

Report to the Arizona Supreme Court  
By the  
Task Force on Rule 13-0017 (Civil Case Processing)  
August 7, 2013

After being established by the Supreme Court in May of 2013, the Task Force on Rule 13-0017 (“the Task Force”) met twice during May and June in an effort to identify areas of agreement and disagreement regarding the State Bar’s proposal in R-13-0017. The members of the Task Force were: Dave Byers, Chair; Judges Peter Swann, Charles Harrington, Kenneth Lee, Jeffrey Coker, and John Rea; David Steelman, Principal Consultant, National Center for State Courts; William Klain and Brian Pollock; Kent Batty, Administrator, Superior Court in Pima County; and Marcus Reinkensmeyer, Paul Julien, Mark Meltzer, Theresa Barrett, and Patience Huntwork.

Following a meeting of the Task Force on June 25, 2013, a Drafting Subcommittee of the Task Force (“the Subcommittee”) met periodically throughout July to draft an amended proposal that would address the diverse viewpoints represented on the Task Force. The Subcommittee was made up of Marcus Reinkensmeyer, Chair, and Judge Peter Swann, Bill Klain, Brian Pollock, Mark Meltzer, Theresa Barrett, and Patience Huntwork.

The Subcommittee took into account public commentary critical of the State Bar’s Amended Petition, nationally-recognized “best practices,” and writings and consultations of David Steelman in reviewing the Arizona rules proposal. Finally, the Subcommittee was mindful of the case-processing time standards currently under development by a Supreme Court Committee chaired by Justice Robert Brutinel.

After reviewing recommendations by the Subcommittee, the Task Force as a whole met on August 2, 2013 and unanimously agreed upon proposed amendments satisfactory to all of the diverse viewpoints of the Task Force participants. The Task Force’s ultimate work product, attached hereto as **Exhibit A**, consists of a redraft of the amendments proposed by the State Bar’s Petition and Amended Petition. Explanatory notes regarding the Task Force’s redraft are set forth below.

Task Force Recommendation #1: The Task Force recommends that the title of existing Rule 16, which is now “Pre-Trial Conferences; Scheduling; Management,” be amended to “Scheduling and Management of Cases.” The title of paragraph (a) of Rule 16 would be changed from “Pretrial conferences; objectives” to “Objectives of Case Management.” The existing material in 16(a) related to pretrial conferences would be deleted in favor of a prefatory sentence stating, “In accordance with Rule 1, the court shall manage a civil action with the following objectives.” The existing list of objectives of a pretrial conference would be updated and substantially expanded to set forth general goals of civil case management.

Task Force Recommendation #2: The Task Force recommends that new Rule 16(b) be entitled “Joint Report and Proposed Scheduling Order.” It would describe the parties’ obligation to confer in good faith on, and jointly file with the court, both a Joint Report and a Proposed

Scheduling Order that would set forth specific dates for the principal pretrial deadlines. Exceptions to that obligation for types of civil matters deemed inappropriate for treatment under Rule 16(b) would be listed in 16(b)(1); i.e., medical malpractice cases, arbitration cases, complex cases, and a list of case categories usually designated for specialized disposition.

Task Force Recommendation #3: The Task Force recommends changing the Amended Petition's deadline for conferring on the Joint Report and the Proposed Scheduling Order from "no later than 14 days after the deadline for serving initial disclosures ... or 180 days after commencement of the action, whichever occurs first" to "no later than 60 days after any defendant has filed an answer ... or 180 days after commencement of the action, whichever occurs first." The deadline for filing the Joint Report and the Proposed Scheduling Order would be the same as in the Amended Petition: "No later than 14 days after the parties confer." However, all references to "meet and confer" would be changed to simply "confer," to clarify that parties do not need to meet face to face.

Task Force Recommendation #4: To implement Differentiated Case Management principles, the Task Force recommends adding an entirely new subparagraph (3) of Rule 16(b) governing the form of the Joint Report and the Proposed Scheduling Order. This subparagraph would require parties to file their Joint Report and their Proposed Scheduling Order on forms approved by the Supreme Court and set forth in Rule 84. The forms would be entitled Expedited Case (Forms 11(a) and (b)), Standard Case (Forms 12(a) and (b)), and Complex Case (Forms 13(a) and (b)). The Task Force has prepared six proposed forms for consideration by the Court. At the request of any party, a court could designate any case as Expedited, Standard, or Complex. The Task Force recommends adoption of a provision at the end of Rule 16(b) (3) that "[t]he court shall endeavor to conduct trial in Expedited Cases within 12 months after the commencement of the action." Under this draft, cases designated "expedited" would involve streamlined presentations of evidence and be offered the opportunity for faster trial settings.

Task Force Recommendation #5: The Task Force would revise the text in the last paragraph of the Amended Petition's Rule 16(b) by, first, deleting the requirement of a court's finding "good cause shown" and, second, changing the ADR deadline from 13 months to a more realistic 15 months. The resulting provision would read:

"Unless otherwise ordered by the court, the parties' Proposed Scheduling Order shall state the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 15 months after the commencement of the action."

Task Force Recommendation #6: As with the Amended Petition, the Task Force's version would entitle Rule 16(c) "Scheduling Orders." The trigger for entry of a Scheduling Order would continue to be "as soon as practicable" after receiving the Joint Report and the Proposed Scheduling Order but the alternative deadline would be the holding of a "Scheduling Conference" instead of a comprehensive pretrial conference. Under the Task Force's proposal, Comprehensive Pretrial Conferences would be replaced by "Scheduling Conferences" except in medical malpractice cases, where they are mandatory. Dates established in the Scheduling Order

that govern court filings or hearings would be subject to modification only for good cause and with court consent. Once a trial date is set, it could be modified only pursuant to Rule 38.1.

Task Force Recommendation #7: The good cause finding required by the State Bar’s Amended Petition under its proposed amendment to Rule 16(c) in order to support a trial setting without engagement in a settlement conference or private mediation would be deleted and the court granted discretion to excuse the requirement. The new recommended language in Rule 16(c) would be as follows:

“Absent leave of court, no trial shall be set unless the parties certify that they engaged in a settlement conference or private mediation or that they will do so by a date certain established by the court. “

Also, the Task Force recommends that the Court add a comment to the trial-setting provisions of 16(c) stating:

**Comment to 2014 Amendment**

A primary goal of civil case management is the creation of public confidence in a predictable court calendar. Courts should avoid overlapping trial settings that necessitate continuances when the court is unable to hold a trial on the date scheduled. Continuances of scheduled trial dates impose unnecessary costs and inconvenience when counsel, parties and witnesses are required to engage in redundant preparation. Although early trial settings may be appropriate, a court should employ a case management system that ensures it will be in a position to conduct each trial on the date it has been set.

Task Force Recommendation #8: The Task Force would add an additional topic in Rule 16(d), to be both discussed between the parties under Rule 16(b) and with the court at a Rule 16(d) Scheduling Conference: “[W]hich form of Joint Report and Scheduling Order is appropriate under Rule 16(b)(3).”

Task Force Recommendation #9: The Task Force recommends making no change to the provisions on medical malpractice cases with the exceptions of the renumbering of Rule 16(c) to Rule 16(e) and the change set forth in Recommendation #15 below.

Task Force Recommendation #10: The Task Force recommends replacing references to “Pretrial Conference,” “Final Pretrial Conference,” and “Comprehensive Pretrial Conference,” with “Scheduling Conference,” “Trial-Setting Conference,” and “Trial Management Conference,” respectively. (“Comprehensive Pretrial Conference” is retained, however, in the provisions relating to medical malpractice cases.)

Task Force Recommendation #11: The Task Force would add a new Rule 16(f) entitled “Trial-Setting Conference.” It would provide that, if the court has not already set a trial

date in the Scheduling Order or otherwise, it shall “hold a Trial-Setting Conference, as set by the Scheduling Order, for the purpose of setting a trial date.” Topics to be discussed at this conference are specifically listed. If for any reason a trial date is not set at the Trial-Setting Conference, the court is required to schedule another Trial-Setting Conference “as soon as practicable.”

Task Force Recommendation #12: The Task Force recommends that the existing provisions governing the Joint Pretrial Statement be expanded by the addition of provisions mandating a “Trial Management Conference,” the nomenclature that would take the place of the current “final pretrial conference.” The Task Force recommends changing the deadline for filing the Joint Pretrial Statement from “five days before the date of the final pretrial conference, or if no conference is scheduled, five days before trial” (under the existing rule) to “ten days before the date of the Trial Management Conference, or if no conference is scheduled, ten days before trial.” A provision would be added to clarify that “the Joint Pretrial Statement shall be prepared by the parties as a single document.” References in the existing rule to “Final Pretrial Conference” would be changed to “Trial Management Conference.”

Task Force Recommendation #13: The Task Force recommends amending the rule on Sanctions, current Rule 16(f)/proposed Rule 16(i), as revised by the Amended Petition, only by inserting references to the Scheduling and Management Conferences.

Task Force Recommendation #14: The Task Force recommends amending Rule 16.1(a) in two ways. First, the Task Force’s proposal would allow parties to request a settlement conference at any time instead of “after the parties have met and conferred regarding case management under Rule 16(b), or as set forth in the scheduling order” (the Amended Petition’s version). Second, it would remove the language making it mandatory (absent good cause) for the court to order a scheduling conference upon request of any party, and instead grant the court discretion to order a settlement conference. Thus the Task Force version would grant the court broad discretion concerning the holding and the timing of settlement conferences.

Task Force Recommendation #15: The Task Force’s proposal would revise Rule 38.1(f) to add a triggering event for avoiding the Dismissal Calendar in medical malpractice cases. The recommended triggering event would be the setting of a Comprehensive Pretrial Conference under Rule 16(e).

The Task Force recommends that the proposed amendments be circulated for an abbreviated public comment period but that, if possible, the amendments become effective on January 1, 2014.