

LOCAL RULES OF PRACTICE

APACHE COUNTY SUPERIOR COURT

Effective June 1, 1993

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ADMINISTRATION

Rule 1. Hours of Court

a. Clerk's Office. The Office of the Clerk of the Apache County Superior Court will be open for business from 8:00 A.M. until 5:00 P.M., except Saturdays, Sundays and legal holidays.

b. Trials. Unless otherwise directed by the trial judge, trials will be held between the hours of 9:00 A.M. and 12:00 noon, and 1:30 P.M. and 5:00 P.M. Trials will be held Tuesday through Friday, unless otherwise directed by the trial judge.

Rule 2. Law and Motion Day

Every Monday shall be Law and Motion Day. When Monday is a legal holiday the following Tuesday shall be Law and Motion Day. Law and Motion Day will commence at 9:30 A.M.

Rule 3. Clerk of the Court

In addition to the duties prescribed by law and rules of practice of the Superior Court adopted by the Supreme Court, the clerk, under the direction of the presiding judge, shall:

- (a) Compile and maintain records of pending cases and other statistics of the business of the Court.
- (b) Promptly notify counsel in writing of the placing of cases on the Inactive Calendar.
- (c) Perform such other duties as the presiding judge shall direct.

Rule 4. Interpreters

The presiding judge shall appoint qualified persons to serve as interpreters in court proceedings. It shall be the responsibility of counsel or a party in need of the services of an interpreter to notify the judge's secretary of that need at least one week in advance of the hearing. Failure to provide timely notice of this need may result in the imposition of sanctions.

Rule 5. Temporary Sessions Outside County Seat

Pursuant to A.R.S. Sec. 12-130, sessions of the Court may be held at places other than the county seat when, in the opinion of the presiding judge, the public interest so requires, provided facilities are available for such sessions. Objections to such sessions shall be heard by the Court.

Rule 6. Attire for Court Appearances

Counsel shall at all court appearances present themselves appropriately attired in a manner befitting their profession and indicative of their respect for themselves and the Court, and shall instruct their clients and witnesses of inappropriate courtroom dress. No gum chewing, food, or drinks, other than water, will be permitted in the courtroom.

GENERAL PROCEDURE

Rule 7. Appearance and Substitution of Counsel

Adherence to Rule 5.1 of the Rules of Civil Procedure is required, except when leave of Court is granted for temporary substitutions on routine matters only.

Rule 8. Arbitration

All civil cases which are filed with the Clerk of the Superior Court in which the Court finds or the parties agree that the amount in controversy does not exceed \$10,000.00, except those specifically excluded by Rules 72 through 76 of the Rules of Civil Procedure, shall be submitted to and decided by an arbitrator in accordance with the provisions of A.R.S. §§ 12-133 and Rules 72 through 76 of the Rules of Civil Procedure.

Rule 9. Case Consolidation

Unless the Court shall otherwise order, when two (2) or more cases are consolidated, the clerk shall regard the lowest case number as the controlling number of the consolidated cases and all further pleadings and papers shall be filed and docketed under that number only. Unless the Court shall otherwise specify, it will be presumed that the consolidation is for all purposes, and not merely for the purpose of trial. The Court will hear any motion to consolidate using the lower cause number.

Rule 10. Briefs, Memoranda and Argument

a. Filing, Copies and Service. When any matter is submitted to the Court for decision and the filing of briefs or memoranda is requested or allowed, the original of each such brief or memorandum shall be filed with the clerk of the court and a duplicate thereof shall be lodged with the Court and service shall be made on counsel or parties not represented by counsel as provided in the applicable parts of Rule 5, Rules of Civil Procedure.

b. Additional Duties of Counsel--Case Assigned to Visiting Judge. When a matter is assigned to a visiting judge, in addition to the above, counsel shall mail copies of all applicable pleadings, motions, affidavits and exhibits to the assigned judge.

c. Oral Argument. All requests for oral argument shall be made in writing by counsel at the time of filing such motion or answering memorandum and opposition memorandum by placing beneath the title of the document the following words: "Oral Argument Requested." When no request for oral argument is made, argument shall be allowed only by order of the Court.

d. Telephonic Argument. Oral argument by telephone conference call may be had on any motion upon prior approval by the Court. Counsel requesting the telephonic argument shall institute the call, at his client's expense, at a date and time mutually agreeable to all parties and the Court or as directed by the Court.

Rule 11. Exhibits

a. Entry Into File. Exhibits attached to a pleading or other filed paper shall be so mounted, folded, and affixed that after the pleading or paper is fastened into the Court files, they can be clearly, freely, and easily read and examined without their having to be removed from the file or loosened from their fasteners.

b. Control by Clerk. Exhibits marked for identification or introduced as evidence shall be under the control of the courtroom clerk and shall be secured in a manner prescribed by the clerk of the court during the trial period, unless otherwise ordered by the Court.

c. Return of Exhibits. Exhibits in any case may be withdrawn by written stipulation or order of the Court. After a judgment has become final and nonappealable, a person who files an affidavit setting forth that he is the owner of or lawfully entitled to the possession of an exhibit may obtain an order permitting its withdrawal. A receipt shall be filed for each exhibit withdrawn. No order shall be required when it is stipulated in open court during the progress of trial that an exhibit may be withdrawn on the filing of a certified or photostatic copy thereof.

Rule 12. Temporary Custody of Court Records

Attorneys admitted to the State Bar of Arizona may obtain temporary custody of official court files, transcripts, and exhibits for no longer than seven (7) days only upon order of the Court.

Upon execution of a receipt therefore, the attorney shall be responsible for the safety, security, and integrity of the file, transcript or exhibits in his or her custody. Neither the clerk of the court nor any of her or his deputies shall be responsible for any file transcript or exhibit released to the temporary custody of any attorney pursuant to this rule and shall not be required to accompany any files, transcripts or exhibits in the possession of attorneys for duplicating purposes.

Rule 13. Grounds for Dismissal for Failure of Prosecution

Any civil action shall be dismissed for failure to prosecute upon written motion and notice to opposing counsel, at the discretion of the Court, upon the following grounds and conditions:

- (a) Failure to comply with Rule 38.1(d) of the Rules of Civil Procedure; or
- (b) For other appropriate reasons.

Rule 14. Inactive Calendar

All civil cases in which a Motion to Set and Certificate of Readiness has not been filed within nine months after the commencement thereof shall be placed on the Inactive Calendar by the clerk of court, unless otherwise ordered by the Court. All cases remaining on the inactive calendar for two months shall be dismissed without prejudice for lack of prosecution in accordance with Rule 38.1(d) of the Rules of Civil Procedure.

Rule 15. Motions for Summary Judgment

All motions for summary judgment shall be filed not later than 60 days prior to trial, except for good cause shown and upon leave of the Court. Motions for summary judgment not timely filed will not be ruled upon by the Court.

Rule 16. Orders and Writs

No injunction, restraining order, or writ shall be signed by any judge before the petition or complaint praying for such is regularly filed in the office of the clerk of the court. The injunction, restraining order or writ shall be signed by the judge to whom it is assigned, except that, in his or her absence, any judge may sign the same. Petitions for preliminary injunctions or temporary restraining orders, except the statutory injunction in domestic relations matters, shall comply with the provisions of Rule 65 of the Rules of Civil Procedure.

Rule 17. Appeals From Justice and Municipal Courts

When an appeal is taken in a civil or criminal case from a Justice or Municipal Court to this Court, the appellant shall make arrangements with the trial court for the preparation of a typed docket sheet or a certified index itemizing the documents comprising the record on appeal. The docket sheet or index shall indicate whether or not a record of the proceedings exists and the form of that record, as an audiotape or a transcript.

PRETRIAL AND TRIAL PROCEDURES

Rule 18. Setting Cases for Trial

Any party desiring to have a civil case set for trial shall follow the procedure set forth in Rule 38.1(a), Rules of Civil Procedure. All Motions to Set and Certificates of Readiness shall certify, in accordance with the provisions of Rule 38.1(a)(3)(iii), Rules of Civil Procedure, that the parties have completed, or will have had a reasonable opportunity to complete, the procedures under Rules 26 to 37 of the Rules of Civil Procedure prior to ten days before trial.

Rule 19. Settlement Conferences

Settlement Conferences will be held as set forth in Rule 16,1. Rules of Civil Procedure.

The settlement conference memoranda will not be furnished to the other parties in the case. Information contained in the settlement conference memoranda or adduced at the settlement conference shall not be admissible at any future proceedings, pursuant to Rule 408, Arizona Rules of Evidence.

Rule 20. Pretrial Statements and Conferences--Discovery

a. Civil Pretrial Statements. Thorough pretrial statements containing all the information required by Rule 16(d), Rules of Civil Procedure, shall be filed with the Court no later than fifteen (15) days prior to the date of trial.

b. Request for Pretrial Conference. In a civil action, either party may request a pretrial conference as provided in Rule 16(b), Rules of Civil Procedure, or the Court may set a pretrial conference on its own initiative.

c. Criminal Pretrial Statement and Conference. In accordance with this rule and the Rules of Criminal Procedure, the Court may require a pretrial statement and conference in criminal cases.

d. Duty to Prepare. Preparation of the pretrial statement shall be upon initiative of the plaintiff in a civil action, or the state in a criminal action, or as otherwise directed by the Court.

e. Pretrial Conference. In both criminal and civil cases, in addition to the matters set forth in the pretrial statement, the Court will consider and counsel shall be prepared to discuss:

- (1) Motions deferred to the pretrial conference and legal issues expected to be encountered at trial.
- (2) Any matter by way of stipulation, pleading or proof that may simplify the issues or expedite the trial.
- (3) Requirements of necessity of filing trial briefs.
- (4) Number of jurors, alternates, peremptory strikes.
- (5) Exhibits.
- (6) Order of trial.
- (7) Length of trial.
- (8) The need for an interpreter.
- (9) Special rules of Court.
- (10) Requirements for proposed jury instructions or jury interrogatories.
- (11) Requirements with regard to voir dire questions.
- (12) The possibility of compromise, plea bargain or settlement; however, nothing with respect thereto shall be admissible in any future proceeding, in accordance with Rule 408, Arizona Rules of Evidence.

Rule 21. Summoning of Jurors

The clerk of the court or jury commissioner shall, not less than eight nor more than twelve days prior to the date any matter has been set for jury trial, draw the required number of jurors, who then shall be summoned for jury duty. The names of jurors excused by the Court shall not be included in the drawing of the jury for the particular matter.

Rule 22. Jury Fees

a. Assessment of Jury Fees.

(1) *Before Impanelment.* If a jury panel has been ordered for trial and a Court is available, but the case is settled or for any reason the panel is not used for that trial, jury fees will be assessed for prospective jurors if the Court is not notified of settlement or that the panel will not be needed for that trial before 12:00 noon on the day preceding the day for which the case is set for trial.

(2) *After Impanelment.* If a jury has been impaneled for a trial but the case is settled or for any reason the panel is not used for that trial, an assessment of jury fees shall be made for each juror and alternate juror impaneled for each day on which the jury was present for trial.

b. Parties Against Whom Fees Assessed. Except as otherwise provided by law, the parties may by agreement, subject to approval by the Court, designate the party or parties against whom jury fees are to be assessed. If the parties fail to so designate, the Court shall assess the jury fees equally against each side unless the Court determines that the interests of justice require assessment of jury fees in some other manner.

c. Mistrials. Jury fees for mistrials shall be fixed by the Court at the time of the mistrial, and may be assessed at the time fixed or at the time judgment is given or disposition made.

Rule 23. Conduct of Trial; Voir Dire; Instructions; Interrogatories

a. Voir Dire Questions. Areas into which the attorneys wish to inquire through voir dire to the jury shall be presented to the trial judge, in writing, no later than the Friday preceding the first day of trial.

b. Instructions--Form and Copies.

(1) All requested instructions shall be numbered and shall cite the authorities relied on by counsel in support thereof. In criminal cases, the pertinent parts of the Rules of Criminal Procedure shall apply. All requested instructions shall be submitted to the Court and opposing counsel no later than the Friday preceding the first day of trial on plain paper, double-spaced, each such paper being submitted with one instruction to a page with the title of the instruction at the top of the page; the number thereof and the authorities shall be placed on the bottom three inches of the page. Instructions which could not reasonably have been anticipated prior to trial may be submitted, with leave of Court, at the close of the evidence.

(2) Counsel shall submit for purpose of submission to the jury, in addition to the original set of instructions in the form hereinbefore specified, a duplicate set of instructions without number and citation of authorities or without any indication as to the party submitting the same.

c. Interrogatories. In those matters where interrogatories are to be submitted to the jury, they shall be submitted on plain paper, double-spaced, each such paper being without any indication as to the party or the attorney submitting the same and there shall be but one interrogatory to a sheet. The interrogatory number will be left blank.

Rule 24. Examination of Witnesses

On direct examination, counsel shall make all necessary inquiries in support of his or her case and shall confine redirect examination to those matters raised by opposing counsel on cross-examination. Recross-examination shall be confined to issues raised on redirect examination.

Rule 25. Trial Exhibits—Documents

Any documents which are to be used as exhibits at trial are to be submitted to the courtroom clerk prior to trial and marked for identification. Copies of all documentary exhibits are to be made available to the Court and opposing counsel prior to their introduction into evidence.

Rule 26. Judgments and Findings

a. Judgments. Except as to parties in default, judgments covered by Rule 58(d) of the Rules of Civil Procedure shall not be signed until the expiration of five days after the proposed form thereof has been served as all pleadings are required to be served, unless the opposite party or his or her counsel shall endorse thereon the words, "Approved as to form." Objections to the form of any judgment must be filed within five days after the proposed form has been served.

b. Findings. When findings of fact and conclusions of law are made by the Court in accordance with Rule 52(a) of the Rules of Civil Procedure, the prevailing party shall reduce the same to writing within five days from the Court's announcement, or within such further time as the Court may order, serve a copy thereof on the opposing party and file the original.

c. Objections. The opposing party shall have five days after service of said proposed findings of fact, conclusions of law, and judgment, or such further time as the Court may order, in which to file written objections thereto or to any portion thereof; and if he or she fails to do so within such period, the Court may approve the same.

Rule 27. Suspension of Rules

The Court may for good cause suspend any of these rules.

Rule 28. Title

These rules shall be entitled the Local Rules of Practice of the Superior Court of the State of Arizona in and for the County of Apache.