule 56(c) [“Procedures”] to impose additional requirements, and presumptive page limitations in Tier 1 and Tier 2 cases, on moving and opposing statements of fact on a motion for summary judgment.

- Amended Rule 76 [“Posthearing Procedures”] to clarify and modify post-hearing procedures and deadlines in compulsory arbitration matters.
- Amended Rule 80(a) [“Agreement or Consent of Counsel or Parties”] to allow mediators and judicial officers to document agreements of the parties in alternative ways, including in an audio or video recording.

2025: Adopted and/or amended several rules as follows:

- Amended Rules 5, 5.1, 5.2, 8, and 11 on an emergency basis effective August 22, 2024, to delete provisions of those rules governing electronic filing, service, and signature, and incorporate by reference the provisions of recently-adopted Section 1-901 of the Arizona Code of Judicial Administration (“ACJA § 1-901”), which now governs mandatory e-filing in the superior, justice, and municipal courts of Arizona.

[The Court will consider whether to adopt the August 22, 2024, emergency amendments to various rules on a permanent basis during its December 2024 Rules Agenda.]

- Adopted new Rule 7.2(c) [“Good Faith Consultation Certificate”] to require that parties consult in good faith, and submit a good faith consultation certificate complying with Rule 7.1(h), before filing any motion in limine, effective January 1, 2025.
- Adopted new Rule 23(i) [“Disposition of Residual Funds in Class Action Cases”], to provide procedures for distributing residual funds in class action cases to the Arizona Foundation for Legal Services and Education to support access to justice for low income residents of Arizona, effective January 1, 2025.
- Amended Rules 16(b) [“Required Early Meeting About Expected Course of Case, Tiering”] and 30(b)(1) [“Notice Generally”] and 30(b)(4) [“By Remote Means”], effective January 1, 2025, to add additional procedural requirements for remote depositions, including that:
 - parties must discuss whether depositions will be held in-person or by remote means at their Rule 16 early meeting, and
 - parties must confer in advance of the deposition about how the deposition will be recorded, handling of exhibits, who may attend the deposition, and how they may appear.
- Amended Rule 16 to clarify that the form of proposed Scheduling Order **should not include** the word “proposed” in the caption, with conforming amendments to Rule 84, Forms 11(b), 12(b), 13(b), and 14(b), effective January 1, 2025.

PREFACE TO THE 2025 EDITION

- Amended Rule 16 to relocate former Rule 16(c)(8)(A) and (B) [“Applicability”] to new subdivisions (k) [“Applicability”] and (l) [“Compulsory Arbitration”], with some clarifying amendments to Ariz. R. Civ. P. 16(l), effective January 1, 2025.
- Amended Rule 47(b) [“Juror Information”], along with various other non-civil rules of procedure, on an emergency basis effective September 14, to add that the court clerk must keep jurors’ dates of birth and email addresses confidential.
[The Court will consider whether to adopt the September 14, 2024, emergency amendments to various rules on a permanent basis during its December 2024 Rules Agenda.]
- Adopted a technical amendment to Ariz. R. Civ. P. 42.1(c)(3), effective August 30, 2024.

As in the past, please feel free to provide your constructive comments and suggestions concerning this publication. I will consider all contributions.

Finally, those who use this work in their practice are reminded to cite check and update the information set forth in this new Edition. The commentary in this publication is intended to serve as a starting point for further research, and not the end point.

Shirley J. McAuliffe
February 2025