SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

DIVISION 5	**RE: COURT PROTOCOLS**

HONORABLE HENRY E. WHITMER	**BY:** Carrie Barton, Judicial Assistant
DIVISION 5	**DATE:** October 29, 2026

Welcome to Judge Henry E. Whitmer's court. We are in the Historic Prescott Courthouse, Third Floor, Courtroom 304. Our address is: 120 S. Cortez, Prescott, Arizona 86303. These Protocols combine my general philosophy with specific guidelines for practice before this Division. I have worked alongside and against some great attorneys during my career; professionals I respect. Over the years, I have noticed that the most effective advocates maintain reasonable positions for their clients while also showing respect for the opposing side. I expect the same level of mutual respect and courtesy between attorneys and parties in my courtroom, whether the parties are represented by an attorney or self-represented.

Courtesy to Court Staff: Please be courteous to court staff. Remember that they can be helpful to you, but they are not lawyers, and they are not permitted to provide legal advice. Furthermore, disrespect to Court staff will be addressed on the record.

Courtroom (and Virtual) Attire: Appropriate attire is expected for all proceedings, including virtual hearings and conferences.

Self-Represented Litigants: I understand that when a party is representing himself/herself without an attorney ("pro per") the process can be somewhat confusing and scary. I will do my best as the judge to explain the process to self-represented litigants or to answer questions about the process during hearings. If you have questions, it is best to ask. But please understand that as the judge, I cannot give legal advice to either party.

Self-Represented Litigants: Please note that all parties, whether self-represented or represented by an attorney, are bound by the Rules equally. A pro per litigant "is held to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer." *Higgins v. Higgins*, 194 Ariz. 266, 270 (App. 1999).

Self-Represented Litigants: If you are representing yourself in litigation without an attorney, there is a Self-Service Center located on the first floor of the Court Building where litigants can obtain information and some limited assistance with the process. You are encouraged to use this free service.

All Attorneys, Litigants, Witnesses, and Spectators: Harassment and/or discrimination on the basis of race, color, sex, religion, national origin, disability, age, or sexual orientation will not be tolerated in this Division.

Pre-Trial Practice and Management Issues

Motion Practice

No Ex Parte Communication: Any written communication with the Court, such as email, must copy the opposing party unless a specific exception allowing for ex parte communication applies.

Service Between Parties: To minimize costs and memorialize communications between parties, the Court will likely order the parties to serve pleadings, other court filings and discovery materials (to the extent feasible) by mail and email, as provided in Rule 5(c)(2)(C)&(D).

Citation to Case Law: This Division adheres to ARCAP Rule 13(f) regarding citation to case law and encourages counsel to save space by omitting parallel citations – citation to the volume and page number(s) of the official Arizona reporter, only, is sufficient. Citation of non-Arizona case law must be to the volume and page number of applicable regional or federal reporters. If a case is not available in an official Arizona reporter in an applicable regional or federal reporter, a party may provide a citation to an electronic database or another source, but should also provide a copy of, or working link to, the case.

No Combination Response/Motions: All motions, responses, replies, and other filings must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No filing will be accepted if filed in combination with another.

No Incorporation by Reference: All filings shall be fully self-contained and shall not "incorporate by reference" other separate filings for review and consideration as part of the pending filing. See, e.g. *DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999) ("adoption by reference amounts to a self-help increase in the length of the … brief. Even when a litigant has unused space…, incorporation is a pointless imposition on the

court's time. A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record").

Timely Filing and Emailed Copies: When a Minute Entry or other Order directs the parties to file a document, the Court expects that the document will be filed by the required date. Copies must be emailed to this division and provided to the other party at the time of filing.

Joint Filings: When a rule requires a document to be filed jointly, or the Court so orders, the document must be filed jointly. If an opposing party fails to participate in the joint filing in good faith, a party may file the document separately and notify the Court of the opposing party's conduct or inaction that necessitated the separate filing.

Motions for Summary Judgment: Each party is limited to one motion for summary judgment during the litigation. If appropriate, a party may request leave to file an additional motion for summary judgment. But leave to file an additional motion will be granted only upon a showing of good cause and will be the exception, not the rule. See, e.g., *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010) (acknowledging the "potential for abuse" when courts allow multiple motions for summary judgment and recognizing courts' discretion to "weed out frivolous or simply repetitive motions.").

Motions for Summary Judgment: When filing or responding to a motion for summary judgment, carefully read and comply with Rule 56(c)(3) regarding the form and substance of supporting and opposing statements of fact.

Motions for Reconsideration: Parties may file motions for reconsideration, but such motions are discouraged unless there is something new that the Court has not considered. If you simply disagree with the ruling, you are likely better off filing an appeal.

Discovery or Disclosure Disputes and/or Sanctions

Self-Represented Litigants: The Rule governing "Disclosure" (information and documents that you must provide to the other party, even if they do not ask for them) is Rule 26.1 of the Arizona Rules of Civil Procedure. You must read this Rule. The Court will hold all litigants to their disclosure obligations pursuant to Rule 26.1.

Self-Represented Litigants: The Rule generally governing "Discovery" (the process for obtaining

information and documents from the other party) is Rule 26 of the Arizona Rules of Civil Procedure. Again, you must read this Rule because the Court will hold all litigants to their discovery obligations pursuant to Rule 26.

Scheduling of Depositions: Depositions are to be scheduled with cooperation and input from the opposing party, unless the opposing party is unreasonably failing to cooperate in scheduling.

Deposition Disputes: The Court is open to resolving minor disputes during depositions. When a dispute arises during a deposition, the parties may call the Court to seek a short telephonic hearing; recognizing that it may take some time to get the judge and the clerk on the phone. The parties may therefore need to instruct the court reporter to mark the disputed portion of the transcript and proceed with the rest of the deposition until the judge and clerk are available for the call. If the parties anticipate that a particular deposition will involve multiple disputes, it is best to alert the Court to the possibility that a telephonic hearing will be needed in the days prior to the deposition.

Deposition Conduct: Parties are instructed to review Rule 30(c)(2)&(3) before a deposition and before calling the Court with a deposition dispute. Objections must be stated concisely, without argument and without suggesting an answer to the deponent. The objecting attorney must not specify the defect in the form of a question or answer unless requested by the deposing attorney. Counsel may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limit already ordered by the Court, or to present a motion under Rule 30(d)(3). Otherwise, the deponent must answer and the testimony is taken subject to any objection.

Discovery Disputes Generally: This Division requires strict compliance with Ariz.R.Civ.P. 26(d), the Expedited Procedure for Resolving Discovery and Disclosure Disputes (other than deposition disputes, discussed above). All disputes between parties that could be addressed in motions for protective order under Rule 26(c) or motions to compel discovery or disclosure under Rule 37(a) must first proceed pursuant to Rule 26(d). The Court will consider expanding the briefing from three pages to six pages upon a showing of good cause in exceptional cases.

Good Faith Certificate: Please remember that when using the procedures under Rule 26(d), or many other Rules governing the filing of motions, resolution of disputes, or seeking of sanctions, the moving party is required to "attach to the motion a separate statement certifying and demonstrating that the movant has tried in good faith to resolve the issue by conferring with, or attempting to confer with – the party against whom the motion is directed. *The consultation must be in person or by telephone and not merely by letter or email*." Rule 7.1(h), Ariz.R.Civ.P. (emphasis added).

Untimely Discovery Disputes: The Court will generally not consider discovery disputes or non-disclosure disputes that are raised for the first time after the Trial Setting Conference deadline, except for disclosures occurring for the first time after the Trial Setting Conference Deadline.

Sanctions: Sanctions are the exception, but they are nonetheless an important tool rooted in statute and the Rules of Civil Procedure. The Court will consider issuing appropriate sanctions under appropriate circumstances. Please note that when issuing a sanction in the form of attorney's fees, costs, or expenses, the Court will generally not grant requests to hold the sanction in abeyance until trial. Sanctions are meant to address specific conduct and their effect should not be diluted by combining them with other sanctions and fee awards arising out of trial.

Trial Practice and Protocol

Trial Schedule

Trial Days and Times: Trial is conducted Tuesday-Friday, 9:00 am to 4:30 pm, with no trial on Mondays. The Court takes morning and afternoon breaks of 15 minutes and a lunch break from 12:00 to 1:30. Attorneys may need to arrive early or stay later on a given day to address jury instructions or other matters. Attorneys should be in the courtroom on the first day of trial by 8:30 a.m.

Adherence to Start and End Times: I do everything in my power to stick to start and end times. I don't like to keep Court staff during lunch or after hours. Jurors cannot be kept late because of risk of missing the juror shuttle. Please plan to start on-time and end on-time each day.

Allotted Time: Time at hearings and at trial is divided equally between "both sides of the v," no matter how many plaintiffs or how many defendants. How you divide the time up on your side of the "v" is up to you.

Joint Pre-Trial Memo and/or Conference; Exhibits and Objections

Motions in Limine: Each party is limited to two motions in limine containing a maximum of four pages of facts, argument, etc. Each motion shall be limited to one issue. Remember that "[t]he primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. It should not, except upon a clear showing of non-admissibility, be used to reject evidence." State v. Superior Court, 108 Ariz. 396, 397 (1972).

Objections for Lack of Timely Disclosure: There are disclosure objections in the JPTS. The Court expects counsel to be able to promptly respond to a timeliness objection, if there is one. For example, if there is an objection to an exhibit for lack of timely disclosure, the party offering the exhibit will be expected to provide the Court the date on which the exhibit was disclosed.

Jury Selection

Voir Dire: During voir dire the Court will ask basic hardship questions and familiarity questions but will leave the majority of the questioning to the attorneys. The Court will generally not attempt to rehabilitate a potential juror, again leaving this portion of voir dire to the attorneys.

Voir Dire: In the past, the Court would generally limit each attorney to 20 minutes of questioning. However, with the elimination of peremptory strikes, the Court will not enforce a strict time limit. You may use as much time as you need, keeping in mind that it counts toward your total allotted time and that the jurors are mindful of their time as well. However, if the Court determines that you are being inefficient, the Court may warn you that your time is about to run.

Trial Practice and Procedure

Opening Statements: Do not argue during opening statements.

Use of Exhibits During Opening Statements: If any party intends to use exhibits during opening statements, the exhibits must be shown to opposing counsel at least 24 hours in advance of their use.

Juror Notebooks: Juror notebooks will be provided to the jurors, and the Court will retain them each night. Counsel may provide copies of key admitted exhibits to the jurors, but it is not required by the Court.

Courtroom Etiquette

Beverages in the Courtroom: Litigants and attorneys may have covered beverages (i.e. bottle of water with a top or a beverage in a travel mug) at counsel tables during hearings.

Recording: Each hearing is recorded through the Court's recording system. Unauthorized recording of a hearing by any means (cell phone, tape recorder, laptop, etc.) is prohibited without prior approval from the Court.

Courtesy to Opposing Party: Do not make comments at/to the other party or opposing counsel. Your comments should be directed to the Court. Do not interrupt the other party (except for proper evidentiary objections) when the other party is speaking.

Public Hearings: Court hearings are open to the public, but the public has no right to interrupt a hearing. Both verbal and non-verbal expressions of approval or disapproval from spectators are unacceptable. The Court will remove an individual from the courtroom or take similar appropriate action if he or she fails to show the parties and the Court the respect and courtesy they deserve. Parties in litigation are already in enough conflict without having family and friends adding fuel to the fire.

In closing, our Courts are the foundation of our Constitutional government. The Court is where any citizen, of any faith, race, religion, creed, or political persuasion, finds equal treatment under the law. Your participation in this great endeavor is a basic human right enshrined in our Constitution. Solemn matters are handled in Court, and I expect both myself, my staff, the litigants, and others to treat these proceedings with respect and dignity.

/S/
HON. HENRY E. WHITMER
Judge of the Superior Court