

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
AUTHORIZING A COMMERCIAL) Administrative Order
COURT PILOT PROGRAM IN THE) No. 2015 - 15
SUPERIOR COURT IN MARICOPA)
COUNTY)
_____)

On May 8, 2014, this Court entered Administrative Order No. 2014-48, which established the Business Court Advisory Committee. The Order required the Committee to submit its recommendations to this Court and to the Arizona Judicial Council by December 11, 2014. The Committee has now done so, and the Committee’s recommendations have been approved by the Arizona Judicial Council and recommended for adoption by this Court.

The Committee’s report proposes the establishment of a pilot commercial court in the Superior Court in Maricopa County. The report suggests establishing this pilot court for three years to permit a reasonable period for its evaluation. The report recommends that at the end of three years, the Supreme Court determine the advisability of adopting a commercial court as a permanent feature of the superior court.

The Committee’s report also proposes a new rule of civil procedure, a joint report and proposed scheduling order for use in commercial cases, a modified civil cover sheet that parties would use to identify cases that may be eligible for the pilot program, and a checklist and model order concerning disclosure and discovery of electronically stored information.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution.

IT IS ORDERED authorizing the Superior Court of Maricopa County to establish a pilot commercial court as follows:

1. **Pilot Court:** The pilot commercial court shall run for a period of three years, beginning July 1, 2015, and ending June 30, 2018.
2. **Rules of Procedure and Forms:** New Arizona Rules of Civil Procedure Rule 8.1 and Rule 84, Forms 14(a) and 14(b), as shown in Appendix A attached hereto, shall apply to cases in the pilot commercial court.

3. **Authority to Adopt Additional Forms:** In furtherance of the purpose and goals of the pilot commercial court, the presiding judge of the Superior Court in Maricopa County is authorized to adopt additional forms for the pilot court, including a checklist and a model order concerning electronically stored information.

IT IS FURTHER ORDERED that the Superior Court in Maricopa County and the Administrative Office of the Courts monitor the pilot program during its three-year term, and that on or before December 1 of calendar years 2016, 2017, and 2018, they submit a progress report to the Arizona Judicial Council that addresses the following:

- A. Superior court data that analyzes cases assigned to the pilot commercial court;
- B. Levels of litigant satisfaction with the pilot commercial court;
- C. Views of judges and attorneys concerning the effectiveness and benefits of the pilot commercial court;
- D. Recommendations concerning eligibility criteria for assignment of cases to the commercial court, adoption of additional measurements to evaluate the performance of this pilot commercial court, and proposed changes to rules and forms; and
- E. Any other matter that should be brought to the attention of the Arizona Judicial Council.

Dated this 18th day February, 2015.

SCOTT BALES
Chief Justice

APPENDIX A

Experimental Rule 8.1: Assignment and management of commercial cases

(a) Application; definitions. This Rule applies in counties that have established specialized courts for commercial cases, which are referred to in this Rule as “the commercial court.”

The commercial court will hear a “commercial case,” as defined in Rule 8.1(a)(1), when the case also meets the criteria of either Rule 8.1(b) or Rule 8.1(c).

1. A “commercial case” is one in which:
 - A. At least one plaintiff and one defendant are “business organizations;”
 - B. The primary issues of law and fact concern a “business organization;” or
 - C. The primary issues of law and fact concern a “business contract or transaction.”
2. A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or a government entity that is not a party to a business contract or transaction.
3. A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations. The term “business contract or transaction” excludes a “consumer contract or transaction.”
4. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

(b) Cases with No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court will hear a commercial case that:

1. Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;
2. Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

3. Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;
4. Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;
5. Is a shareholder or member derivative action;
6. Arises from a commercial real estate transaction;
7. Arises from a relationship between a franchisor and a franchisee;
8. Involves the purchase or sale of securities or allegations of securities fraud; or
9. Concerns a claim under state antitrust law.

(c) Cases Subject to an Amount in Controversy Requirement. If the amount in controversy is at least \$50,000, the commercial court will hear a commercial case that:

1. Arises from a contract or transaction governed by the Uniform Commercial Code;
2. Involves the sale of services by, or to, a business organization;
3. Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
4. Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
5. Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.

(d) Ineligible case types. Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

1. Evictions;

2. Eminent domain or condemnation;
3. Civil rights;
4. Motor vehicle torts and other torts involving physical injury to a plaintiff;
5. Administrative appeals;
6. Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
7. Wrongful termination of employment.

(e) Assignment of cases to commercial courts.

1. **Plaintiff's duties.** To request assignment of a case to the commercial court, the plaintiff must include in the initial complaint's caption the words "commercial court assignment requested." At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.
2. **Assignment to commercial court.** The court administrator will review complaints and civil cover sheets filed in accordance with Rule 8.1(e)(1). If a complaint appears appropriate for assignment to the commercial court, the court administrator will refer the case to a commercial court judge. That judge has discretion to enter an order assigning, or declining to assign, a referred case to the commercial court.
3. **Motion to reconsider assignment to commercial court.** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through (d). Any party filing a motion under this Rule must do so not later than 20 days after the defendant files an answer or a motion under Rule 12, or within 20 days after that party's appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.
4. **Motion to transfer to commercial court.** On the court's own initiative, on motion of a party filed within 20 days after a defendant files an answer or a motion under Rule 12, or on motion of a party filed within 20 days of that party's appearance, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).

5. **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 a complex civil litigation program pursuant to Rule 8(i).

(f) **Case Management.** Rules 16(a) through 16(k) apply to cases in the commercial courts, except:

1. **Scheduling conference.** Scheduling conferences under Rule 16(d) are mandatory.

2. **Initial conference.** Prior to filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:

A. Requirements and limitations on disclosure and production of ESI;

B. The form or formats in which the ESI will be disclosed or produced; and

C. If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.

3. **Joint report.** The parties' Rule 16(b) Joint Report must address the following additional items:

A. Whether the parties have reached any agreements with regard to ESI, what those agreements are, those areas on which they were unable to agree, and whether the parties request the court to enter an order concerning ESI;

B. Whether the parties reached agreements pursuant to Rule 502 of the Rules of Evidence;

C. Whether any party is requesting the court to enter a protective order pursuant to Rule 26(c), and if so, a brief statement concerning the need for a protective order; and

D. Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

(g) **Motions.** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.

Form 14(a) – Joint Report: Commercial Case

In the Superior Court of Arizona

_____ County

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

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(d), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. Brief description of the case: _____

- If a claimant is seeking other than monetary damages, specify the relief sought _____
_____.
- This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply): _____.

2. Current case status: Every defendant has been served or dismissed. yes no

- Every party who has not been defaulted has filed a responsive pleading. yes no
- Explanation of a “no” response to either of the above statements: _____
_____.

3. Amendments: A party anticipates filing an amendment to a pleading that will add a new party to the case: yes no

4. **Special case management:** Special case management procedures are appropriate: yes no
If “yes,” the following case management procedures are appropriate because: _____
_____.

5. **Commercial case management [Rule 8.1(f)]:**

The parties have reached agreements regarding electronically stored information (“ESI”) that are appended to this joint report: yes no

The parties have prepared a stipulated order regarding ESI, attached hereto: yes no

The parties have been unable to agree on areas of disclosure or discovery of ESI, which are described in item 14 below: yes no

The parties have reached agreements pursuant to Rule 502 of the Rules of Evidence and submit a proposed order that is attached to this report: yes no

The parties have agreed on a proposed protective order, attached hereto: yes no

A party has raised an issue concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f), as further described in item 13 below: yes no

6. **Settlement:** The parties agree to engage in settlement discussions with a settlement judge assigned by the court, or a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

7. **Readiness:** This case will be ready for trial by _____.

8. **Jury:** A trial by jury is demanded. yes no

9. **Length of trial:** The estimated length of trial is ____ days.

10. **Summary jury:** The parties agree to a summary jury trial. yes no

11. **Preference:** This case is entitled to a preference for trial pursuant to the following statute or rule: _____.

12. **Special requirements:** At a pretrial conference or at trial, a party will require disability accommodations (specify) _____

an interpreter (specify language) _____

13. Other matters: Other matters that the parties wish to bring to the court's attention that may affect management of this case: _____
_____.

14. 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:

_____.

Dated this ____ day of _____, 20____.

For Plaintiff

For Defendant

Form 14(b) – Proposed Scheduling Order: Commercial Case

In the Superior Court of Arizona

_____ County

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

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

- 1. Initial disclosure:** The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.
- 2. Expert witness disclosure:** The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

- 3. Lay (non-expert) witness disclosure:** The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. **Final supplemental disclosure:** Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. **Discovery deadlines:** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. **Settlement conference or private mediation:** [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. **Dispositive motions:** The parties shall file all dispositive motions by _____.

8. **Trial setting conference:** On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

9. Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

10. **Firm dates:** No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

11. Further orders: The court further orders as follows: _____
_____.

Date

Judge of the Superior Court