



REPORT OF THE
COMPLEX CIVIL
LITIGATION COURT
EVALUATION COMMITTEE
TO THE ARIZONA
SUPREME COURT

January, 2009

***COMPLEX CIVIL LITIGATION COURT
EVALUATION COMMITTEE***

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Executive Summary. “If you build it, they will come.” That was the expectation of a 2002 committee which, after thorough study, recommended to the Arizona Supreme Court that a pilot program for complex civil litigation be established in Maricopa County. The committee’s confidence that this experimental program would benefit Arizona litigants led it to project that hundreds of cases annually would be certified for admission.

Now that the program is in its seventh year, the number of cases admitted into this program has been far below that projection. Since the inception of the program through the end of 2008, only 101 cases have been designated as complex. For 2006 and 2007, the number of new cases admitted annually into the program was in the single digits. However, during 2008, the number of new cases has re-established an encouraging upward trend: sixteen cases were admitted to the program during the 2008 calendar year.

Were the original projections of triple digit complex case volumes unduly optimistic, or are there actions that could increase program admissions closer to the committee’s preliminary expectations?

The Evaluation Committee believes that by implementing a few straightforward recommendations, the program could make further progress towards those original projections of case volumes. Notably, in an era of tight budgets and limited resources, this Committee’s recommendations can be, and are being, implemented without cost.

The concept of a specialized court for complex case management is one whose time has come, not just in Arizona, but nationally. Arizona is in the forefront of states which have implemented a program which is open to any type of complex case; the sole requirement is complexity.¹ The quality of Arizona’s judiciary is distinguished by its leadership in implementing innovative and specialized programs such as this complex civil litigation initiative. The business community within Arizona, and out-of-state enterprises which are considering a move to Arizona, look to the quality and reputation of Arizona’s courts, including this complex civil litigation program, as an incentive to doing business in Arizona.

Accordingly, the Evaluation Committee unanimously supports the continued existence of the complex civil litigation program.

¹ Four states have complex litigation courts: Arizona, California, Connecticut, and Florida. Additionally, four cities have complex litigation courts within their civil court structure: Philadelphia, Pittsburgh, Chicago, and Las Vegas. Thirteen states have business courts: Colorado, Delaware, Florida, Illinois, Maryland, Massachusetts, Michigan, Nevada, New York, North Carolina, Oklahoma, Pennsylvania, and Rhode Island. See Florida’s Task Force on the Management of Cases Involving Complex Litigation (April 30, 2008), at page 18. The report may be found at http://www.flcourts.org/gen_public/news/bin/ComplexLitigation.pdf

Introduction. The Supreme Court established the Complex Civil Litigation Court Evaluation Committee (the “Evaluation Committee”) in November, 2002, Administrative Order No. 2002-107. This Administrative Order followed the final report and recommendations of the Committee to Study Complex Litigation (the “Study Committee”).²

The Study Committee recommended the establishment of a pilot program in the Superior Court as an experimental forum for resolving complex civil disputes. Pursuant to the recommendation of the Study Committee, Arizona Supreme Court A.O. 2002-107 authorized the pilot program in Maricopa County. Administrative Order No. 2002-107 also adopted rules of civil procedure which had been recommended by the Study Committee to define complex cases, and to create a process for designating a case as complex. A complementary administrative order, Maricopa County Superior Court A.O. No. 2002-127, implemented the program in the Superior Court in December, 2002.

Supreme Court Administrative Order No. 2002-107 authorized the pilot program for a period of two years. In April, 2004, Administrative Order No. 2004-27, extended the evaluation period for two additional years. And in December, 2006, Administrative Order No. 2006-123 authorized an extension of the program until December 31, 2008.³

A report jointly prepared by the Evaluation Committee and the Maricopa County Superior Court (the “Joint Report”), was provided to the Arizona Supreme Court in December, 2006.⁴ The report concluded:

“Over the past four years, the committee has had the pleasure of watching this program grow from a concept into a reality of recognizable value to the legal community....The committee urges the court to continue the program with the eventual goal of making it a permanent part of the judicial landscape in Arizona.”⁵

Six years have passed since the implementation of the complex civil litigation program. The Evaluation Committee, as well as the judges who have sat on the complex bench, remain fast to the concepts that the program has “recognizable value” and that it should be made “a permanent part of the judicial landscape in Arizona.”

² The Study Committee was established by Administrative Order 2001-122.

³ There were correlative extensions by Maricopa County Superior Court administrative orders.

⁴ Find the report: <http://www.supreme.state.az.us/courtserv/ComplexLit/JointRptFinal.pdf> Pursuant to A.O. 2002-107, the pilot program was to run until December 31, 2004, and the report was to be submitted at the conclusion of the pilot period. However, A.O. 2004-27 extended the deadline for the report until December, 2006.

⁵ Joint Report, at page 7.

The Evaluation Committee has continued to meet quarterly, and during that time the Maricopa County Court Administrator has provided updates on volumes of cases that have been admitted into the complex civil litigation pilot program since its start in December, 2002.

From the inception of the program in December, 2002, through the end of 2003, **37** cases entered the program.⁶ In the calendar years which followed, the number of admitted cases were:

2004: **20** cases

2005: **12** cases

2006: **9** cases⁷

2007: **7** cases

2008: **16** cases⁸

Maricopa County is the fourth most populous county in the United States⁹, with substantial population growth annually. It is home to large businesses, the site of major construction activity, and the locus of proliferating tort claims. The volume of civil filings in Maricopa County continues to rise each successive year, yet the complex case admissions have been modest in number.¹⁰ Complex cases do exist, and they are still being filed, albeit not in the complex program.¹¹ The Evaluation Committee set out to assess why complex cases were

⁶ The Evaluation Committee believes that a high percentage of the cases that entered the program during the first year had been pending for a year or two prior to the inception of the program; that is, they were not cases which had been filed during the program's first year, but instead were older cases that were transferred into the program during that first year.

⁷ The December, 2006, Joint Report indicated that **91 cases** had been admitted as of that time. The numbers shown above on this page, which were provided by the Court Administrator, show that through 2006, **78 cases** had been admitted into the complex program. Attempts to reconcile the two numbers have been unsuccessful.

⁸ One case was admitted in February, 2008; the other 2008 cases were admitted in and after May, 2008.

⁹ Los Angeles County, California, is the most populous county, followed by Cook County, Illinois, and Harris County, Texas.

¹⁰ The Maricopa County Superior Court's Civil Department produced a 2006-2010 Strategic Plan in September, 2005. That document reported that annual civil case filings were as follows: for 2002, 31,188 cases; for 2003, 35,956 cases; for 2004, 37,810 cases; and for 2005, 38,016 cases. The document also reported that the population of Maricopa County increased from 3.3 million in 2002 to 3.6 million in 2005. That is about a 9% population increase in just four years.

¹¹ It is plausible that some complex cases which might have been filed in the Superior Court were instead going to private arbitration, or to federal court; but this alone would not account for the scarcity of cases being designated into Maricopa County's complex program.

not being captured by the complex civil litigation program. This is the Evaluation Committee's report of that assessment.

Summary of conclusions.

1. The opportunity to utilize electronic filing, which at one time was exclusively for complex cases, was a significant incentive for attorneys to file motions to have their cases designated for admission to the complex civil program. Now that electronic filing is widely used throughout the civil courts, e-filing is no longer a special attraction of the complex program.

2. There appears to be a general lack of awareness of the complex civil program among members of the civil bar.

3. Not all complex cases are captured by the program through motions to designate and certifications of complexity.

Discussion of conclusions.

(1) Parity of electronic incentives in the civil courts. Electronic document filing made its debut in the Maricopa County Superior Court on December 8, 2003, about a year after the complex program began. When electronic filing was implemented through LexisNexis, it was exclusively for cases in the complex civil program. Electronic filing was an overwhelming success; the Joint Report noted that the stack of documents filed in the program during the initial years of e-filing would have reached the height of a 103 story building.¹²

The popularity of electronic filing soon spread to civil cases outside the complex case program. A 2005 Maricopa County Superior Court Administrative Order implemented electronic document filing in the general civil courts, with a phase-in beginning in June, 2005.¹³ In October, 2007, the Superior Court promulgated Electronic Filing Guidelines which further promoted the modern efficiency of electronic filing.¹⁴ Arizona Supreme Court Administrative Order number 2008-89, effective December 1, 2008, permits electronic filing in the Maricopa County Superior Court for all civil case types in accordance with the Superior Court's electronic filing guidelines.

Meanwhile, effective September 8, 2008, the electronic filing feature of the LexisNexis system was no longer available for filing documents in complex civil litigation cases. The electronic playing field had been leveled for cases within and outside of the complex civil program.

¹² Joint Report, footnote 4.

¹³ Maricopa County Superior Court Administrative Order number 2005-072, June 1, 2005.

¹⁴ Maricopa County Superior Court Administrative Order number 2007-140, October 25, 2007.

“Electronic courtrooms” were also once a hallmark of the judges assigned to complex cases.¹⁵ The ongoing proliferation of these courtrooms, while of enormous benefit to civil cases generally, has removed this second technological advantage of having a case in the complex program.

(2) Lack of awareness of the program. The Joint Report noted that Committee members had arranged and conducted a February, 2005, continuing legal education session that attracted more than 70 participants, and that “on-going collaboration between practitioners and the superior court will play a critical role in ensuring accountability.”¹⁶

Little has occurred since that time to promote general awareness of the program. Anecdotally, many civil practitioners, some in the midst of an apparently complex case, admit to having no knowledge of the existence of the complex civil program.

(3) Limitations of the motion to designate and certification of complexity for capturing complex cases. The September, 2002, Study Committee Report recommended an amendment to Rule 8(h), Ariz. R. Civ. P., to provide a “complex” classification for civil actions; and enumerated criteria for complexity and a process for complex designation in a new Rule 8(i).¹⁷ The amended Rule 8(i) included a form entitled “Certification of Complexity”. This form required the certifying attorney to mark any of the generic criteria, adopted from Rule 8(i), which warranted a conclusion of complexity, and to file an accompanying motion requesting complex designation. Civil filings which were accompanied by a certification of complexity and a motion to designate the case as complex were routed to the presiding civil judge¹⁸, who ruled on the motion.

As time went on, fewer and fewer motions requesting complex designation were being filed, and the number of cases being admitted into the complex program dwindled. Additionally, and in hindsight, the parties’ lack of initiative in motioning cases into the program suggested that motions to designate might not be the only mode of complex case identification. More information, derived from a source other than the motion to designate, was needed upon receipt of the initial filings to channel complex cases into the program.

¹⁵ The Joint Report noted that “each program judge presided over an e-courtroom equipped with the most up-to-date electronic technology for evidence presentation, electronic recording and computer-enhanced judicial management of the courtroom.” [Joint Report at pages 2-3] Currently, 18 of the 24 civil judges in Maricopa County Superior Court have electronic courtrooms.

¹⁶ Joint Report at page 6.

¹⁷ Rules 8(h) and 8(i) were approved by A.O. 2002-107. The comment to Rule 8(h) noted that the rule was “intended to establish a process by which the parties can alert the court to the complex nature of their dispute.”

¹⁸ Maricopa County Superior Court A.O. 2002-127 granted to the presiding civil judge the authority to determine if a case warrants a complex designation.

Summary of recommendations.

1. Promote the complex program to attorneys and increase their awareness of its existence.
2. Support use of the new civil cover sheet.
3. Continue the recently developed program of having the court staff screen potentially complex cases.
4. Encourage non-panel judges to refer complex cases to the complex program.
5. Extend the term of the pilot program for two years.

Discussion of recommendations.

(1) Increase awareness of the program. The Study Committee envisioned that a complex program in both Maricopa and Pima counties would absorb between 1 to 3% of the civil filings – that is, between 400 to 1,000 cases per year.¹⁹ Maricopa County, which over the past five years has had between 30,000 and 40,000 case filings annually, has fallen far short of that mark with regard to complex case designations.

The user survey appended to the 2006 Joint Report detailed 83 responses from attorneys who had appeared in the program.²⁰ The largest number of responses (36%) was from attorneys from large (51+ attorneys) firms. Sixty percent of the responses came from attorneys at firms with more than 21 lawyers.

A current program judge has offered to make a lunch hour presentation to the twenty largest law firms in the area about the complex civil program. Large law firms are the biggest filers of complex cases. The panel of complex judges knows the program better than anyone. The complex judges can enumerate for those potential participants the advantages of the program like no one else can.

¹⁹ See the Study Committee's Report, at page 5. Florida's 2008 Task Force Report (see footnote 1) estimated that if a complex case program was established in that state, 2,000 to 3,000 complex cases might be filed annually. (Florida Report, at page 16.) Counsel for the Judicial Council of California has reported to the Evaluation Committee's staff that California's complex program, which operates in six populous counties, currently utilizes 17 judges. Each judge has about 100 cases, although a judge may have fewer cases if some are unusually complex. These judges are dedicated program judges; they do not handle standard track cases. Therefore, California currently has approximately 1,700 cases in its complex program.

²⁰ The survey reported that over 500 attorneys had entered appearances in the complex program cases.

As complex case volumes accelerate, additional promotions could follow, such as articles in periodicals, including the *Arizona Attorney* and *Maricopa Lawyer*; inclusion of complex case considerations in continuing legal education courses, for example, construction litigation seminars; and ongoing informative programs.

2. Support the use of the new civil cover sheet. In October, 2007, this Evaluation Committee recommended adding elements to the Maricopa County civil cover sheet to identify whether the claim was cognizable under one of California's provisional complex case categories.²¹ By February, 2008, a revised civil cover sheet had been developed by the Maricopa County Superior Court, and this form was promulgated for use by the legal community. This form specifically inquired whether the case was complex, and if so, whether it fell into one of the provisional complex case categories.

For several reasons, use of the revised cover sheet was not mandated. As a result, new case filings were not rejected if the revised form was not submitted with the initial filing. Cases continued to be accepted even with an old form that had no complex case information. It also appeared, especially for cases filed at the night drop, that the cover sheet was sometimes completed by court runners rather than by counsel.

A rule petition was filed in January, 2008, by the Administrative Office of the Courts which proposed that a cover sheet approved by the Supreme Court be filed in all civil cases.²² Although a single page form for the cover sheet was initially proposed, a subsequent reply revised the cover sheet by adding a second page to the form. Pursuant to this petition, an amendment to Arizona Rules of Civil Procedure Rule 8(h)(1) was adopted by the Supreme Court on September 8, 2008.

The front page of the new cover sheet has a specific box to check if the action is complex. If the complex box is checked, then on the reverse of the form, the filer will be asked to identify one of the following applicable categories of complexity:

1. antitrust/trade regulation
2. construction defect with many parties or structures
3. mass tort
4. securities litigation with many parties
5. environmental toxic tort with many parties
6. class action claims
7. insurance coverage claims arising from the above-listed case types
8. a complex case as defined by Rule 8(i)

²¹ Committee minutes, October 23, 2007. California's provisional categories were included in the civil cover sheet proposed by R-08-0008, *infra*, pages 10-11.

²² The rule petition was R-08-0008.

The amendment to Rule 8(h)(1) became effective in January, 2009. The rule mandates use of the new statewide cover sheet.²³ This new civil cover sheet should assist the Court in screening cases that are appropriate for the complex program, and the Evaluation Committee unanimously supports its use.

(3) Continue the existing process of using the court staff to screen complex cases. An alternative process has developed for funneling cases into the complex program. The process starts when the court clerk segregates cases in which the box indicating complexity has been checked on the civil cover sheet which is currently in use.

The clerk then sends these cases, in batches of 25 cases, to the court administrator for further review. The court administrator typically concludes that a few cases per batch are potentially complex.²⁴ Those cases which are felt to be potentially complex are brought to the attention of the presiding civil judge. If the presiding civil judge determines that a case is not complex, it stays on its existing track. If, however, it appears that a case is complex, the court issues a minute entry advising the attorneys of a “presumptive” designation of complexity.²⁵

This method of screening cases has proven to be a positive way of identifying complex cases and for effectively transmitting those cases to the civil presiding judge for potential designation. In addition, because the cover sheet will occasionally be inaccurate, incomplete, or misleading,²⁶ potentially complex cases should have a preliminary, pre-judicial evaluation such as the one currently in use.

²³ The new rule permits cover sheet addendums to be adopted by Local Rule. Maricopa’s version of the new civil cover sheet may require the signature of Plaintiff’s attorney.

²⁴ A case may be complex because of sophisticated **legal** issues; it may be complex because of **evidentiary** issues (including areas of expert testimony); or it may be **logistically** complex, with multiple parties or large volumes of evidence. A case may also have two or three of these dimensions of complexity.

²⁵ The form minute entry used for this process was created in June, 2008. The minute entry reads: “The Court has presumptively determined that the above-captioned matter meets the criteria for inclusion in the complex Civil Litigation program as set forth in Ariz.R.Civ.P. 8(i) and Maricopa County Superior Court Administrative Order No. 2008-59. Unless a formal objection is filed with the Presiding Civil Court Judge within twenty (20) days of the issuance of this order, the matter will be designated as a Complex Civil Litigation case and assigned to one of the Complex Civil Litigation Judges. Pursuant to Administrative Order No. 2008-059, the complex case fee will then be assessed.”

²⁶ Cover sheets indicating complexity are on occasion entirely misleading. The complex box indicating “insurance coverage claim” is checked in a number of garden variety insurance coverage cases. One “mass tort” indicated on a cover sheet was apparently based on a supposition that because the plaintiff was injured by an allegedly defective product, other Arizonans were probably injured too. Another “mass tort” involved multiple claimants injured in a single auto accident.

The court staff should continue to screen cases for potential admission into the complex program. The court staff has shown initiative and efficiency in screening cases. A number of potentially complex cases are, and should continue to be, routed to the presiding civil judge not only by the filing of a motion to designate and certificate of complexity, as set out in Rule 8(i); but also by manual screening of batches of cases by the court staff. As a screening aid, the following algorithm may be used:

1. Filings by **self-represented litigants** are screened out as being non-complex cases.

2. Cases in which a **complex certification and motion to designate** have been filed are **referred directly** to the presiding civil judge for a ruling, as provided in Rule 8(i).

3. Cases in which a complex certification and motion to designate have not been filed, but where **the box for complexity has been checked on the front side of the civil cover sheet**, are treated as follows:

a. if there is a designation checked on the reverse side of the cover sheet for construction defect with multiple parties or structures, securities litigation with multiple parties, environmental toxic tort with multiple parties, antitrust/trade regulation, or class action claims, the case **will** be routed to the presiding civil judge; and after a review of the file, a minute entry designating the case as complex may be issued by the presiding civil judge;

b. if there is a case type checked on the reverse side for mass tort, insurance coverage claims, or other, the case is screened by the court staff for complexity and **may** be referred to the presiding civil judge for judicial review and complex designation;

c. if there is no designation checked on the reverse side, the case is screened by the court staff for other indicia of complexity for **possible** referral to the presiding civil judge for judicial review and complex designation.

The Evaluation Committee notes parenthetically that the concept that a case may only come into the program if it is completely “voluntary”, while initially embedded in the Maricopa County pilot program, is no longer viable as a necessary condition of admission. Much as the court can make a determination either *sua sponte* or by motion about whether a case is suitable for the arbitration track²⁷, the court must also exercise its authority to direct complex cases to the appropriate track. The court must have the ability to transfer to the complex track those cases requiring complex case management, not only in those situations where a complex determination has been requested by a party, but also in those cases where no request has been made.

²⁷ Ariz. R. Civ. P. Rule 72(e)(5).

(4) Non-panel judges should be encouraged to refer their complex cases to the complex program. The expectation from the onset of this pilot was that the non-program judges would refer their complex cases to the program.

The Evaluation Committee agrees that most civil judges are capable of handling complex cases by virtue of their training, experience and expertise prior to appoint to the bench. But the benefit of the complex litigation program is that the structure of the complex program offers special capacities for complex case management:

1. The complex case judges have longer assignments. (Complex judges have a five year assignment versus a normal two year rotation through the civil department.) One judge who has sat on the complex bench cited the five year assignments as the *raison d'etre* of the program. Each time a new judge assumes a complex case which has not been designated into the complex program, there is going to be a process of re-education, which is costly to the court as well as to the litigants. There may be inconsistency in rulings between non-program judges following a transition. The value-added benefit of the complex program is that a case will remain with a single judge during the entire course of the case.
2. The complex judges' calendars are better adapted to meet the requirements of complex case scheduling than are the calendars of other judges. Pretrial conferences in complex cases, for example, are not limited to 30 minutes, as in a typical civil proceeding. More time can also be allocated to complex motions. Pretrial conferences can be scheduled multiple times during the course of a case, compared to once or twice in a routine civil matter.
3. The complex case judges also have a full time staff attorney to assist them in the legal issues that arise from complex cases.²⁸ Other members of the civil bench often do their own legal research, without the assistance of law-trained staff.
4. The complex judges have more tools for managing complex cases. The complex case requires not just a different process in dealing with discovery issues, calendaring, settlement, and deadlines; but it also has a distinctive pace, guided by specific complex case management practices.

The recommendation that civil judges be encouraged to refer their complex cases to the program is one that should be implemented by judicial education. The civil bench should be cognizant about the benefits provided by this specialized complex case program.

(5) Extend the term of the pilot program for two years. Although the pilot program has existed for six years, more time is required to fairly evaluate its progress. The volume of cases admitted into the program over the next two years may determine whether the program should be made a "permanent part of the judicial landscape in Arizona."

²⁸ A staff attorney for the complex civil litigation judges was hired in November, 2007.

As noted in the introduction to this report, the complex civil litigation program was established by administrative orders issued in 2002 by the Chief Justice of the Arizona Supreme Court, and by the presiding judge of the Maricopa County Superior Court. Although the term of the pilot program expired on December 31, 2008,²⁹ Administrative Order 2009-11, entered on January 22, 2009, extended the term of the pilot program until December 31, 2009. The Evaluation Committee recommends the continuation of the pilot program and the Evaluation Committee for two additional years, that is, until December 31, 2010, to monitor the effectiveness of the program and the recommendations made in this report. The Committee further recommends that it make annual reports to the Administrative Office of the Courts on the status of the pilot program. At the end of that two year period, the Supreme Court can reconsider whether it should make the complex program a permanent feature of the Superior Court.

²⁹ Four of the five members of the Evaluation Committee have served on the two complex civil case committees since the formation of the Study Committee in December, 2001.

PROPOSED ADMINISTRATIVE ORDER:

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of: _____)
)
) Administrative Order
 EXTENSION OF AUTHORIZATION) No. _____
 FOR THE COMPLEX CIVIL) (Amending Administrative Orders
 LITIGATION PILOT PROGRAM) No. 2006-123 and 2009-11)
 APPLICABLE IN MARICOPA COUNTY)
 _____)

On November 22, 2002, Administrative Order No. 2002-107 was entered establishing a two-year Complex Litigation Program in the Superior Court in Maricopa County and the Complex Civil Litigation Court Evaluation Committee. Under Administrative Order No. 2002-107 and No. 2003-52, members were appointed to the Committee. By Administrative Order No. 2004-27, the program was extended to December 31, 2006, and the Committee members' terms were extended for the duration of the program. By Administrative Order No. 2006-123, the program and Committee were extended to December 31, 2008. By Administrative Order 2009-11, the term of the pilot program was extended to December 31, 2009.

The January, 2009, report of the Evaluation Committee has been received and reviewed. The Committee has requested a two-year extension of the pilot program to monitor the effectiveness of the program and the Committee's recommendations. The Committee has also recommended that periodic reports be provided to the Administrative Office of the Courts regarding the status of the pilot program. After due consideration,

IT IS ORDERED that the Complex Civil Litigation Pilot Program in the Maricopa County Superior Court and the Complex Civil Litigation Court Evaluation Committee are extended to December 31, 2010.

IT IS FURTHER ORDERED that the Evaluation Committee shall provide to the Administrative Office of the Courts periodic reports, as directed, on the status of the complex civil litigation pilot program. The reports shall be furnished annually, on December 1, 2009, and December 1, 2010.

Dated this ___ day of _____, 2009.

RUTH V. MCGREGOR
Chief Justice

COMPLEX CIVIL LITIGATION PILOT PROGRAM
IN MARICOPA COUNTY

JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY
AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

DECEMBER 2006



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**JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE**

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Appendices

Appendix A

Rules of Civil Procedure Applicable to Cases in the Complex Civil Litigation Pilot Project in the Superior Court in Maricopa County

Appendix B

Summary of Complex Civil Litigation User Survey Results

**JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE
DECEMBER 2006**

A. INTRODUCTION

The Supreme Court established the Complex Civil Litigation Pilot Program at the Superior Court in Maricopa County in January 2003 on an experimental basis pursuant to Supreme Court Administrative Order No. 2002-107.¹ The Order also appointed members to the Complex Civil Litigation Court Evaluation Committee to monitor the program and directed the committee to file a joint report with the Presiding Judge in Maricopa County at the conclusion of the program. This report responds to that directive.

The Complex Civil Litigation Court in Maricopa County is one of many similar programs around the country. Within the last five years, the number of business or complex civil specialty courts has grown from six states to no less than sixteen states. Interest in implementing these types of courts continues to grow.² In keeping with this trend, the American Bar Association's Conference of State Trial Judges initiated a Business and Commercial Court Judges Committee in 2003. Last year several business and complex civil court judges established the American College of Business Court Judges with some initial funding provided by the Brookings Institute. These organizations facilitate the exchange of ideas and best practices for trying complex cases touching on commercial and corporate governance issues.

Although business and complex civil court programs vary from state-to-state in many respects, they generally fall into either one of three distinct categories: pure business courts, where the parties must be commercial entities but the dispute need not be complex; complex business courts, where parties must be commercial entities and the case must be complex; or complex civil courts, like the California and Maricopa Superior Court programs, where the parties need not be businesses, but the case must be complex.

¹ The program was extended by two years in Administrative Order No. 2004-27 (April 28, 2004).

² The list of states includes Delaware, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nevada, North Carolina, New Jersey, New York, Pennsylvania, and Rhode Island. Other states known to be considering such a program include Michigan, Ohio, and Oklahoma. Colorado considered establishing a commercial division in Denver and decided against it for the time being. Wisconsin offered a business court in Milwaukee for a few years, but the program has been shelved for lack of interest. See, Business and Technology Courts, A Survey of Existing State Business and Technology Courts (March 2005), Univ. Maryland School of Law; Civil Action (Winter 2004) National Center for State Courts, Williamsburg, VA; M. Bach & L. Applebaum, A History of the Creation and Jurisdiction of Business Courts in the Last Decade, *The Business Lawyer* (November 2004); and information provided by Lee Applebaum, Vice-Chair, Subcommittee on Business Courts, ABA Business Law Section.

B. PROGRAM COMPONENTS

1. Rules

The Complex Civil Litigation Pilot Program consists of several new rules of civil procedure for use by the parties in designating complex cases and designed to emphasize active pre-trial management by the judge. The rules applicable to the program cases appear in Appendix A.

2. Three-judge panel

The Superior Court in Maricopa County designated three judges assigned to the civil bench to preside over program cases, Hons. Kenneth Fields, Pendleton Gaines and Rebecca Albrecht. Judge Albrecht retired in 2005 and was replaced by Judge Janet Barton. In-coming program cases have been assigned to one of the three judges on a rotating basis. In addition to handling complex cases, each of these judges also presided over a full complement of non-complex civil matters. The program judges have attended a variety of specialized trainings out-of-state that focused on complex case management. They have also had opportunities to learn from other complex and commercial case judges from jurisdictions outside Arizona. They have shared what they learned with other judges on the civil bench in Phoenix.

The Presiding Civil Department Judge acted as the program's gatekeeper, ruling on all motions for complex designation filed by parties seeking to have their cases formally assigned to the Complex Litigation panel.

3. Electronic filing/e-courtrooms

After the first year of the program, the superior court initiated its first electronic filing program through LexisNexis. This program was implemented exclusively for cases in the pilot program. Once it was available, all participating parties were required to file their pleadings electronically. Program participants have electronically filed 144,600 pages of documents with the court.³ LexisNexis has electronically served a staggering 3,262,159 pages of documents on program participants in just three years.⁴ The user survey revealed that being able to e-file was either very important or somewhat important to 83 percent of responding attorneys. The court is in the process of implementing e-filing in all divisions court-wide, so the complex litigation program will soon lose this advantage over the regular civil divisions.

In addition to learning how to work with e-filing, each program judge presided over an e-courtroom equipped with the most up-to-date electronic technology for evidence

³ Data provided by LexisNexis as of October 19, 2006.

⁴ According to LexisNexis, if these pages were stacked up, the stack would roughly equal the height of a 103-story building.

presentation, electronic recording and computer-enhanced judicial management of the courtroom.

4. Staff attorney position

The court created a special position for an experienced staff attorney to assist program judges with research and drafting. The attorney also serves as a liaison between the judges to ensure consistent rulings on similar issues, an important goal of the program. Generally speaking, judges at Maricopa Superior Court do not have access to a law clerk or must rely on law-trained bailiffs for assistance with research and drafting.

5. Case management system enhancements

The IT staff at Maricopa Superior Court customized a new module for the court-wide case management system (iCIS) to assist in tracking pilot program cases. Judicial assistants for each of the program judges input pre-defined data in this application, including type of complaint, whether the case was a class action, whether a master was appointed, number of trial days, number of motions filed, date and type of disposition, if any, and a brief explanation of the gatekeeper's decision to admit or deny admission for each case.

6. Filing fee

Six months into the program, the Maricopa County Board of Supervisors approved a special \$500 filing fee, which parties were required to pay upon admission to the program. The user survey disclosed that nearly 80 percent of responding lawyers agreed the \$500 fee was not a disincentive to participation in the program. The fee was waived or reduced in some cases. Revenue generated by this fee totaled \$258,600 over three years, or approximately \$86,000 a year. This is less revenue than originally anticipated.

To date, expenditures, totaling \$43,128,⁵ have been focused on the staff attorney position, which was only recently filled (\$36,200), equipment and supplies (\$4,400) and limited funding of education and training (\$2,500) for the panel judges. This is less than the level of additional training for the judges anticipated when formation of the Complex Court was first recommended. The superior court and clerk of court's office have picked up all other costs associated with the program. Projections indicate that absent additional funding sources or increased utilization of the program, the program will not bring in enough revenue to support the staff attorney position beyond 2009.

⁵ Data current as of October 19, 2006, provided by Maricopa County Superior Court Administration.

C. PROGRAM CASES

Complex case designation was sought in 301 cases, several of which were consolidated matters. The court admitted 91 cases, a number that actually represents approximately 242 separate actions. The court denied motions for designation in 59 cases. In four cases, the parties either resolved their disputes or moved to another jurisdiction while the motion to designate was pending. Common characteristics of cases denied admission to the program have been lack of complexity and because they were too old to benefit from early and active judicial management.

A total of 5,246 individual plaintiffs and 1,352 defendants were represented in the program cases. More than 560 attorneys entered appearances in these actions. Litigants filed nearly 17,000 motions, of which 2,622 were substantive in nature. The program judges presided over ten trials. Approximately 70 percent of the cases in the program were newly-filed cases. Approximately 30 percent of the cases were resolved within the four-year pilot phase. Fifteen cases were dismissed; judgment was entered in six other cases.

All but one case involved businesses on one or both sides of the dispute. The one non-business case was a divorce action requiring division of a multi-million dollar estate with interests in California and Arizona. As reported by the court, approximately 39 percent of the complex cases were classified as “tort non-motor vehicle.” Contract disputes comprised another 30 percent of the caseload. The other 30 percent fell into an “other civil” category. The attorneys who responded to the committee’s user survey provided more specific information about case types. Their descriptions indicate a majority of the claims were based on construction defect or contract. Additional case types reported were product liability, anti-trust, insurance coverage, securities, shareholder derivative suits, toxic tort, securities, and medical and legal malpractice.

D. USER SURVEY RESULTS

The committee did not undertake a comparative analysis of case processing efficiencies between cases in the program and those not in the program, since no two complex cases are sufficiently alike to permit meaningful data. Additionally, with fewer than 100 cases in the program so far, most of which have not yet been completed, the sample size is too small to render valid empirical data. Consequently, the committee surveyed participating attorneys for an indication of whether the program is meeting its stated goals.

In September 2006, the AOC conducted an online survey of the 560+ lawyers who had entered appearances in program cases. Responses were received from 83 attorneys. The survey results are summarized in Appendix B.

By a large majority, attorneys who responded to the survey were veteran lawyers with experience in handling complex cases. Three out of four responders reported they have been in practice for ten years or more. Seventy percent described themselves as defense lawyers. More than half work in firms of more than 20 lawyers and have handled five or more complex cases in the past ten years.

Ninety-six percent of those responding favored continuation of the program. Fifty-five percent favored expanding the volume of cases in the program by admitting more case types, but 80 percent favored keeping the program without making any changes. Program judges were uniformly perceived to be well-equipped to handle complex civil matters and were somewhat more able to devote attention to these cases compared with other non-program judges. The program judges also received high marks in consistency of rulings, predictability, communication with counsel, familiarity with complex case law, experience, active case management, and client and attorney satisfaction.

E. RECOMMENDATIONS REGARDING PROGRAM MODIFICATIONS
--

Administrative Order No. 2002-107 directs the committee to provide the court with recommendations for modifications “to procedural rules, staffing, and funding parameters as needed” and “for implementing the program in other counties and/or on a statewide basis as the committee deems appropriate.”

Recommendation No. 1. Continue the program

The Complex Civil Litigation Pilot Program should be converted to a permanent component of the Civil Department of the Superior Court in Maricopa County. The program has evolved more slowly than originally anticipated, and its strengths have yet to be fully appreciated. Nevertheless, the program has already achieved unqualified success in eliminating problems related to judicial rotation and in providing the community with a cadre of specially-trained experienced judges able to competently and efficiently manage complex disputes working with a full complement of modern litigation support tools in an environment designed to provide consistency and predictability.

Recommendation No. 2. Explore funding options

Absent a substantial influx in cases, additional funding for this program will be needed within the next few years to support the program’s staffing and training needs. The \$500 filing fee needs to be supplemented through legislative appropriation or some other source.

Recommendation No.3. Find ways to increase case volume preferably without changing the rules for admission

A large majority of program participants have expressed a desire to see the program continued without modifying the rules. However, funding constraints threaten the program's continued viability and efficacy unless more cases are designated complex. At the same time, voluntary participation is a desirable feature of the Arizona program that distinguishes it from most other similar programs around the country. Therefore, the committee prefers to approach the problem of case volume in a way that would maintain the voluntary nature of participation but assist the court in identifying the most deserving cases, not only to increase funding for the program, but also to remove them from the regular civil calendar. Internal case processing in the clerk's office should be modified to bring newly-filed presumptively complex cases to the attention of the program gatekeeper automatically. The civil cover sheet may be used for this purpose. The gatekeeper could then notify presumptively-eligible petitioners to consider moving for complex case designation under A.R.Civ.P. 8(i). With experience, the court can identify the appropriate categories of cases to be handled in this fashion. For example, experience to date has demonstrated that construction-defect claims involving more than 20 homes typically require extensive judicial involvement in coordinating discovery and therefore should be considered presumptively complex and automatically screened by the program gatekeeper as recommended here.

Recommendation No. 4. Extend the term of the evaluation committee

In the view of everyone involved, the committee's periodic meetings with program judges and court administrators have been essential to steering the program through the pilot phase. Committee members have actively assisted in promoting the program, including arranging and conducting a February 2005 continuing legal education session that attracted more than 70 participants. On-going collaboration between practitioners and the superior court will play a critical role in ensuring accountability, refining the program's parameters, and possibly even identifying new funding options.

Recommendation No. 5. Defer statewide expansion

The original committee envisioned a complex division in both Maricopa and Pima County Superior Court locations. Pima County declined to participate. Given the volume of program cases to date and the limited funding options, the establishment of complex civil divisions in other counties does not appear practical or necessary at this point in time. The presiding civil department judge entertained one motion for complex case designation filed by a party in an out-of-county case from Coconino County. Current law permits a change of venue to another county in civil cases by either the consent of the parties or by court order based on a determination of good and sufficient cause. A.R.S. §12-401 et. seq.

F. CONCLUSION

Over the past four years, the committee has had the pleasure of watching this program grow from a concept into a reality of recognizable value to the legal community. Many people deserve acknowledgement for this accomplishment, not least of which are the judges, clerks, administrators, and judicial staff at the Superior Court in Maricopa County. They have laid a solid foundation on which to continue to build. The committee urges the court to continue the program with the eventual goal of making it a permanent part of the judicial landscape in Arizona.

Appendix A

Rules of Civil Procedure Applicable to Cases in the Complex Civil Litigation Pilot Project in the Superior Court in Maricopa County

[Revised] Rule 8(h). Classification of Civil Actions

(1) Counsel for plaintiff or petition shall describe in the caption of each complaint or petition filed with the court the nature of the civil action or proceeding, as follows: Tort Motor Vehicle, Tort Non-Motor Vehicle, Contract, Domestic Relations, Eminent Domain or Non-classified Civil, Writ of Garnishment.

(2) Writs of garnishment shall include under the caption whichever of the following notations is applicable:

- ~~(1)~~A. Federal Exemption.
- ~~(2)~~B. Enforce order of support.
- ~~(3)~~C. Enforce order of Bankruptcy Court
- ~~(4)~~D. Enforce collection of taxes.
- ~~(5)~~E. Non-earnings.

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

[New] 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), the court shall 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 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) Inherently complex legal issues;
- (H) Factors justifying the expeditious resolution of an otherwise complex dispute;
- (I) 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 (2) justifying the designation. The certification shall be in a form approved by the Supreme Court 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 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 (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.

COMMENT

Proposed 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.

[New] Rule 8(i) Program Designation Certification Form
IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

_____)	
Plaintiff)	Case No. _____
)	
vs.)	9 Certification of Complexity
)	9 Joint Certification of Complexity
)	9 Contravening Certification
_____)	
Defendant)	
_____)	

The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

- 9** Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve
- 9** Management of a large number of witnesses or a substantial amount of documentary evidence
- 9** Management of a large number of separately represented parties
- 9** Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:

- 9** Substantial postjudgment judicial supervision
- 9** 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
- 9** Inherently complex legal issues
- 9** Factors justifying the expeditious resolution of an otherwise complex dispute
- 9** 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]

[New] 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) 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) Appointing liaison counsel and admission of non-resident counsel
- (8) Scheduling settlement conferences
- (9) Notwithstanding Rule 26.1, the establishment and timing of disclosure requirements
- (10) Scheduling expert disclosures and whether sequencing of expert disclosures is warranted
- (11) Scheduling dispositive motions
- (12) Adopting a uniform numbering system for documents and establishing a document depository
- (13) Determining whether electronic service of discovery materials and pleadings is warranted
- (14) Organizing a master list of contact information for counsel
- (15) Determining whether expedited trial proceedings are desired or appropriate
- (16) Scheduling further conferences as necessary
- (17) Use of technology, videoconferencing and/or teleconferencing
- (18) Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof
- (19) 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. Proposed 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.

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

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: See 16.3.

Appendix B
Complex Civil Litigation User Survey
Results Summary
October 2006

A. Rate your experience in the Complex Civil Litigation pilot program

Based upon my experience in the CCL program, overall, I am more satisfied with the case management process vs. the way cases are managed by conventional civil judges.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	37	28	14	1	3
Response Percent	45%	34%	17%	1%	4%

The level of judicial management and involvement in my CCL program cases(s) was greater than in non-pilot civil cases in the Superior Court in Maricopa County.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	30	30	19	2	2
Response Percent	36%	36%	23%	2%	2%

The assigned judge of my CCL cases(s) was more accessible compared to my cases that were not in the pilot program.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	24	26	28	2	3
Response Percent	29%	31%	34%	2%	4%

The judge(s) in my CCL case (s) were more experienced in dealing with complex issues than judges who are not assigned to the CCL pilot program.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	39	29	8	3	3
Response Percent	48%	35%	10%	4%	4%

CCL judges, overall, have more familiarity with complex case law to decide such cases fairly and accurately than judges who are not in the CCL pilot program					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	28	37	9	5	3
Response Percent	34%	45%	11%	6%	4%

Taken as a whole, CCL judges communicate more with trial counsel than judges who are not in the pilot program.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	37	28	14	1	3
Response Percent	45%	34%	17%	1%	4%

Given that CCL judges have long-term judicial assignments (not rotated), trial counsel and their clients are more able to accurately predict the course of the case in cases assigned to the CCL program than in cases not assigned to the CCL program.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	45	24	8	5	1
Response Percent	54%	29%	10%	6%	1%

Clients generally are happy with the operation of the CCL program.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	26	26	25	3	3
Response Percent	31%	31%	30%	4%	4%

A. Rate your experience with non-CCL cases.

I am satisfied with having more than one judge become involved in pretrial management.

	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	1	9	21	30	20
Response Percent	1%	11%	26%	37%	25%

Rulings are just as consistent.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	2	14	23	35	6
Response Percent	2%	18%	29%	44%	8%

Non-complex judges devote the proper amount of time and resources to adequately manage a case.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	3	29	30	13	5
Response Percent	4%	36%	38%	16%	6%

Most non-complex judges have sufficient knowledge about complex commercial law to decide such cases fairly and accurately.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	4	18	28	28	2
Response Percent	5%	22%	35%	35%	2%

Most non-complex judges have sufficient experience in complex litigation to manage their caseloads in an efficient and effective manner.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	4	14	28	31	4
Response Percent	5%	17%	35%	38%	5%

Direct communication between trial counsel and the non-complex judges is adequate.					
	Strongly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Strongly Disagree
Total Responses	2	27	32	15	3
Response Percent	3%	34%	41%	19%	4%

B. Evaluate the Complex Civil Litigation program's future

Keep the program as is/make no changes to the existing pilot program.		
	Yes	No
Total Responses	65	17
Response Percent	79.3%	20.7%

Reform the existing program but do not eliminate it completely.		
	Yes	No
Total Responses	22	43
Response Percent	33.3%	65.2%

Eliminate the program completely.		
	Yes	No
Total Responses	3	73
Response Percent	3.9%	96.1%

Expand the volume of case types that are admitted to the program.		
	Yes	No
Total Responses	44	36
Response Percent	55%	45%

Support legislation that would provide for a statewide Complex Civil Litigation program.		
	Yes	No
Total Responses	67	15
Response Percent	81.7%	18.3%

The criteria for designating whether a case is “complex” (and thereby allowing or disallowing entry into the CCL pilot program per A.R.C.iv.P.8 (i)) are reasonable.		
	Yes	No
Total Responses	74	6
Response Percent	92.5%	7.5%

C. A few questions about your civil litigation background and preferences

How important is it to you to e-file your pilot program case(s)?			
	Very important	Somewhat important	Not important
Total Responses	41	27	14
Response Percent	50%	33%	17%

Please indicate the types of case(s) that you have handled in the Complex Litigation pilot.

	Response Total	Response Percent
Construction Defect	39	48%
Contracts	30	37%
Malpractice (legal or medical)	3	4%
Product liability	14	17%
Tort non-motor vehicle	16	20%
Toxic tort	7	9%
Antitrust	11	14%
Insurance	3	4%
Class action	3	4%
Business Tort	2	2%
Commercial Fraud	2	2%
Securities litigation	4	5%

Do you consider the \$500 filing fee to be a disincentive to participating in the Complex Civil Litigation pilot program?

	Yes	No
Total Responses	18	64
Response Percent	22%	78%

How many complex civil cases (pilot and non-pilot) have you handled in the Superior Court in Maricopa County or elsewhere in the past 10 years?				
	1 to 4	5 to 10	11 to 20	21 +
Total Responses	36	24	15	6
Response Percent	44%	30%	19%	7%

How many lawyers are in your firm?				
	1 to 10	11 to 20	21 to 50	51 +
Total Responses	20	12	19	29
Response Percent	25%	15%	24%	36%

Do you consider yourself to be primarily a defendant's or a plaintiff's attorney?		
	Defendant's Attorney	Plaintiff's Attorney
Total Responses	54	23
Response Percent	70.1%	29.9%

How many years have you been an attorney?			
	1 to 10	11 to 20	21+
Total Responses	22	23	36
Response Percent	27%	28%	44%

**FINAL REPORT OF THE
COMMITTEE TO STUDY COMPLEX LITIGATION
SEPTEMBER 2002**

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**FINAL REPORT OF THE
COMMITTEE TO STUDY COMPLEX LITIGATION
September 2002**

A. EXECUTIVE SUMMARY

1. ORIGIN OF THE COMMITTEE

In December 2001, the Chief Justice established the Committee to Study Complex Litigation. Members of the committee were drawn from the defense and plaintiff's bars, trial and appellate judges, court administrators, an elected clerk of court, public policy experts, corporate general counsel representing several large corporations in the Phoenix and Tucson areas and a state senator. In the words of the administrative order that created the committee, "in keeping with the Court's strategic goal to promote swift and fair justice, it is deemed advisable to study complex litigation in Arizona, the rules and statutes that govern these cases, and to determine if the establishment of a complex litigation/business court or division would benefit the citizens of this state and the administration of justice in Arizona." The committee was asked specifically to "determine if any of the various models used in other states should be implemented in Arizona."

2. WORK OF THE COMMITTEE

The committee reviewed materials from existing complex and commercial case programs in Delaware, California, Illinois, Connecticut, Maryland, Michigan, New York, North Carolina and Pennsylvania. The highlight of the committee's inaugural meeting was a panel discussion with the Chief Justice of California, the Chief Judge of New York, the Administrative Director of the California Judicial Department, the President of the National Center for State Courts and the chairman of the California Complex Litigation Task Force.

The committee first focused on a discussion of whether to implement changes. After extensive discussion of the pros and cons of such a change, the committee unanimously agreed that changes were needed. Then the committee focused on how to make changes and which changes to recommend. Members described their efforts to avoid bringing civil disputes to state court by filing their claims in federal court or hiring a private judge. A number of factors were identified that contribute to the problem, including some judges' lack of familiarity with complex civil litigation and commercial law. At the same time, judicial rotation prevents even the most skilled judges' ability to oversee more complex cases through to resolution. The committee also reviewed with the Pima and Maricopa County Clerk's office the effect that removing complex controversies from the overall mix would have on all other civil litigants because the civil bench will be able to devote more resources to the large volume of less complex civil cases.

Some of the systems reviewed were limited specifically to commercial cases that the committee determined would not be in the best interests of Arizona's court system. After reviewing the programs in other states, the California model, although still in a pilot phase, was deemed to be a suitable fit for Arizona in many respects. Unlike several other states' programs, the California program targets substantively and procedurally complex cases. An additional advantage to this approach is that it would include more than traditionally commercial cases such as mass tort and toxic tort. California has created a comprehensive deskbook to guide judges and lawyers in their case management tasks and to alert practitioners to what will be expected of them. Whereas California received considerable funding (\$2.8 million) from the state legislature to establish the program in six different counties, Arizona will rely primarily on the reallocation of existing resources in Maricopa and Pima Superior Courts. To the extent extra funds are needed to facilitate the courts' infrastructure to implement this program, they may be generated by the courts themselves through imposition of extra filing fees on complex case litigants and other civil litigants, all of whom stand to reap the benefits of this program.

3. COMMITTEE STRUCTURE

The committee divided into four sub-committees, each addressing one aspect of the new program.

- Rotation/Selection proposed a means of designating a small panel of judges to hear eligible cases. The group also identified how those judges would be selected, and suggested they be taken out of the normal rotation schedule for at least five years.
- Definition/Eligibility proposed a means of identifying and screening complex cases eligible for the program.
- Rules/Procedures drafted an additional subsection for Rule 16 that would require an early case management conference at which the parties and the judge could choose from numerous management tools to fit their particular case. They also drafted a proposed rule 39.1 to guide judicial officers in expediting trials in complex cases where possible.
- Administration/Infrastructure identified a list of enhancements to courthouse facilities, caseflow and records management techniques, technology, staffing, judicial education and funding that would maximize the advantages that the program has to offer.

4. PROGRAM DESIGN

The committee concluded that active hands-on management by the judge is the foundation for successful management of complex litigation. In keeping with this idea, one judge would oversee all aspects of the case, and would stay with the case until resolution. Case management would be aimed at encouraging early resolution of cases or parts of cases. Discovery would be focused to promote cost savings and rapid settlement or dismissal of issues. Parties would be encouraged to use court-annexed mediators and arbitrators. Program judges would be available on short notice to resolve discovery disputes. The program is intended to encourage all participants to maximize their use of electronic communication and storage and transmission of evidence in each case. Appearance at pre-trial hearings by remote electronic means could become routine. Periodic case management conferences would be

the norm. Judges would receive training in case management techniques and substantive law areas common to complex cases. They would be expected to confer with each other to maintain consistency in substantive rulings and case management.

The process envisioned by the proposal would remove approximately 400-1,000 (1-3%) complex cases per year from the regular civil calendars in the Superior Court in Pima and Maricopa Counties. A panel of one full-time and two part-time judges would be devoted to managing these cases in each court. Parties could opt into the program by use of a re-designed civil cover sheet, or a judge could make the designation *sua sponte*. The program judge assigned to the case would have the final say over which cases stay in the program. In the initial phase of the program, complex litigation judicial panels will be established only in Phoenix and Tucson. Once the program has proven itself, case transfer or other forms of accommodation may be designed to reach eligible cases filed in other counties.

Oversight of the program in its initial phase may need to be formally delegated to one or more implementation committees that will review the program and implement any changes necessary. This implementation committee may also sponsor an effectiveness study to measure the costs and benefits of the program in real terms. The implementation committee will also look at indirect benefits of the program.

B. PROPOSED RULES APPLICABLE TO COMPLEX CASES

1. Amendment to Rule 8(h).

Rule 8(h). Classification of Civil Actions

(1) Counsel for plaintiff or petition shall describe in the caption of each complaint or petition filed with the court the nature of the civil action or proceeding, as follows: Tort Motor Vehicle, Tort Non-Motor Vehicle, Contract, Domestic Relations, Eminent Domain or Non-classified Civil, Writ of Garnishment.

(2) Writs of garnishment shall include under the caption whichever of the following notations is applicable:

- (~~1~~)A. Federal Exemption.
- (~~2~~)B. Enforce order of support.
- (~~3~~)C. Enforce order of Bankruptcy Court
- (~~4~~)D. Enforce collection of taxes.
- (~~5~~)E. Non-earnings.

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

2. Proposed 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), the court shall 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 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) Inherently complex legal issues;
- (H) Factors justifying the expeditious resolution of an otherwise complex dispute;
- (I) 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 (2) justifying the designation. The certification shall be in a form approved by the Supreme Court 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 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 (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.

COMMENT

Proposed 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. The committee is seeking comments from practitioners and the bench pertaining to the proposed process for designating a case as eligible for the complex litigation program.

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.

3. Proposed 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) 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) Appointing liaison counsel and admission of non-resident counsel
- (8) Scheduling settlement conferences
- (9) Notwithstanding Rule 26.1, the establishment and timing of disclosure requirements
- (10) Scheduling expert disclosures and whether sequencing of expert disclosures is warranted
- (11) Scheduling dispositive motions
- (12) Adopting a uniform numbering system for documents and establishing a document depository
- (13) Determining whether electronic service of discovery materials and pleadings is warranted

- (14) Organizing a master list of contact information for counsel
- (15) Determining whether expedited trial proceedings are desired or appropriate
- (16) Scheduling further conferences as necessary
- (17) Use of technology, videoconferencing and/or teleconferencing
- (18) Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof
- (19) 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. Proposed 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.

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

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: See 16.3.

C. JUDICIAL ROTATION AND SELECTION

1. Proposal

The complex case program will initially be handled by a panel of judges in the Maricopa and Pima County Courts. At least one judge will be assigned to complex litigation cases. During initial implementation the presiding judge will regulate the assignment and transfer of cases with the

eventual goal of at least one judge working exclusively on complex litigation cases. At the outset, all civil department judges should be encouraged to identify cases on their calendars that would be eligible for transfer to the complex litigation program.

The judges will serve for a minimum of five years. The presiding judge of the superior court will select the judges and shall consult the chief justice of the supreme court prior to making the selection. It is understood that the presiding judge may from time to time need to adjust the rotation and assignment of judges in order to meet caseload demands or other exigencies.

Judges will be chosen based on their training, experience, and interest in complex litigation and commitment to engage in ongoing judicial education. Judges selected to this bench must be committed to the use of new technologies in resolving cases. Examples of requisite skills would include the ability to use the Internet for research, an understanding of electronic file storage and retrieval, and the ability to follow electronic links in legal reference materials.

2. Justification:

The proposal calls for a multi-judge panel to accommodate the anticipated volume of cases, judicial conflicts of interest, Rule 42(f) change of judge notices, and to promote collaboration between judges.

There are several major advantages of establishing a panel of judges to handle complex litigation:

Case management: Currently, superior court judges rotate among benches within a superior court. While this rotation has numerous benefits, it can have debilitating effects in complex cases. It often results in the parties having to reeducate a new judge on every motion. Different judges hear different stages of the litigation, and the potential for conflicting rulings exists.

One of the key benefits to designation of a case or cases as complex litigation is the assignment of the litigation to one judge who is not in a rotation for handling of all pretrial matters, including motions and discovery. Since the judge who handles pretrial motions will also try the case, possibility of inconsistent decisions on substantive and evidentiary matters is greatly reduced. The most significant improvement in the management of complex cases should occur at the pretrial stage.

Case management by one judge can also result in more certainty in the setting of cases for trial and a shorter wait for a trial date. Since most cases still settle just before trial, shortening the pretrial phase and getting the case on the trial calendar can result in a more efficient and less costly disposition of cases.

Speed and flexibility: In many complex cases, particularly those involving change in ownership or corporate governance issues, preliminary injunctive relief is a critical issue. Often decisions need to be rendered before specific times such as shareholder meetings. Having a judge available to hear such cases on short notice is a significant benefit to the parties. In many cases a business simply

needs an answer to an issue so it can make a decision and move on with the operation of the company. The speed and flexibility provided by the establishment of a complex litigation division helps to meet those needs.

Specialization: Because the complex litigation judges will hear only complex cases, they will develop proficiency in handling both the substantive law and the case management issues that arise in complex cases. The judges will acquire the level of expertise in dealing with complex cases that come from specialization, which in turn will lead to greater efficiency and predictability.

As part of its function, the implementation task force should explore a judicial assignment model that would permit complex civil litigants statewide to take advantage of the program, possibly through a circuit-riding panel of judges or some other means.

COMMENT

During committee debate, some concern was expressed that the assignment of judges to the complex litigation program should be the sole and exclusive responsibility of the local presiding judge. The proposal contemplates that the decision be made only after the presiding judge has consulted the chief justice of the supreme court, so that the presiding judge can benefit from any particular insights that the chief justice may have to share. Currently, the chief justice approves the presiding judge's selection of an associate presiding judge, but not the presiding judge's selection of a presiding judge of the juvenile court or other subdivisions within the superior court (e.g., civil, criminal, probate/mental health and family court).

D. ADMINISTRATION AND INFRASTRUCTURE

1. CASEFLOW MANAGEMENT

a. Issue

Effective caseflow management requires "early and continuous" judicial control of all cases from the time of filing through final disposition, irrespective of the type of disposition. Arizona statutes, rules of civil procedure and local rules provide a general framework for the court's management of complex civil litigation. Current caseflow management policies and procedures must be reviewed and enhanced in light of the new rules for a complex litigation court. For example, in Maricopa County, the inactive calendar process (Rule 3.6 Maricopa County Local Rules) is automated. When this process is changed, information systems and computer-generated notices will need to be reprogrammed, and staff will need to be trained in the new process.

Information systems in the trial courts must be enhanced to randomly assign the complex cases to the designated judges in a manner that promotes integrity in case assignments, balanced calendars and consistency with the court's other case assignment systems. The case assignment system must

also support periodic calendar equalization, case reassignments, case transfers to another county, and special circumstances case assignments as directed by the presiding judge.

b. Implementation

In establishing a complex litigation court, the supreme court is essentially establishing a differentiated case management (DCM) system for civil cases in the superior court. Key components of the DCM model include “triage” to identify complex cases at the time of case filing, prescribed “tracks” with time deadlines for key case events (“intermediate monitorable events”), opportunity for alternative dispute resolution, pretrial case management and case monitoring. For the complex litigation court, a new complex case track must be instituted, while the court also maintains the existing caseflow management system for “non-complex” civil cases. Key areas for review and establishment of new case management procedures include:

- ☞ Management Information and Statistical Reporting: Statistical information and management reports are essential for effective caseflow management. Individual judges and their staff must be provided timely and accurate listings of their active pending cases, information on case status, case aging data, etc. Aggregate case management data is also essential for the court to maintain balanced calendars, for evaluation of caseflow management trends, and for resource allocation. The following essential statistical reports must be developed for the complex litigation court, both on an individual judge and “court-wide” basis:
 - Trends in case filings, termination and pending active case inventory;
 - Case clearance rates, by case category;
 - Listing of individual active pending cases, with case status and next court event (active case inventory);
 - Cases set for trial; and,
 - Age of pending cases as compared to case processing time standards.
- ☞ Case Processing Time Standards: The Arizona Supreme Court’s guidelines for civil case processing are patterned after the American Bar Association time standards are not practical for complex cases. The committee recommends that the Supreme Court establish standards specific to complex cases. Recommendations with regard to these standards should be made by the implementation committee.

Once time standards for complex cases are established, it will be important to educate the bench and bar on the time standards and underlying rationale, and to incorporate the new time goals in management statistics and information systems.

Juror Availability: It is often difficult to find jurors who can serve for complex cases because of the length of the trial. Potential jurors may need to be pre-screened for length of service for trial or other reasons.

2. FACILITIES

a. Issue

Complex civil cases often involve a large number of attorneys, parties and witnesses; numerous exhibits and documents; media attention; and other special logistical considerations. In the long term, new courthouse construction or renovation may provide an opportunity to build large, flexible, state-of-the-art courtrooms specifically designed for complex civil litigation (see section on technology). In the short term, however, it will be necessary to use existing superior court facilities in Pima and Maricopa County for the complex litigation program.

b. Solution

To the extent feasible, the superior courts should consider the following measures to improve facility and logistical support for the complex litigation program:

- ☞ Larger courtrooms in the courthouse or alternate space that can be retrofitted for court hearings. Note: In Maricopa County, 8 new e-courtrooms have recently been established, some of which could be designated for complex litigation calendars.
- ☞ Physical modifications to the courtroom, such as additional space for counsel, parties, files, exhibits, or persons such as experts or consultants whose presence may be needed.
- ☞ Installation of necessary technology for use by the court, counsel, and jurors, e.g., evidence presentation systems, video conferencing systems, etc.
- ☞ Jury accommodations, particularly in a lengthy trial.
- ☞ Witness and attorney conference rooms.
- ☞ Courtroom security and access during non-trial hours.
- ☞ Media accommodations, including a “press room” and special arrangements for cameras in the courtroom.

Advance notice of special space and equipment needs is critical to making the best use of existing court facilities. These special needs should be identified as early as possible, through pretrial management conferences and formal notice to the court. Plans for special equipment (e.g., video conferencing, etc.) should specify which parties are responsible to make special arrangements, as well as the party responsibility for funding. The courts, in turn, can designate a court staff person(s) to coordinate any special arrangements for equipment, storage, etc.

3. RESOURCES AND STAFFING

a. Issue

To the extent feasible, the trial courts will seek to establish the complex litigation courts largely through reallocation of existing judges and staff. Some additional judicial and staff resources may be required, however, based on the nature and scope of judicial and complex litigation court model.

b. Solution

At a minimum, the judges of the complex litigation courts must be provided staff attorneys to review pleadings, conduct legal research, draft rulings, etc. The exact number of staff attorneys required has yet to be determined, but at least one staff attorney per for the program in each county is assumed for planning purposes. Additional staffing needs may also extend to initial case screening, information systems (courtroom technology and computer programming) and caseload manager responsibilities, as outlined below:

- ☞ Staff attorneys: The nature of litigation in the complex litigation court suggests a need for experienced staff attorneys, licensed to practice in Arizona.
- ☞ Information Technology Services and Staffing: Electronic filing, courtroom technology and the computer programming enhancements for the complex litigation court will require services of court technology staff and/or outside consulting/vendor services. Specific staffing requirements can be assessed as plans for the business court and technology projects are more fully defined.

COMMENT

A relevant staffing model is the capital law clerk project for the superior courts. The staff attorneys supporting judges throughout the state work as a team, all available to conduct research for any superior court judge, sharing all research findings and work products.

4. TECHNOLOGY

a. Issue

Because of the nature of complex litigation, i.e., large volume cases with multiple plaintiffs, defendants and lawyers, the filing, presentation of exhibits and distribution of massive amounts of paper work and files becomes unwieldy.

Using the latest technology is the most efficient way of handling these issues. However, most courthouses, courtrooms and clerk's offices are not capable of handling these new technologies.

Clerk's offices on the whole are not ready for e-filing, electronic document distribution, handling of electronic exhibits and processes for use of and retention of electronic records/files.

Courtrooms generally are old and do not have the wiring or equipment to handle electronic cases. There would be a cost to upgrading these courtrooms in a time when funds are limited.

b. Challenges

New technology in old courtrooms. Lack of equipment and technology. Lack of funding. Resistance to change.

c. Solution

Utilize e-filing and digital exhibits on complex cases where appropriate.

Real time court reporting should be routinely provided, including feeds to the lawyers at a reasonable fee.

Courtroom technology should provide broadband width courtroom connectivity of the lawyers to the Web, including VPN or other appropriate connections with their office systems.

E-distribution of documents

Upgrade and utilize an up-to-date courtroom.

Impose user fees by rule/order for financing.

Change rule or legislation for electronic record retention and filing of electronic documents and materials

Use of the Internet

d. Justification

Save space with digital exhibits and records.

Save processing time in filing cases/documents, imaging, distribution.

Immediate access to information for all parties through real time recordation.

Save mailing costs.

Save employee time in moving papers, files and distributing documents.

Allow more efficient handling of complex cases.

COMMENT

The committee is interested in hearing from practitioners whether they believe that attorneys will be discouraged from participating in this program if they are required to use technological innovations such as electronic filing or briefs offering hyperlinks to materials cited.

5. RECORD MANAGEMENT

a. Issue

Because of the nature of complex litigation, i.e., large volume cases with multiple plaintiffs, defendants and lawyers, the filing and presentation of exhibits and distribution of massive

amounts of paper work and files becomes unwieldy. A complex case can contain multiple files – sometimes over a hundred, and requires voluminous paper management in the filing, imaging, record reproduction and distribution of documents.

The hard files have to be pulled for any hearing or to file papers, and then re-filed. There is a tremendous cost in personnel, paper and supplies.

b. Challenges

Cost

Paper to electronic record use.

Resistance to change.

Training for court personnel, public and private sector users.

Change the business process in the courts.

c. Solution

Electronic records – digital and imaged

Systems that are convertible to new technologies

Training for all involved in complex cases

Impose filing fee/surcharge

Utilize e-filing and e-documents in complex cases where appropriate

Change rule and/or legislation for electronic record retention

Use of the Internet

d. Justification

More efficient and effective system and process.

Save space.

Save time (court, lawyers, parties).

Save money (runners, mailing, instant access)

Save paper, equipment and supplies.

No increase in employees for increased volume in court cases.

6. EDUCATION

a. Issue

Establishing a court, division or calendar for the purpose of handling complex litigation will require new skills and specialized knowledge for judges, judicial support staff, administrators and clerks, and for those attorneys who handle these cases.

Many excellent ideas are being considered regarding how best to re-engineer the court system and its processes to more effectively and efficiently handle complex litigation. All of these ideas, however, introduce “change” into the court system and change must be “institutionalized” for it to be sustained over time as court personnel turn over. Court employees, judges and lawyers

who handle cases that will be classified as “complex” need to know the rules to be followed and their responsibility in making the system work.

b. Solution

The Judicial College of Arizona (JCA) and the Council on Judicial Education and Training (COJET) oversee statewide educational programming for the judicial branch. The JCA creates the educational programming for judges, and COJET, through its numerous committees, does the planning for judicial staff. The main educational event for judges is the Annual Judicial Conference. This 2.5-day conference, which is usually held each June, is attended by judges from all court levels and addresses a variety of topics. Additionally, from time to time and as the need dictates and resources permit, special programs are offered which are usually of limited scope and participant interest.

Judges assigned to this program should be committed to participating in educational programs. Program judges should conduct continuing legal education seminars for practitioners and other judges at least annually.

Judicial staff education is offered through regional conferences covering a variety of topics. Single-topic programs also are offered as necessary and as time and money permit.

Educational programs on handling complex litigation can be incorporated into these annual education events.

Training programs for attorneys also will need to be offered. These programs may be appropriate for the State Bar’s Continuing Legal Education Program to sponsor. Judges could also hold training conferences with the state and county bar members to educate them about procedures and to elicit feedback for areas of improvement. These training sessions would be held on an annual basis.

7. FUNDING

The costs associated with this program have been identified as personnel and technology. The committee felt that a skilled staff attorney who would be able to carry out legal research as well as assisting with case management would be important. Such a position would be necessary to support each panel of complex litigation judges.

Additionally, continued improvement to technology in and around the courtroom will be imperative to efficient communication and case processing in complex cases.

The committee felt that an additional filing fee for entering the complex case program in the amount of \$500 for each litigant would be appropriate. The majority of participants in this program are likely to be large companies and firms who would not see the additional fee as a barrier to justice. The fee waiver and deferral process already in use would be extended to

cover those who have complex cases but are unable to afford this fee. The designating party shall pay the fee at the time of filing. Fees due from other litigants shall be paid pursuant to the presiding judge's order of transfer. The County Board of Supervisors should approve these fees in each county. Any and all funds from special fees or charges for complex litigation shall be used only for the complex litigation program including courtroom facilities, staffing and other expenses incurred by the clerk's office or court administration in connection with implementing and operating the complex litigation program in that county. The fees collected should be handled in a manner similar to the local judicial collection enhancement fund, which requires the approval of both the superior court clerk and the presiding judge in making expenditures from the fund.

Assuming that between 400 and 1,000 cases are filed in the program annually, the revenue stream this proposal would generate would be between \$400,000 and \$1,000,000 on a yearly basis.

APPENDIX A: PROPOSED RULE 8(i) PROGRAM DESIGNATION CERTIFICATION FORM

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

_____)	
Plaintiff)	Case No. _____
)	
vs.)	9 Certification of Complexity
)	9 Joint Certification of Complexity
)	9 Controvening Certification
_____)	
Defendant)	

The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

- 9** Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve.
- 9** Management of a large number of witnesses or a substantial amount of documentary evidence.
- 9** Management of a large number of separately represented parties;
- 9** Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court: _____
- 9** Substantial postjudgment judicial supervision
- 9** 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.
- 9** Inherently complex legal issues.
- 9** Factors justifying the expeditious resolution of an otherwise complex dispute
- 9** 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]

**APPENDIX B: ADMINISTRATIVE ORDER ESTABLISHING
COMMITTEE**