

APPENDIX D

**CONFORMING CHANGES
TO OTHER RULES¹**

RULES OF THE SUPREME COURT OF ARIZONA

Rule 47. General Procedural Matters

(a) Pleadings. There may be a complaint, an answer, an amended complaint, and an answer to an amended complaint. No other pleadings may be filed unless as permitted by these rules or otherwise permitted by the presiding disciplinary judge, the hearing panel, or the court.

1. *General Rules of Pleading.* Pleadings filed shall conform to the requirements of Rule 8(~~b~~)(c), (~~d~~)(e), and (~~e~~)(f), Ariz. R. Civ. P., as may be applicable to these proceedings.

* * *

(i) * * *

YOUR RIGHT TO OBJECT

The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The presiding disciplinary judge enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached.

You may object to this subpoena if you feel that you should not be required to respond to the request(s) made. Any objection to this subpoena must be made within five (5) days after it is served upon you, or before the time specified for compliance, by filing a written objection with the Attorney Discipline Probable Cause Committee or the presiding disciplinary judge, as appropriate.

If you object because you claim the information requested is privileged or subject to protection as trial preparation material, you must express the objection clearly, and support each objection with a description of the nature of the documents, communication or item not produced so that the demanding party can contest the claim. See Rule 45(c)(5)(~~C~~) of the Arizona Rules of Civil Procedure.

If you object to the subpoena in writing you do not need to comply with the subpoena until you are ordered to do so.

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

If you are not a party to the litigation, or an officer of a party, the presiding disciplinary judge may issue an order to protect you from any significant expense resulting from the inspection and copying commanded.

You may also file a motion with the presiding disciplinary judge to quash or modify the subpoena if the subpoena:

(i) does not provide a reasonable time for compliance;

(ii) requires a non-party or officer of a party to travel to a county different from the county where the person resides or does business in person; or to travel to a county different from where the subpoena was served; or to travel to a place farther than 40 miles from the place of service; or to travel to a place different from any other convenient place fixed by an order of the presiding disciplinary judge, except that a subpoena for you to appear and testify at trial can command you to travel from any place within the state;

(iii) requires the disclosure of privileged or protected information and no waiver or exception applies;

(iv) subjects you to an undue burden. See Rules 45(c)~~(5)~~(6)(B)(iii) and 45(e) of the Arizona Rules of Civil Procedure.

* * *

Rule 48. Rules of Construction

* * *

(b) Rules of Civil Procedure. Only the following Arizona Rules of Civil Procedure are applicable to discipline and disability proceedings before the presiding disciplinary judge or the hearing panel, as specifically set forth in these rules: Rules 4, 4.1, 4.2, 5, 5.1(e), 5.2(b), 5.3, 6(a), 6(c), 7.1(a), 7.1(b), 8~~(b)~~(c)-~~(e)~~(f), 10(b)-(c), 11(a)-(d), 12(b), 12(c), 12(d), 12(e), 12(f), 16(a), 16(g)(2)(A-E) and (J), 16(i), 26(a)-(f), 29-36, 38.1(b), 42(a), 43-45, 56, 60(b)-(d), 80(a), 80(c), and 80(d).

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Rule 58. Formal Proceedings

* * *

(b) Answer. Respondent shall file an answer with the disciplinary clerk and serve copies upon bar counsel of record within twenty (20) days after service of the complaint, unless, upon written request by respondent, the time is extended by the presiding disciplinary judge. The presiding disciplinary judge may grant one extension of time, not to exceed thirty (30) days. Respondent shall provide a current address in his or her answer, and confirm that the address given is the address reported to the state bar pursuant to Rule 32(c)(3). A respondent's answer must comply with Rule ~~8(b)~~(c), Ariz. R. Civ. P.

* * *

(f) Discovery.

1. *Time limits.* Unless extended by agreement of the parties or otherwise ordered at the case management conference, all initial discovery requests must be made within forty (40) days of the date an initial answer is filed, except that additional discovery requests may be filed within thirty (30) days of the date an answer is filed to an amended complaint. Discovery requests based upon an amended complaint shall be limited to new allegations. Discovery shall be governed by Rules 26(a) through ~~(f)~~(h), Rules 29 through 36, and Rule 45, Ariz. R. Civ. P., to the extent not inconsistent with these rules.

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Rule 92. Presiding Judge; Associate Presiding Judge

(a) Powers and Duties of Presiding Judge. The presiding judge in each county, in addition to exercising general administrative supervision over the court and the judges thereof, shall:

* * *

(6) Identify and develop programs that provide alternative methods for the resolution of civil disputes to which actions may be referred pursuant to the authority conferred by Rule 16~~(g)~~(i) of the Arizona Rules of Civil Procedure, and promulgate such local rules as a majority of the judges of the county may approve establishing and governing such alternative dispute resolution programs.

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ARIZONA RULES OF PROBATE PROCEDURE

Rule 28. Pretrial Procedures

A. Initial Procedures; Scheduling Conference.

1. If a matter is contested, unless the parties agree otherwise, the court shall set a scheduling conference that shall occur promptly after the date of the initial hearing on the petition. The scheduling conference may be held at the time set for the initial hearing on the petition. At the scheduling conference, the court and the parties shall address the following issues:

a. the deadline for filing a written objection if one has not already been filed;

b. the deadline for filing a joint alternative dispute resolution statement pursuant to Rule 29 of these rules;

c. any other issues the court or the parties deem relevant.

2. Unless inconsistent with these rules, Rule 16(b)(c), Rules of Civil Procedure, shall apply to all pretrial conferences.

3. Following the scheduling conference, the court shall enter an order setting forth the deadlines determined at the scheduling conference.

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LOCAL RULES OF PRACTICE SUPERIOR COURT—

MARICOPA COUNTY

Rule 3.12. Maricopa County Complex Civil Litigation Program

(a) Complex Civil Actions. If an action is designated as complex under this rule, the notation “complex” must appear under the case number on the complaint’s first page. This requirement is in addition to the designation required in the Civil Cover Sheet.

(b) Complex Civil Litigation Program Designation.

(1) Definition. A “complex civil action” 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 civil action under (b)(1), the court must consider the following factors:

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

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

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

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

(E) substantial postjudgment judicial supervision;

(F) the action 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) inherently complex legal issues;

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

(I) any other factor that 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 Civil Action.

(A) Designation by Plaintiff. When filing its initial complaint, a plaintiff may designate an action as a complex civil action by filing a motion and separate certificate of complexity identifying the case attributes in Rule 3.12(b)(2) justifying the designation. The certification must be in a form as set forth in this rule and must be served on the defendant along with the motion when the complaint is served.

(B) Designation by Defendant. If the plaintiff has not done so and if the court has not already ruled on whether the action is complex, a defendant may designate an action as complex by filing a motion and certificate of complexity as described in Rule 3.12(b)(3)(A) with or before the filing of defendant's first responsive pleading.

(C) Joint Designation. The parties may jointly designate an action as complex by filing a joint motion and certificate of complexity with or before the filing of any defendant's first responsive pleading.

(4) Procedure for Opposing Designation. If a party has certified that an action is complex, the court has not previously declared the action to be a complex civil action, and another party disagrees with the designating party's certificate, the opposing party must file—no later than when that party files its first responsive pleading—a response to the designating party's motion and a controverting certificate that specifies the particular reason for the opposing party's disagreement with the designating party's certificate.

(5) Effect of Signature. An attorney's or party's signature constitutes a certification by the signer that the signer has considered the applicability of this rule; 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 of complexity is not made for any improper purpose. Rule 11(a) of the Arizona Rules of Civil Procedure applies to every certification of complexity filed under this rule.

(6) Action by Court.

(A) On Motion When Filing an Initial Pleading. The presiding superior court judge, or the judge's designee, must decide, with or without a hearing, whether the action is a complex civil action within 30 days after the filing of the response to the designating party's motion.

(B) Later Ruling. At any time during the pendency of an action, the court may, on motion or on its own, decide that a civil action is a complex civil action or that an action previously declared to be a complex civil action is not a complex civil action.

(C) Sanctions. If the court finds that the certificate of a party or its counsel designating an action as complex was not made in good faith, the court may—on motion or on its own—make such orders as are just, including, among others, any action authorized under Rule 11(c) of the Arizona Rules of Civil Procedure.

(7) Not Appealable. Parties do 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 civil action must be substantially in the Certification of Complexity form set forth below.

(c) Initial Case Management Conference in Actions Assigned to the Complex Civil Litigation Program. Once an action is determined to be a complex civil action under this rule, the court must conduct an initial case management conference at the

earliest practical date with all parties who have appeared in the action, and must promptly enter a Case Management Order after the conference. Among the subjects that should be considered at such a conference are:

- (1) the status of parties and pleadings;
- (2) determining whether severance, consolidation, or coordination with other actions is desirable;
- (3) scheduling motions to dismiss or other preliminary motions;
- (4) scheduling class certification motions, if applicable;
- (5) scheduling discovery proceedings, setting limits on discovery, and determining whether to appoint a discovery master;
- (6) issuing protective orders;
- (7) any requirements or limits for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
- (8) any measures the parties must take to preserve discoverable documents or electronically stored information;
- (9) any agreements reached by the parties for asserting claims of privilege or of protection of trial-preparation materials after production;
- (10) appointing liaison counsel and admission of nonresident counsel;
- (11) scheduling settlement conferences;
- (12) determining whether the requirements and timing for disclosure under Rule 26.1 of the Arizona Rules of Civil Procedure should be varied;
- (13) scheduling expert disclosures and whether sequencing of expert disclosures is warranted;
- (14) scheduling dispositive motions;
- (15) adopting a uniform numbering system for documents and establishing a document depository;
- (16) determining whether electronic service of discovery materials and pleadings is warranted;
- (17) organizing a master list of contact information for counsel;
- (18) determining whether expedited trial proceedings are desired or appropriate;
- (19) scheduling further conferences as necessary;
- (20) use of technology, videoconferencing and/or teleconferencing;

- (21) determining whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination of these procedures; and
- (22) such other matters as the court or the parties deem appropriate in managing or expediting the action.

(d) Meeting of Parties Before Conference; Joint Report. Before the initial case management conference, all parties who have appeared in the action, or their counsel, must meet and confer concerning the matters to be raised at the conference, must attempt in good faith to reach agreement on as many case management issues as possible, and must submit a joint report to the court no later than 7 days before the conference. The court may sanction a party or its counsel if the party or counsel fails to participate in good faith in this meeting.

(e) 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.

(f) Establishing Time Limits. Time limits should be regularly used to expedite major phases of a complex civil action. Time limits should be established early, tailored to the circumstances of each action, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pretrial conference must be set by the court as early as possible.

(g) Commencement of Discovery. Unless the parties agree by stipulation filed with the court or the court orders otherwise, no party may initiate discovery or disclosure in a complex civil action until the court has entered a Case Management Order in the action.

Comment

Promulgation of Rule 3.12

Justification for this Rule. Rule 3.12 is intended to 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. Rule 3.12 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.

Form 1. Certification of a Complex Case.

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

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

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:

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 , 20 .

(Attorney for) (Plaintiff) (Defendant)

-

-
(Attorney for) (Plaintiff) (Defendant)

-
[This certification must be accompanied by a motion]

Form 2. Joint Report: Complex Case.

In the Superior Court of Arizona
Maricopa County

<u>Plaintiffs</u>)	Case number _____
)	
<u>v</u>)	<u>Joint Report</u>
)	<u>(Complex case)</u>
<u>Defendants</u>)	
)	<u>Assigned to:</u>

The parties signing below certify that they have conferred about the following matters. With regard to issues upon which the parties could not agree, they have set forth their positions separately in item 6 below.

1. Brief description of the case:

2. Participants: The total number of parties (including third parties) in this case is

_____:

- Number of counsel appearing: _____
- Number of self-represented litigants appearing: _____
- Number of parties not yet served: _____

3. Pleadings: This case includes [check if applicable]:

A counterclaim(s)

A cross claim(s)

A third party complaint(s)

A request for class action certification

Consolidated cases

4. Complexity: This case is complex under the factors specified in Local Rule 3.12(b)(2) because:

5. Special considerations: The parties request the court to consider at this time the following information concerning management of this case:

6. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

7. Initial case management conference: The parties agree that the court may set this matter for an initial case management conference under Maricopa County Local Rule 3.12(c). Prior to the conference, the parties will meet and confer, and prepare a second joint report, addressing those items specified in Rule 16(d) of the Arizona Rules of Civil Procedure and Maricopa County Local Rule 3.12(c). If the parties cannot agree on an item in the joint report, the report will state the positions of the parties concerning the item at issue. The parties will submit the second joint report to the court at least seven (7) days before the conference date specified above.

Dated this ____ day of _____, 20 ____.

For Plaintiff

For Defendant

For:

For:

Form 3. Proposed Scheduling Order: Complex Case.

In the Superior Court of Arizona
Maricopa County

<u>Plaintiffs</u>)	Case number _____
)	
v)	<u>Proposed Scheduling Order</u>
)	
<u>Defendants</u>)	<i>(Complex case)</i>
)	
)	<u>Assigned to:</u>

Upon consideration of the parties' Joint Report, this court orders as follows:

1. Initial case management conference: This case is set for an initial case management conference in this division on the _____ day of _____, 20____, at _____ a.m./p.m. [The court will provide the date.]

2. Second joint report: The parties shall meet and confer, and prepare a second joint report, addressing those items specified in Rules 16(d) of the Arizona Rules of Civil Procedure and Maricopa County Local Rule 3.12(b). If the parties cannot agree on an item in the joint report, the report will state the positions of the parties concerning the item at issue. The parties will submit the joint report at least seven (7) days before the conference date specified above.

3. Sanctions: Any party who does not participate in good faith with the other parties in conferring and in preparing the second joint report, or who does not attend the initial case management conference, shall be subject to sanctions as provided in Rules 16(h) and 3.12(c).

4. Further orders: The court further orders as follows:

_____.

Date

Judge of the Superior Court

* * *