

David K. Byers, Director
Administrative Office of the Courts
1501 W. Washington St.
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO PERMANENTLY)
ADOPT RULES 8(h)(3), 8(i), 16.3,) Supreme Court No. R-10-____
and 39.1, ARIZONA RULES OF)
CIVIL PROCEDURE)
)
)
_____)

Petitioner respectfully petitions this Court to permanently adopt Rules 8(h)(3), 8(i), 16.3, and 39.1 of the Arizona Rules of Civil Procedure. The text of these rules is set out in the Appendix.

I. Background. Administrative Order 2002-107 was entered on November 22, 2002. This Order authorized the establishment of a complex civil litigation pilot program in Maricopa County. To facilitate the process of complex litigation, this Order also adopted on an “experimental” basis the four rules of civil procedure that are the subject of the instant petition:

Rule 8(h): Classification of civil actions (a new paragraph 3)

Rule 8(i): Complex civil litigation program determination

Rule 16.3: Initial case management conference in cases assigned to the complex civil litigation program

Rule 39.1: Trial of cases assigned to the complex civil litigation program

Pursuant to Administrative Order 2002-107, these experimental rules, the pilot program, and a newly established Complex Civil Litigation Court Evaluation Committee were to end on December 31, 2004. However, they were all extended by subsequent Orders: number 2004-27 (an extension until December 31, 2006), number 2006-123 (an extension until December 31, 2008), number 2009-11 (an extension until December 31, 2009), and number 2009-30 (an extension until December 31, 2010.)

On December 7, 2010, the Arizona Judicial Council approved recommendations contained in a report submitted by the Complex Civil Litigation Court Evaluation Committee, including: (1) that the complex civil litigation program be made a permanent feature of the superior court; and (2) that the four experimental rules concerning complex civil litigation be adopted on a permanent basis.

On December 10, 2010, the Court entered Administrative Order No. 2010-126. This Administrative Order extended the Complex Civil Litigation Pilot Program in the Maricopa County Superior Court, and Rules 8(h)(3), 8(i), 16.3, and 39.1, until further order of the Court, thereby allowing for the instant rule petition

to be filed, circulated for comment, and considered by the Court at its September 2011 Rules Agenda.

II. Content of the proposed rules. This petition requests that four civil rules for complex civil litigation, which were previously adopted by administrative order, now be adopted pursuant to Rule 28 of the Rules of the Supreme Court. These rules are set out in the Appendix as they are currently propounded. This petition does not seek changes to the substantive content of these rules. However, this petition requests minor revisions to Rule 8(h)(3), and formatting changes and other minor revisions in Rules 8(i) and 16.3, as shown in the Appendix.

Petitioner is also requesting a simple change in the comments to Rules 8(i) 16.3, and 39.1. Petitioner proposes that the word “experimental” in each of these comments be deleted. The proposed deletions are also shown in the Appendix to this petition.

III. Comments. Although the request for permanent adoption of the complex litigation rules has been presented to the Arizona Judicial Council, this petition has not otherwise been circulated for comment prior to filing.

IV. Conclusion. Petitioner requests that Rules of Civil Procedure 8(h)(3), 8(i), 16.3, and 39.1, which concern complex case procedures, be permanently adopted, with the modifications set out in the Appendix.

RESPECTFULLY SUBMITTED this ____ day of December, 2010.

By _____
David K. Byers, Director
Administrative Office of the Courts
1501 W. Washington Street
Phoenix, AZ 85007

Appendix

Deletions are shown by ~~striketrough~~. Additions are shown by underline.

Rule 8(h). Civil Cover Sheets; Classification of Civil Actions

(1) When filing the initial complaint or petition in a civil action, the plaintiff shall complete and submit a Civil Cover Sheet in a form approved by the Supreme Court. The Civil Cover Sheet shall contain the following: plaintiff's correct name and mailing address; the name of plaintiff's attorney and bar number; the defendant's name(s), the nature of the civil action or proceeding; the main case categories and subcategories designated by the Administrative Director; whether the action meets the criteria for a complex action listed in Rule 8(i); and such other information as the Supreme Court may require. The superior court in each county may, with the approval of the Supreme Court, adopt a local rule requiring that additional information be provided in an Addendum to the Civil Cover Sheet. The Civil Cover Sheet shall be maintained on the website of the Administrative Office of the Courts.

(2) Writs of garnishment do not require a Civil Cover Sheet. Writs of garnishment shall include under the caption of the petition or complaint whichever one of the following notations is applicable:

- (A) Federal exemption
- (B) Enforce order of support
- (C) Enforce order of bankruptcy
- (D) Enforce collection of taxes
- (E) Non-earnings.

(3) In those counties in which a complex civil litigation program has been established, in addition to the ~~the~~ Civil Cover Sheet designation required by paragraph (1), the caption shall also identify the action as complex if the action meets the criteria listed in Rule 8(i).

Rule 8(i). Complex Civil Litigation Program Designation

(1) **Definition.** In those counties in which a complex civil litigation program has been established, a “complex case” is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.

(2) **Factors.** In deciding whether a civil action is a complex case under ~~subdivision~~ ~~(a)~~ paragraph (1), the court shall consider the following factors:

(A) ~~N~~numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;

(B) ~~M~~management of a large number of witnesses or a substantial amount of documentary evidence;

(C) ~~M~~management of a large number of separately represented parties;

(D) ~~E~~coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;

(E) ~~S~~substantial postjudgment judicial supervision;

(F) ~~T~~the case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law;

(G) ~~I~~inherently complex legal issues;

(H) ~~F~~factors justifying the expeditious resolution of an otherwise complex dispute; and

(I) ~~A~~any other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) **Procedure for designating a complex case.** At the time of filing the initial complaint, a plaintiff may designate an action as a complex case by filing a motion and separate certification of complex case identifying the case attributes outlined in paragraph (2) justifying the designation. The certification shall be in a form

approved by the Supreme Court as set forth in paragraph (8) of this rule and must be served on the defendant along with the motion at the time of service of the complaint. Plaintiff's certification, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's certification of complexity or controverting certification.

The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of Rule 8(i) of the Arizona Rules of Civil Procedure; that the signer has read the certificate of complexity or controverting certificate; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to complexity is not set forth for any improper purpose. The provisions of Rule 11(a) of these Rules apply to every certification of complexity filed under this Rule.

(4) Procedure for opposing designation. If a plaintiff has certified a case as complex and the court has not previously declared the action to be a complex case, and the defendant disagrees with the plaintiff's assertion as to complexity, the defendant shall file and serve no later than that party's first responsive pleading a response to plaintiff's motion and a controverting certification that specifies the particular reason for the defendant's disagreement with plaintiff's certificate.

(5) Designation by defendant or joint designation. A defendant may designate an action as a complex case if the plaintiff has not done so and if the court has not already made a ruling in this matter by filing a motion and the certification of complex case described in paragraph (3) at or before the time of filing defendant's first responsive pleading and serving them upon the plaintiff. The parties may join in designating an action as a complex case by filing a joint motion and certification of complex case with or before the filing of defendant's first responsive pleading.

(6) Action by court. The presiding judge of the court or designee shall decide, with or without a hearing, whether the action is a complex case within 30 days after the filing of the response to the designating party's motion. The court may decide on its own motion, or on a noticed motion by any party, that a civil action is a complex case or that an action previously declared to be a complex case is not a complex case. This ruling may be made at any time during the pendency of an action, for good cause shown. If the court finds that an attorney or party has made an allegation as to complexity which was not made in good faith, the court, upon motion or upon its own initiative, shall make such orders with regard to such

conduct as are just, including, among others, any action authorized under Rule 11(a) of these Rules.

(7) Not Appealable. Parties shall not have the right to appeal the court's decision regarding the designation of an action as complex or noncomplex.

(8) Program Designation Certification Form. The certification of a complex case shall be substantially in the following form:

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

_____ ,)	Case No. _____
Plaintiff)	
vs.)	<input type="checkbox"/> Certification of Complexity
)	<input type="checkbox"/> Joint Certification of Complexity
)	<input type="checkbox"/> Contravening Certification
_____ ,)	
Defendant)	
_____)	

- The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:
 - Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve
 - Management of a large number of witnesses or a substantial amount of documentary evidence
 - Management of a large number of separately represented parties
 - Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court: _____
 - Substantial postjudgment judicial supervision
 - The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law
 - Inherently complex legal issues
 - Factors justifying the expeditious resolution of an otherwise complex dispute
 - The following other factor(s) warranting designation as a complex case, in the interest of justice: _____

- The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:
 - _____
 - _____
 - _____

Dated this ___ day of _____, 200 ___.

(Attorney for) (Plaintiff) (Defendant) (Attorney for) (Plaintiff) (Defendant)

[This certification must be accompanied by a motion]

COMMENT TO ~~EXPERIMENTAL~~ RULE 8(i)

~~Experimental~~ Rule 8(i) is intended to establish a process by which the parties can alert the court to the complex nature of their dispute. However, the determination that a case is, in fact, eligible for the complex litigation program is to be made by the presiding judge or designee. The parties are not to self-select in the absence of a determination by the court on good cause shown.

Justification for this rule: This rule sets the standard for determining whether a case is eligible for participation in the complex case program. It also sets out a process for designating a case as complex and for contesting the designation. A ruling on whether a case is eligible for the complex case program is not appealable to promote early final resolution of the issue of eligibility for participation in the program. This is in keeping with one of the overall goals of the program: to achieve finality for complex cases in an expedited manner.

Rule 16.3. Initial Case Management Conference in Cases Assigned to the Complex Civil Litigation Program

(a) Subjects for Consideration. Once a case is determined to be a complex civil case, an initial case management conference with all parties represented shall be conducted at the earliest practical date, and a Case Management Order issued by the court promptly thereafter. Among the subjects that should be considered at such a conference are:

- (1) ~~the~~ Sstatus of parties and pleadings;
- (2) ~~D~~etermining whether severance, consolidation, or coordination with other actions is desirable;
- (3) Sscheduling motions to dismiss or other preliminary motions;
- (4) Sscheduling class certification motions, if applicable;
- (5) Sscheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master;
- (6) Issuing protective orders;
- (7) ~~A~~any requirements or limitations for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
- (8) ~~A~~any measures the parties must take to preserve discoverable documents or electronically stored information;
- (9) ~~A~~any agreements reached by the parties for asserting claims of privilege or of protection as to trial-preparation materials after production;
- (10) ~~A~~appointing liaison counsel and admission of non-resident counsel;
- (11) Sscheduling settlement conferences;
- (12) ~~N~~notwithstanding Rule 26.1, the establishment and timing of disclosure requirements;

(13) ~~S~~Scheduling expert disclosures and whether sequencing of expert disclosures is warranted;

(14) ~~S~~Scheduling dispositive motions;

(15) ~~A~~Aadopting a uniform numbering system for documents and establishing a document depository;

(16) ~~D~~Determining whether electronic service of discovery materials and pleadings is warranted;

(17) ~~O~~Organizing a master list of contact information for counsel;

(18) ~~D~~Determining whether expedited trial proceedings are desired or appropriate;

(19) ~~S~~Scheduling further conferences as necessary;

(20) ~~U~~Use of technology, videoconferencing and/or teleconferencing;

(21) ~~D~~Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof; and

(22) ~~S~~Such other matters as the court or the parties deem appropriate to manage or expedite the case.

(b) Meeting of Parties Before Conference. Before the date set by the court for the initial case management conference, all parties who have appeared in the action, or their attorneys, shall meet and confer concerning the matters to be raised at the conference, shall attempt in good faith to reach agreement on as many case management issues as possible, and shall submit a joint report to the court no later than seven (7) days before the initial case management conference. A party who fails to participate in good faith shall be subject to sanctions.

(c) Purpose of Conference. The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(d) Establishing Time Limits. Time limits should be regularly used to expedite major phases of complex civil cases. Time limits should be established early, tailored to the circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference shall be set by the court as early as possible with a trial date to follow within 60 days of the final pre-trial conference.

(e) Commencement of Discovery. Absent an order of the court, or by stipulation of the parties filed with the court, no party may initiate discovery or disclosure in a complex civil case until the court has issued a Case Management Order following the initial case management conference.

COMMENT

Justification for this rule. Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. ~~Experimental~~ Rule 16.3 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

Case Management Resources. In considering procedures for management of a complex civil case, the court, in its discretion, may look for guidance to the Manual for Complex Litigation published by the Federal Judicial Center and to similar complex litigation manuals used by courts in other jurisdictions.

Rule 39.1. Trial of Cases Assigned to the Complex Civil Litigation Program.

[No change to the existing text of Rule 39.1.]

The court should employ trial procedures as are deemed necessary or appropriate to facilitate a just, speedy and efficient resolution of the case, including, but not limited to, time limits and allocation of trial time, sequencing of evidence and arguments, bifurcation of issues or claims, advance scheduling of witnesses and other evidence, pre-trial admission of exhibits or other evidence, electronic presentation of evidence, jury selection and juror participation issues and other means of managing or expediting the trial of a complex case.

COMMENT

Justification for this rule. Rule 39.1, like Rule 16.3, is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. ~~Experimental~~ Rule 39.1 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.