LRCiv 3.6

REMOVAL TO FEDERAL COURT

(a) Procedure. A defendant or defendants desiring to remove any civil action or criminal prosecution from a state court shall file a Notice of Removal, signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. The removing party must include the most recent version of the docket from the State Court, if available. The notice must contain an affirmative statement that a copy of the notice has been filed with the clerk of the state court from which the action or prosecution has been removed. In addition to submitting the civil cover sheet (AO Form JS-44), the removing party must also submit a "Supplemental Civil Cover Sheet for Cases Removed from Another Jurisdiction."

(b) State Court Record. The removing party must file copies of all pleadings and other documents that were previously filed with the state court, accompanied by a verification from the removing party or its counsel that they are true and complete copies of all pleadings and other documents filed in the state court proceeding. Unless the removing party files a motion requesting an extension of time for good cause, the state court record must be filed when the notice of removal is filed.

(c) Pending Motions. If a motion is pending and undecided in the state court at the time of removal, the Court need not consider the motion unless and until a party files and serves a notice of pending motion. The notice must: (1) identify the motion by the title that appears in its caption; (2) identify any responsive or reply memoranda filed in connection with the motion, along with any related papers, such as separately filed affidavits or statements of fact; and (3) state whether briefing on the motion is complete, and, if not, it must identify the memoranda or other papers yet to be filed.

(d) Jury Trial Demand. In a case removed from state court, a party must comply with Federal Rule of Civil Procedure 81(c) to preserve any right to a trial by jury.

Title VII. Judgment

F.R.Civ.P. 54. Judgment; Costs

LRCiv 54.1

COSTS: SECURITY FOR, TAXATION, PAYMENT

(a) Procedure for Filing Bill of Costs. Costs shall be taxed as provided in Rule 54(d), Federal Rules of Civil Procedure. A party entitled to costs shall, within fourteen (14) days after the entry of final judgment, unless time is extended under Rule 6(b), Federal Rules of Civil Procedure, file with the Clerk of Court and serve upon all parties, a bill of costs on a form provided by the Clerk. This bill of costs shall include a memorandum of the costs and necessary disbursements, so itemized that the nature of each can be readily understood, and, where available, documentation of requested costs in all categories must be attached. The bill of costs shall be verified by a person acquainted therewith.

(b) Objections, Appearance Not Required. Within fourteen (14) days after service of the bill of costs, a party objecting to any cost item may file with the Clerk and serve itemized objections in writing, presenting any affidavits or other evidence he or she has in connection with the costs and the grounds for the objection. Once the fourteen (14) day objection period has expired, the Clerk shall have thirty (30) days to tax the costs and allow such items as are properly allowable. In exceptional cases a party may request, by written motion, that a taxation hearing with parties present be held before the Clerk. The Clerk, on his or her own motion, may also order the parties to appear for a taxation hearing. In the absence of objection, any item listed may be taxed in the discretion of the Clerk. The Clerk shall thereupon docket and include the costs in the judgment. Notice of the Clerk's taxation shall be given by mailing a copy of the taxation order to all parties in accordance with Rule 5, Federal Rules of Civil Procedure. The taxation of costs thus made shall be final unless modified on review by the Court on motion served within seven (7) days thereafter, pursuant to Rule 54(d), Federal Rules of Civil Procedure.

(c) Security. In every action in which the plaintiff was not a resident of the District of Arizona at the time suit was brought, or, having been so, afterwards removed

from this District, an order for security for costs may be entered upon application therefor within a reasonable time upon notice. In default of the entry of such security at the time fixed by the Court, judgment of dismissal shall be entered on motion.

(d) Prevailing Party Entitlement to Costs. The party entitled to costs shall be the prevailing party. Generally, a party in whose favor judgment is rendered is the prevailing party. The prevailing party need not succeed on every issue to be entitled to costs. Upon entry of judgment on a motion for summary judgment, the party requesting the summary judgment is the prevailing party. The Court will not determine the party entitled to costs in actions terminated by settlement; parties must reach agreement on taxation of costs, or bear own costs.

(e) Taxable items.

(1) Clerk's Fees and Service Fees. Clerk's fees (see 28 U.S.C. § 1920), and service fees are allowable by statute.

(2) Fees Incident to Transcripts - Trial Transcripts. The cost of the originals of transcripts of trials or matters prior or subsequent to trial, is taxable at the rate authorized by the judicial conference when either requested by the Court, or prepared pursuant to stipulation. Mere acceptance by the Court of a copy does not constitute a request. Copies of transcripts for counsel's own use are not taxable in the absence of a special order of the Court.

(3) Deposition Costs. The reporter's charge for an original and copy of a stenographic transcript of a deposition is taxable if it was necessarily obtained for use in the case whether or not the deposition was actually received into evidence or was taken solely for discovery purposes. The cost of obtaining a copy of a stenographic transcript of a deposition by parties in the case other than the one taking the deposition is also taxable on the same basis. The reasonable expenses of the deposition reporter and a notary presiding at the taking of the depositions are taxable, including travel and subsistence. Counsel fees and other expenses incurred in arranging for and attending a deposition are not taxable. Fees for the witness at the taking of a deposition are taxable at

the same rate as for attendance at trial. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

Costs associated with a video recording are not taxable.

(4) Witness Fees, Mileage and Subsistence. The rate for witness fees, mileage and subsistence are fixed by statute (see 28 U.S.C. § 1821). Such fees are taxable even though the witness does not take the stand, provided the witness is in attendance at the Court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. Taxable transportation expenses shall be based on the most direct route at the most economical rate and means reasonably available to the witness. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the district. No party shall receive witness fees for testifying in his or her own behalf, but this shall not apply where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses. Allowance fees for a witness being deposed shall not depend on whether or not the deposition is admitted into evidence.

(5) Exemplification and Copies of Papers. The reasonable cost of copies of papers necessarily obtained from third-party records custodians is taxable. The reasonable cost of documentary exhibits admitted into evidence at hearing or trial is also taxable, including the provision of additional copies for the Court and opposing parties. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client are not taxable. All other copy costs are not taxable except by prior order of the Court.

(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The cost of maps and charts are taxable if they are admitted into evidence. The cost of photographs, 8" X 10" in size or less, are taxable if admitted into evidence, or attached to documents required to be filed and served on opposing counsel.

Enlargements greater than 8" X 10" are not taxable except by prior order of the Court. The cost of models is not taxable except by prior order of the Court. The cost of compiling maps, summaries, computations, and statistical comparisons is not taxable.

(7) Interpreter Fees. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. ~~The reasonable fee of a competent translator is taxable if the document translated is necessarily filed, or admitted into evidence, or is otherwise taxable.~~

(8) Docket Fees. Docket fees are taxable pursuant to 28 U.S.C. § 1923.

(9) Removed Cases. Fees paid to the Clerk of the State Court prior to removal are taxable in this Court.

(10) Other items may be taxed with prior Court approval.

Title X. District Courts and Clerks: Conducting Business; Issuing Orders

F.R.Civ.P. 77. Conducting Business; Clerk's Authority;

Notice of an Order or Judgment

LRCiv 77.1

LOCATIONS; HOURS OF CLERK'S OFFICES

(a) Locations. The District covers the entire State of Arizona. However, for convenience the District is divided into three divisions, each named and comprising counties as follows:

Phoenix Division: Maricopa, Pinal, Yuma, La Paz, and Gila counties.

Prescott Division: Apache, Navajo, Coconino, Mohave, and Yavapai counties.

Tucson Division: Pima, Cochise, Santa Cruz, Graham, and Greenlee counties.

(b) Schedule of Hearings. The Court shall be open permanently at Phoenix and at Tucson and will sit at Prescott and such other places when and as the Court shall designate.

(c) Place of Trial. Unless otherwise ordered by the Court, all civil and criminal cases founded on causes of action (1) arising in the Phoenix division shall be tried in Phoenix, (2) arising in the Prescott division shall be tried in Prescott, and (3) arising in the Tucson division shall be tried in Tucson. All civil and criminal cases founded on causes of action arising on the portion of the Tohono ~~O'Odham~~ O'odham Indian Reservation located in Maricopa County shall be tried in ~~Tucson~~Phoenix, unless otherwise ordered by the Court. All other civil and criminal cases founded on causes of action arising on the Tohono O'odham Indian Reservation shall be tried in Tucson, unless otherwise ordered by the Court. All civil and criminal cases founded on causes of action arising on the San Carlos Indian Reservation shall be tried in Phoenix, unless otherwise ordered by the Court.

(d) Hours of Clerk's Offices. The offices of the Clerk shall be open during regular business hours, as designated and posted by the Clerk of Court, on each day except Saturdays, Sundays, and legal holidays enumerated in Federal Rules of Civil

Procedure 6(a)(6) and 77(c)(1), when the offices are closed unless otherwise ordered by the Court.

LRCiv 79.1

CUSTODY AND DISPOSITION OF NON-ELECTRONICALLY SUBMITTED EXHIBITS, ADMINISTRATIVE RECORDS, AND SEALED DOCUMENTS

(a) Retained by Party or Attorney. All non-electronically submitted exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after trial by the party or attorney offering the exhibits, unless otherwise ordered by the Court. All non-electronically submitted administrative records offered by any party, whether or not received into evidence, in Social Security cases and other cases reviewed under the Administrative Procedure Act will be returned to counsel at the conclusion of the action, including any appeal, unless otherwise ordered by the Court.

(b) Transmitted on Appeal. In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the Clerk any non-electronically submitted exhibits to be transmitted to the appellate court as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

(c) Notice to Remove Non-electronically Submitted Exhibits and Administrative Records. If any party, having received notice from the Clerk concerning the removal of non-electronically submitted exhibits or administrative records, fails to do so within thirty (30) days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits or administrative records.

~~**(d) Sealed Documents - Generally.** Unless otherwise ordered by the Court, any sealed document, paper, case file or thing in any action where final judgment or final disposition occurred in 1990 or thereafter, will be subject to the custody and disposition processes according to (e) or (f), below, as applicable.~~

~~**(e) Sealed Documents - Actions in Which No Trial Commenced.** Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which no trial commenced shall be eligible for destruction no less than 23~~

~~years from the date of entry of final judgment or final disposition. The seal will be vacated without further action by the Court at the time of destruction.~~

~~**(f) Sealed Documents – Actions in Which the Case Was Terminated During or After Trial.** Unless otherwise ordered by the Court, any document, paper, case file or thing filed under seal in any action for which a trial commenced shall be unsealed without further action by the Court 23 years from the date of entry of final judgment or final disposition, and will remain stored as a permanent record. This Local Rule further applies to all cases consolidated pursuant to Rule 65(a), Federal Rules of Civil Procedure.~~

~~Cases filed pursuant to 18 U.S.C. § 3509 and juvenile cases, unless the record has been expunged, are exempt from this paragraph.~~

(gd) Sealed Documents – Search Warrants, Orders on Pen Registers, Orders on Trap and Trace Devices, and Mobile Tracking Device Warrants. Unless otherwise ordered by the Court, any search warrant, order on pen register, order on trap and trace device, or mobile tracking device warrant ordered sealed by a magistrate judge in a criminal matter on or after December 1, 2014, will be unsealed 180 days after the file date of the search warrant or the expiration date of the pen/trap order or tracking warrant. At least 60 days before the expiration of the sealing order, the Clerk of Court must notify the Criminal Chief at the Office of the United States Attorney, or his or her designee, of the date when the documents will be unsealed. Before the expiration of the sealing order, the government may move the court to extend the sealing order. A motion to extend a sealing order may be filed ex parte. Documents that have been unsealed may be destroyed when eligible under the Records Disposition Schedule in the *Guide to Judiciary Policy*.

LRCiv 83.3

APPEARANCE BY ATTORNEY OR PARTY; NAME AND ADDRESS CHANGES; CONTROL OF CAUSE

(a) Attorney of Record; Duties of Counsel. Except as provided below, no attorney shall appear in any action or file anything in any action without first appearing as counsel of record. ~~In any matter, even if it has gone to judgment, there must be a formal substitution or association of counsel before any attorney, who is not an attorney of record, may appear.~~ An attorney of record shall be deemed responsible as attorney of record in all matters before and after judgment until the time for appeal expires or until there has been a formal withdrawal from or substitution in the case.

(b) Withdrawal and Substitution. With the exception of a change of counsel within the same law firm or governmental law office, ~~N~~no attorney shall be permitted to withdraw or be substituted as attorney of record in any pending action except by formal written order of the Court, supported by written application setting forth the reasons therefor together with the name, last known residence and last known telephone number of the client, as follows:

(1) Where such application bears the written approval of the client, it shall be accompanied by a proposed written order and may be presented to the Court *ex parte*. The withdrawing attorney shall give prompt notice of the entry of such order, together with the name, last known residence and last known telephone number of the client, to all other parties or their attorneys.

(2) Where such application does not bear the written approval of the client, it shall be made by motion and shall be served upon the client and all other parties or their attorneys. The motion shall be accompanied by a certificate of the attorney making the motion that (A) the client has been notified in writing of the *status* of the case including the dates and times of any court hearings or trial settings, pending compliance with any existing court orders and the possibility of sanctions, or (B) the client cannot be located or for whatever other reason cannot be notified of the pendency of the motion and the status of the case.

(3) No attorney shall be permitted to withdraw as attorney of record after an action has been set for trial, (A) unless there shall be endorsed upon the application therefore, either the signature of an attorney stating that the attorney is advised of the trial date and will be prepared for trial, or the signature of the client stating that the client is advised of the time and date and has made suitable arrangements to be prepared for trial, or (B) unless the Court is otherwise satisfied for good cause shown that the attorney should be permitted to withdraw.

(4) ~~Notwithstanding the provisions of paragraph (b) of this Local Rule, a governmental law office or a private or public law firm that has appeared as counsel of record may substitute or associate an attorney who is a member of, associated with, or otherwise employed by that office or firm by timely filing a notice of substitution or association with the Court.~~ Where there has been a change of counsel in the same law firm or governmental law office, an order of substitution or association is not required; the new attorney must file a notice of substitution or association. The notice shall state the names of the attorneys who are the subjects of the substitution or association and the current address and e-mail address of the attorney substituting or associating. An occasional court appearance or filing of a pleading, motion or other document ~~as associate counsel~~ at the request of an attorney of record shall not require the filing of a notice of substitution or association. Counsel substituted or associated pursuant to this paragraph must also comply with (b)(3) above.

(c) Applicability of Rules.

(1) Anyone appearing before the court is bound by these Local Rules. Any reference in these Local Rules to 'attorney' or 'counsel' applies to parties not represented by an attorney unless the context requires otherwise.

(2) Appearance by Represented Party. Whenever a party has appeared by an attorney, that party cannot thereafter appear or act in that party's own behalf in the cause, or take any steps therein, unless an order of substitution shall first have been made by the Court after notice to the attorney of each such party, and to the opposite party. The attorney who has appeared of record for any party shall represent such party in the cause

and shall be recognized by the Court and by all the parties to the cause as having control of the client's case, in all proper ways, and shall, as such attorney, sign all papers which are to be signed on behalf of the client, provided that the Court may in its discretion hear a party in open court, notwithstanding the fact that that party has appeared or is represented by an attorney.

(d) Notice of Name and Address Changes. An attorney or unrepresented party must file a notice of a name or address change, and an attorney must also file a notice of a change of firm name or e-mail address. The notice must be filed no later than fourteen (14) days before the effective date of the change, except that an unrepresented party who is incarcerated must submit a notice within seven (7) days after the effective date of the change. A separate notice must be filed in each active case.

(e) *Ex Parte* Presentations; Duty to Court. All applications to a District Judge or Magistrate Judge of this Court for *ex parte* orders shall be made by an attorney of this Court or by an individual on that individual's own behalf. In the event that any *ex parte* matter or default proceeding has been presented to any District Judge, Magistrate Judge or judicial officer and the requested relief is denied for any reason, such matter shall not be presented to any other District Judge or Magistrate Judge or judicial officer without making a full disclosure of the prior presentation. Counsel should be governed by the provisions of ER 3.3 of the Rules of Professional Conduct, Rule 42, Rules of the Supreme Court of Arizona. For a failure to comply with the provisions of this Local Rule, the order or judgment made on such subsequent application may be vacated at any time as a fraud upon the Court.

(f) Waiver of Service of Documents. A party who has been terminated from a case by judgment, order, or stipulation of dismissal, and for whom the time to appeal the termination has expired, may waive service of any further documents in the case by filing a Notice of Waiver of Service. An attorney may waive service of documents on associated attorneys by naming them and by certifying that the attorney is authorized to waive service of documents on their behalf. A waiver of service does not effect a withdrawal of an attorney from the case under paragraph (b) of this rule.

F.R.Crim.P. 5. Initial Appearance

LRCrim 5.1

ASSIGNMENT OF CASES AND MATTERS; CRIMINAL; JUVENILE

(a) Assignment of Criminal Cases. Unless otherwise provided in these Rules or ordered by the Court, the Clerk must assign criminal cases to District Judges within each division by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys will be able to make a deliberate choice of a particular Judge. At the conclusion of the preliminary hearing and detention hearing in Tucson, or at the conclusion of the grand jury return in Phoenix, the Clerk must randomly refer the criminal case to a Magistrate Judge. The cases so assigned or referred will remain with the Judges to whom assigned or referred unless otherwise ordered by the Court. With the exception of defense counsel, any officer of the Court who determines that a new charge has been filed against a defendant who is under federal Court supervision must immediately notify the presiding judge before whom the new case is pending.

(1) New Cases in Which the Defendant is on Supervised Release or Probation. The Clerk of Court must directly assign new cases in which the defendant is already on probation or supervised release to the judge to whom the probation or supervised release case is assigned, except as provided in subsections (A), (B), and (C) below.

(A) If the judge to whom the probation or supervised release case is assigned is on Senior Status and ~~does not want~~declines to accept both cases, or if the judge is retired or otherwise unavailable, the Clerk of Court must randomly assign both the new case and the petition to revoke probation or supervised release to a District Judge, except as provided in subsections (B) and(C) below.

(B) If the new case and the probation or supervised release case are in different divisions, the new case will remain in its division, and the petition to revoke probation or supervised release must be reassigned to that division's judge, unless the judge to whom the probation or supervised release case is assigned wants to keep the petition.

(C) In the case of a consolidated plea agreement which resolves both a new felony illegal reentry after deportation, and a probation or supervised release violation for illegal reentry, alien smuggling, or drug trafficking, the judge to whom the new offense is assigned must also decide the request for unsuccessful termination of supervision, unless the judge to whom the supervised release violation is assigned objects, in which case both the new case and the supervised release case must be assigned to the objecting judge. In all such cases, defense counsel must be assigned to handle the entire consolidated proceeding, the sentencing and disposition must be consolidated, and the clerk must file the minutes in both cases.

(2) Inter-District Probation and Supervised Release Transfer Cases. The Clerk of Court must randomly assign probation or supervised release cases transferred from another district to a District Judge in accordance with these rules, except that if a criminal case involving the same defendant has been filed in this district, the transferred case must be assigned to the same District Judge.

(3) Escape Cases. In all cases filed that allege an escape in violation of 18 U.S.C. § 751 and/or § 4082, the Clerk of Court shall directly assign the escape case to the judge who issued the Judgment and Commitment that ordered the original confinement. If the judge who issued the Judgment and Commitment is on Senior Status and declines to accept the new escape case, or if the judge who issued the Judgment and Commitment is retired or otherwise unavailable, the Clerk of Court must randomly assign the new case to a District Judge. If the new escape case is in a different division than the original confinement case, the new case will remain in its division.

(b) Assignment of Juvenile Matters and Related Cases. Except as provided in subsection (1) below, the Clerk of Court must assign juvenile matters to the District Judges within each division by automated random selection and in a manner so that neither the Clerk nor any parties or their attorneys will be able to make a deliberate choice of a particular Judge. The cases so assigned will remain with the Judge to whom assigned unless otherwise ordered by the Court.

(1) Upon filing an indictment against an adult or an information against a juvenile(s) for conduct that arises from substantially the same event as a case already pending against a juvenile or an adult, the United States Attorney must file a Notice of Related Case in all affected cases. The judicial officer to whom the lowest numbered case is assigned will make a determination as to reassignment of these cases based on the factors set forth in LRCiv 42.1(a) and (d) and, if appropriate, direct the Clerk to reassign the cases accordingly.

(2) If there are multiple juveniles charged with conduct that arises from substantially the same event, the United States Attorney must file a Notice of Related Case with each juvenile information. The judicial officer to whom the lowest numbered case is assigned will make a determination as to reassignment of these cases based on the factors set forth in LRCiv 42.1(a) and (d) and, if appropriate, direct the Clerk to reassign the cases accordingly.

(3) If the government moves to transfer a juvenile to adult status and the motion to transfer is granted, the Clerk of Court must reassign the case and any related cases by automated random selection to one District Judge upon return of an indictment by the grand jury.

(c) Assignment of Misdemeanor Cases. All misdemeanor cases filed by indictment, complaint, or information must be assigned to a Magistrate Judge who will proceed in accordance with 18 U.S.C. § 3401 and Rule 58 of the Federal Rules of Criminal Procedure. Class A misdemeanor cases filed by indictment or information must be assigned to a Magistrate Judge by automated random selection, with the exception of cases brought before the Magistrate Judges sitting in Flagstaff and in Yuma, which must be directly assigned such cases. In the Phoenix Division, Class B and C misdemeanors must be assigned to the Magistrate Judge who signed the complaint. In the Tucson Division, misdemeanors initiated by complaint must be assigned to the Magistrate Judge who signed the complaint but may be heard by any Magistrate Judge designated to try misdemeanors. Any Magistrate Judge may act in the absence or unavailability of the assigned Magistrate Judge. In the case of a Class A misdemeanor, if the defendant does

not waive trial, judgment, and sentencing before a District Judge of the District Court and does not consent to those proceedings before the Magistrate Judge, the case will be promptly referred to the Clerk of Court for assignment to a District Judge and the defendant will be directed to appear before the assigned District Judge.

(d) Temporary Reassignment of Cases. With regard to temporary reassignment of cases above, see Rule 3.~~8~~7(g) of the Local Rules of Civil Procedure.

(e) Cases Refiled After Dismissal. With regard to cases refiled after dismissal, see Rule 3.~~8~~7(a)(2) of the Local Rules of Civil Procedure.

(f) Voluntary Judicial Reassignment of Cases. With regard to voluntary judicial reassignment of cases, see Rule 42.1(e) of the Local Rules of Civil Procedure.

(g) Assignment of Judge to Changes of Plea Hearings. All changes of plea are automatically referred to an available United States Magistrate Judge who shall, provided that the defendant and government consent in writing, thereafter conduct plea proceedings and make findings and recommendations pursuant to Rule 11, Federal Rules of Criminal Procedure.