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8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

11 **PETITION TO AMEND RULE**
12 **8.1(d) OF THE ARIZONA RULES**
13 **OF CIVIL PROCEDURE**

Supreme Court No. R-25-

PETITION

14 Pursuant to Rule 28(a) of the Arizona Rules of Supreme Court, the State Bar
15 of Arizona (the “State Bar”) hereby petitions the Court to amend Rule 8.1(d) of the
16 Arizona Rules of Civil Procedure.
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18 Rule 8.1(d), which is entitled “Assignment and Management of Commercial
19 Cases,” has since 2017 allowed each county to establish a specialized commercial
20 court. To date, only Maricopa County has opted in to the program. The Rule spells
21 out the procedure by which a case is assigned to the commercial court. In each
22 instance it requires a party to request assignment within a relatively tight timeframe.
23 But what happens when a case is commenced in a county that does not have a
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1 commercial court and is subsequently transferred into a county that does, and the
2 case meets all of the eligibility requirements to be in the commercial court?
3 Presently, the Rule does not provide a mechanism for assignment to the commercial
4 court under these circumstances. The Petition proposes amending Rule 8.1(d) to
5 provide that mechanism.
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7 The attached **Exhibit A** contains a red-lined version of proposed amended
8 Rule 8.1(d), and attached **Exhibit B** contains a clean version of proposed amended
9 Rule 8.1(d).
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11 **I. BACKGROUND**

12 This Petition has its genesis in the fact pattern described above. A member of
13 the State Bar encountered this situation and was unable to have his otherwise-eligible
14 case placed in the commercial court in Maricopa County after it had been transferred
15 there from a county that does not have a commercial court. The member
16 subsequently contacted the Arizona State Bar's Committee on Civil Practice and
17 Procedure and requested that the Committee consider whether to recommend
18 amendment of the Rule. The Committee appointed a subcommittee consisting of two
19 judges who have presided over the commercial court, commercial court
20 practitioners, and member of the Maricopa County clerk's office to look into this
21 issue, as well as Rule 8.1 generally. After consulting with additional commercial
22 court judges and more practitioners, the subcommittee reported that Rule 8.1 is
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1 functioning well in Maricopa County and should not be amended generally, but that
2 the issue raised by the State Bar member was well taken, and the Rule should be
3 amended to address that situation. The Committee agreed, as did the State Bar Board
4 of Governors, which resulted in this Petition.
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6 Petitioner does not know the exact number of cases that will be affected by
7 the proposed amendment but estimates that it is in the range of five to fifteen per
8 year. The proposed amendment is drafted in such a way that it is focused on those
9 limited number of cases and keeps the remaining structure of Rule 8.1 intact.
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11 **II. THE PROPOSED AMENDMENT TO RULE 8.1(d).**

12 Rule 8.1 contains seven subsections, enumerated as (a) through (g). The
13 proposed amendment is to subsection (d) only; this subsection is entitled
14 “Assignment of Cases to the Commercial Court.”
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16 The Rule currently allows both “Plaintiffs” and “Other Parties” to initiate the
17 process by which a case is placed in commercial court, but it assumes that the case
18 was commenced in a county that has a commercial court. *See* Ariz. R. Civ. P.
19 8.1(d)(2), (3). The proposed amendment adds a new subsection, (d)(4), that also
20 gives this authority to “Parties in a Case Commenced in a County that Does Not
21 Have a Commercial Court.” (It also amends the language of subsections (d)(2) and
22 (d)(3) to specify that the current procedure still applies to a “Case Commenced in
23 a County that Has a Commercial Court.”)
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1 New proposed subsection (d)(4) then provides the timing and mechanism for
2 placing these transferred cases in commercial court. As with subsections (d)(2)
3 and (d)(3), new subsection (d)(4) has a relatively tight timeframe. It requires any
4 party requesting assignment to do so “within 20 days after notice of assignment of
5 a judicial officer to the case, . . .” The reason that “notice of assignment of a judicial
6 officer” begins the proposed 20-day period is that such notice is presently given to
7 all parties promptly upon transfer and gives an equal chance to all to request
8 assignment.
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11 Considering the addition of subsection (d)(4), the remaining subsections of
12 Rule 8.1(d) are numbered and now consist of 8.1(d)(5) through 8.1(d)(9).
13 Renumbered section (d)(5), which is entitled “Assignment,” is amended to include
14 assignment under new subsection (d)(4); it is also amended non-substantively to
15 expressly enumerate the now-three available means of assignment under,
16 respectively, subsection (d)(2), subsection (d)(3), and new subsection (d)(4).
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21 **CONCLUSION**

22 The commercial court has been an outstanding success. There is good reason
23 to make it available to all qualifying cases, regardless of where they were
24 commenced. The amendment proposed by this Petition would do so. For this reason,
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1 the State Bar respectfully petitions this Court to amend Ariz. R. Civ. P. 8.1(d) as set
2 forth in the attached Exhibits.

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4 RESPECTFULLY SUBMITTED this 10th day of January, 2025.

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7 Lisa M. Panahi
8 General Counsel
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10 Electronic copy filed with the
11 Clerk of the Supreme Court of Arizona
12 this 10th day of January, 2025.

13 by: PSequin
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EXHIBIT

Exhibit A

(Please note: deletions are reflected by ~~striketrough~~ and additions are reflected by underline.)

Rule 8.1. Assignment and Management of Commercial Cases

(a) – (c) [No changes.]

(d) Assignment of Cases to the Commercial Court.

(1) *Request.* A party to an eligible commercial case may request assignment of the case to the commercial court.

(2) *By Plaintiff in a case commenced in a county that has established a commercial court.* A plaintiff seeking assignment of an eligible case to the commercial court must do so at the time of filing the complaint by (A) including in the initial complaint's caption the words “commercial court assignment requested,” and (B) if the complaint is not electronically filed, completing a civil cover sheet that indicates the action is an eligible commercial case.

(3) *By Other Parties in a case commenced in a county that has established a commercial court.* If a plaintiff has not sought assignment to the commercial court, another party, within 20 days after that party's appearance, may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.

(4) *By parties in a case commenced in a county that has not established a commercial court.* In a case that has been transferred to a county that has established a commercial court from a county that has not established a commercial court, within 20 days after notice of assignment of a judicial officer to the case, any party may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.

(54) *Assignment.* Upon the filing of a complaint by a plaintiff requesting assignment to the commercial court under (d)(2), or the filing by another party of a Notice Requesting Assignment to the Commercial Court under (d)(3), the case will be assigned to the commercial court.

(65) *Transfer out of Commercial Court by the Presiding Judge.* After assignment of a case to the commercial court, if the commercial court judge determines the

matter is not an eligible commercial case, then the judge may either keep the case or request that the presiding judge or designee transfer the case out of the commercial court. If the presiding judge or designee agrees to transfer the case out of the commercial court, the presiding judge or designee may either leave the case with the judge to whom it is currently assigned or reassign the case to a general civil court.

(76) Discretion of Presiding Judge. The presiding judge or designee may reassign any case that qualifies under Rule 8.1(b)(6),(7), (10), or (11) to a general civil court.

(87) Judicial Request to Transfer to the Commercial Court. Within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may request the presiding judge or designee to transfer a case to the commercial court if that judge determines the matter is an eligible commercial case.

(98) Complex Cases. Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to the Maricopa County complex civil litigation program under applicable local rules.

(e)-(g) [No change.]

EXHIBIT

Exhibit B

Rule 8.1. Assignment and Management of Commercial Cases

(a) – (c) [No changes.]

(d) Assignment of Cases to the Commercial Court.

(1) *Request.* A party to an eligible commercial case may request assignment of the case to the commercial court.

(2) *By Plaintiff in a case commenced in a county that has a commercial court.* A plaintiff seeking assignment of an eligible case to the commercial court must do so at the time of filing the complaint by (A) including in the initial complaint's caption the words “commercial court assignment requested,” and (B) completing a civil cover sheet that indicates the action is an eligible commercial case.

(3) *By Other Parties in a case commenced in a county that has a commercial court.* If a plaintiff has not sought assignment to the commercial court, another party, within 20 days after that party's appearance, may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.

(4) *By parties in a case commenced in a county that does not have a commercial court.* In a case that has been transferred to a county that has a commercial court from a county that does not have a commercial court, within 20 days after notice of assignment of a judicial officer to the case, any party may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.

(5) *Assignment.* The case will be assigned to the commercial court upon the filing (i) of a complaint by a plaintiff requesting assignment to the commercial court under (d)(2), (ii) by another party of a Notice Requesting Assignment to the Commercial Court under (d)(3), or (iii) by any party of a Notice Requesting Assignment to the Commercial Court under (d)(4).

(6) *Transfer out of Commercial Court by the Presiding Judge.* After assignment of a case to the commercial court, if the commercial court judge determines the matter is not an eligible commercial case, then the judge may either keep the case or request that the presiding judge or designee transfer the case out of the commercial court. If the presiding judge or designee agrees to transfer the case out of the commercial court, the presiding judge or designee may either leave the case

with the judge to whom it is currently assigned or reassign the case to a general civil court.

(7) *Discretion of Presiding Judge.* The presiding judge or designee may reassign any case that qualifies under Rule 8.1(b)(6),(7), (10), or (11) to a general civil court.

(8) *Judicial Request to Transfer to the Commercial Court.* Within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may request the presiding judge or designee to transfer a case to the commercial court if that judge determines the matter is an eligible commercial case.

(9) *Complex Cases.* Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to the Maricopa County complex civil litigation program under applicable local rules.

(e)-(g) [No change.]