

1 John A. Furlong, Bar No. 018356  
General Counsel  
2 STATE BAR OF ARIZONA  
4201 N. 24<sup>th</sup> Street, Suite 100  
3 Phoenix, Arizona 85016-6266  
4 Telephone: (602) 252-4804  
[John.Furlong@staff.azbar.org](mailto:John.Furlong@staff.azbar.org)  
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6 **IN THE SUPREME COURT**  
7 **STATE OF ARIZONA**

8 PETITION TO AMEND ARIZONA  
9 RULES OF CIVIL PROCEDURE 16,  
10 16.1, 26, 37, 38, 38.1, 72, 73, 74, AND  
11 77

Supreme Court No. R-13-0017

**The State Bar of Arizona's Amended  
Petition and Response to Comments  
on Petition to Amend Arizona Rules  
of Civil Procedure 16, 16.1, 26, 37, 38,  
38.1, 72, 73, 74, and 77**

12 The State Bar<sup>1</sup> submits this Amended Petition and Response to the Comments of  
13 (1) the Civil Bench of Arizona Superior Court in Pima County ("Pima County Civil  
14 Bench Comment"); (2) Judge Carmine Cornelio of the Arizona Superior Court in Pima  
15 County ("Judge Cornelio Comment"); and (3) the Maricopa County Attorney's Office  
16 ("Maricopa Attorney's Office Comment"), collectively referred to as "the Comments".  
17

18 The Comments raise concerns regarding the Petition's proposal for trial settings,  
19 case management, and ADR requirements that the State Bar (through its Civil Practice &  
20 Procedure Committee) carefully considered when the amendments proposed by the  
21 Petition were developed. In fact, as noted by the Pima County Civil Bench Comment,  
22 these same concerns were in large part previously raised and considered, and led to some  
23 changes to the Petition before it was filed. For example, concerns regarding the timing of

24 <sup>1</sup> In referencing the "State Bar's" beliefs and positions, this Amended Petition is  
25 referencing that group of the State Bar that continues to believe that the Petition should be  
adopted with the changes proposed herein. As noted below, another group now opposes  
the changes to case management proposed by the Petition.

1 trial settings were previously considered and led to a change to the Petition before it was  
2 filed that gives a court discretion to set a trial early in the case as part of the scheduling  
3 order that is entered. Similarly, concerns over requiring ADR before trial is set were also  
4 previously considered and led to a proposed exception for good cause.

5 While the system embodied in the proposed rule change was first developed in  
6 Maricopa County, many counties, including Yavapai, Coconino, and Yuma have  
7 voluntarily adopted the new management approach that the Bar proposes. In essence, the  
8 Petition seeks to acknowledge, by rule, what has become the reality in the vast majority  
9 of civil cases litigated in the State. The State Bar takes the position that litigants have a  
10 right to expect that the published rules will be followed. Because the existing rules have  
11 become wholly anachronistic, it is no longer possible to follow them given the volume of  
12 civil litigation that now exists in Arizona.

13 After considering the Comments, there now exists a split within the State Bar  
14 regarding the Petition. One group continues to believe that the Petition adequately  
15 addresses the competing concerns and that the Petition should be adopted with the  
16 amendments proposed herein to address the concerns raised by the Pima County Civil  
17 Bench Comment and the Judge Cornelio Comment regarding (i) the administrative  
18 means of monitoring cases to assure compliance with the Rule requirements for filing  
19 proposed scheduling orders, and (ii) the timing of requiring the parties to engage in a  
20 settlement conference or private mediation. Accordingly, that group of the State Bar  
21 would propose to amend the State Bar's Petition to incorporate these changes. Attached  
22 hereto, as Appendix A, are the proposed amended Rules redlined to show the revisions  
23 proposed by this group's Amended Petition. That group's reasons for continuing to  
24 support the Petition (with the proposed amendments) is best stated both in the original  
25 Petition and in this Amended Petition.

1 Another group of the State Bar, however, now opposes the Petition's proposed  
2 changes regarding case management and the procedure proposed for moving away from  
3 motions to set and certificates of readiness to scheduling orders. This group includes the  
4 Pima County Civil Bench, the Pima County Bar Association and Judge Cornelio. While  
5 this group may believe that the changes to the Petition proposed in this Amended Petition  
6 are an improvement, they remain opposed to the proposed changes regarding case  
7 management. Their reasons and arguments for opposing the changes are best addressed  
8 in the Comments already on file with this Court from the Pima County Civil Bench and  
9 Judge Cornelio.

10 Given this split in viewpoints among the State Bar, both groups of the State Bar  
11 respectfully suggest and request that the Court form a Committee to further examine the  
12 issues raised by the Petition regarding case management.

### 13 CASE MANAGEMENT

14 The Pima County Civil Bench Comment raises a number of arguments relating to  
15 the Petition's proposed changes to the default system of case management under our  
16 Rules. Many of these same arguments were considered during the development of the  
17 Petition, and the State Bar continues to believe that the Rule changes proposed by the  
18 Petition are appropriate and beneficial, and should be adopted by the Court.

#### 19 **A. Current Rules Are Largely Ignored and Treated Differently County** 20 **by County**

21 The primary argument raised by the Pima County Civil Bench Comment is that  
22 the Petition offers a solution in search of a non-existent problem and that the current  
23 system works well in Pima County and other counties. It further proposes that each  
24 county should be left to determine what case management and trial setting system works  
25 best for it and that mandating a culture change would be unwise when there are no

1 existing problems.<sup>2</sup> The State Bar respectfully disagrees. The current system is out-of-  
2 date and not followed in practice. This leads to uncertainty, inefficiencies, and a  
3 patchwork system of case management throughout the State that increases the cost of  
4 litigation.

5 The current Rules require a motion to set and certificate of readiness to obtain a  
6 trial date, with the motion to set required to certify that the parties have completed or  
7 will have had a reasonable opportunity to complete all disclosures and discovery either  
8 by the time of filing the motion to set, within 60 days thereafter, or prior to ten days  
9 before trial, depending upon the local rule of the county. *See* Ariz. R. Civ. P. 38.1(a)(3).  
10 As explained in the Petition, this requirement is largely or entirely ignored by both the  
11 bench and the bar, with most cases eventually governed by a scheduling order.

12 Based on the Pima County Civil Bench Comment, it appears that the judiciary in  
13 Pima County has recognized shortcomings in the current Rules and adjusted practice as a  
14 result. According to the Pima County Civil Bench Comment, in the typical case in Pima  
15 County:

16 [A] party files a Motion to Set and Certificate of Readiness just after  
17 the Answer has been filed. In the Motion to Set, the parties set out their  
18 request for a jury, the number of days the trial will take, how soon  
19 discovery will be completed and a proposed trial date. Depending upon  
the number of trial days requested the Court will issue a trial notice  
with the trial date and numerous other deadlines.

20 The exemplar trial notice attached as Attachment A to the Pima County Civil  
21 Bench Comment shows that the trial notice sets a number of pre-trial deadlines,

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23 <sup>2</sup> The Pima County Civil Bench Comment further suggests that other counties are in  
24 agreement with it and are against the amendments proposed by the Petition. In fact,  
25 however, and notwithstanding the fact that multiple presentations concerning the Petition  
were made to this Court's Committee on Superior Court in advance of the filing of the  
Petition, no members of the judiciary outside of Pima County have filed a comment in  
opposition to the Petition. In fact, a comment has been filed in support of the petition by a  
Superior Court Judge in Yavapai County.

1 including a deadline for discovery to be completed not later than 60 days prior to trial.  
2 This is not the process set forth in Rule 38.1. The Rule does not require the motion to  
3 set to state "how soon discovery will be completed." Likewise, Rule 38.1 does not direct  
4 the Court to set various pre-trial deadlines. Finally, while the standard trial notice  
5 attached to the Pima County Civil Bench Comment sets a discovery deadline of 60 days  
6 prior to trial, Rule 38.1 includes no such deadline. Instead, Rule 38.1 requires a motion  
7 to set to certify that discovery already has been completed, will be completed within 60  
8 days, or will be completed no later than ten days prior to trial.

9       Rather than following Rule 38.1, it appears that what Pima County has done is  
10 create an amalgamation of Rules 38.1 and 16 whereby the filing of a motion to set  
11 triggers the issuing of a standard scheduling order. While the State Bar does not quarrel  
12 with whether this system works for the Pima County Civil Bench, that system does not  
13 follow current Rule 38.1. In fact, the system being employed is one based on an early  
14 scheduling order being put in place to govern the case, which is exactly the system  
15 proposed by the Petition.

16       The current Rules also mandate that when a motion to set is filed, "the clerk of  
17 the court or court administrator shall place the case on the Active Calendar and shall  
18 stamp thereon a chronological list number which shall generally govern the priority of  
19 the case for trial." Ariz. R. Civ. P. 38.1(c). Again, this Rule is ignored, with not a single  
20 county to the State Bar's knowledge keeping such an "Active Calendar" of  
21 chronologically numbered cases for trial. For example, the Pima County Civil Bench  
22 Comment indicates that the judge issues a trial notice setting "the trial date and  
23 numerous other deadlines."

24       While the system of motions to set, controverting certificates, and active  
25 calendars served a valuable purpose for many years, the State Bar believes that the

1 system has become obsolete to the point of irrelevance. To keep this default system of  
2 case management in our Rules leads to inefficiencies and uncertainties. For example,  
3 this obsolete system often leads to parties waiting until they are placed (or about to be  
4 placed) on the inactive calendar nine months into the case before seeking or obtaining a  
5 scheduling order.<sup>3</sup> The result is idiosyncratic case management by each judge, leading to  
6 delay and increased expense.

7 **B. The Proposed Case Management System Should Not Lead to**  
8 **Increased Costs for Litigants or Courts**

9 The Pima County Civil Bench Comment suggests an extra cost of nearly \$20  
10 million for litigants under the proposed Rule changes due to time spent crafting and  
11 considering a scheduling order. The State Bar believes, however, that the current system  
12 already imposes such costs through the time spent either working with the court to get a  
13 scheduling order in place or preparing motions to set and controverting certificates  
14 (oftentimes only to be followed by further time spent in then putting together a  
15 scheduling order). In addition, the State Bar believes the parties and courts will realize  
16 significant benefits from earlier case management and planning.

17 A comparison of what the Petition proposes with what the Pima County Civil  
18 Bench Comment indicates is already happening in Pima County highlights why there  
19 should be no additional costs. According to the Pima County Civil Bench Comment, a  
20 party typically files a motion to set shortly after the answer is filed setting out the

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22 <sup>3</sup> For example, a quick search of dockets in Pima County turned up cases where right after  
23 placement on the inactive calendar, motions to set were filed followed by entry of a  
24 schedule by the court through a notice. *See, e.g.,* Docket Sheet and Court Filings from  
25 *Groethe v. Town of Sahuarita*, Case No. C20113008, attached hereto as Appendix B;  
*Docket Sheet and Court Filings from National Bank of Arizona v. MW2 Development Corp.,*  
*et al.*, Case No. C20111080, attached hereto as Appendix C. The same thing happens in  
Maricopa County, *See, e.g., Marquez v. Ortega*, 65 Ariz. Adv. Rep. 18 (Feb. 28, 2013)  
(noting scheduling order put in place 14 months after case was filed, after plaintiff filed  
motion to set when case had already been pending for over a year).

1 number of days trial will take, how soon discovery will be completed, and a proposed  
2 trial date, after which the court enters a trial notice with the trial date and numerous other  
3 deadlines. Thus, in Pima County, the courts and parties are already spending time  
4 establishing a schedule, but they are doing it through motions to set. The Petition's  
5 proposal is that the courts and parties establish a schedule early in a case (just as is  
6 typically happening in Pima County and the remaining counties that already follow the  
7 proposed system), but through a scheduling order rather than a motion to set.

8 The changes should effect no additional costs on litigants or the courts. If  
9 anything, the changes should make the case management system clearer and more  
10 efficient, and allow the courts and parties to avoid unnecessary scheduling or status  
11 conferences to establish a schedule. In fact, the Pima County Civil Bench Comment  
12 itself recognizes the benefits of the proposed system, noting that through the proposal's  
13 establishment of earlier deadlines for "expert disclosure and witness disclosure, the  
14 potential for trial delay is removed."

15 With respect to the argument that the Petition's proposal will cause increased  
16 monitoring costs for court administration, the State Bar does not believe that there  
17 should be any increased costs. Under the current system, court administration monitors  
18 cases for the filing of motions to set. Under the proposed system, court administration  
19 will monitor cases for the filing of a joint report and proposed scheduling order. The  
20 Pima County Civil Bench Comment, however, notes that under the proposed Rule, this  
21 filing could potentially be given various names by the parties as opposed to the uniform  
22 name given to motions to set, thereby potentially leading to more work in monitoring  
23 cases. The State Bar believes this is a valid point, but one that can be easily resolved in  
24 the proposed Rule by specifying the name to be given to this filing. Accordingly, the  
25 State Bar supports amending the second sentences of proposed Rules 16(b)(1) and

1 16(b)(2) to read, “No later than 14 days after the parties meet and confer, they shall file a  
2 Joint Report and Proposed Scheduling Order with the court stating, to the extent  
3 practicable, their positions on the subjects set forth in Rule 16(d) and proposing a  
4 scheduling order that specifies by calendar date, month, and year deadlines for the  
5 following....” The State Bar further supports amending proposed Rule 38.1(f) to replace  
6 the phrase “joint report” with the phrase “Joint Report and Proposed Scheduling Order”  
7 in the first sentence of that section and in subsection (1) of that section. Providing a  
8 uniform name for the filing resolves the concerns of increased administrative costs.

9 **C. The Proposed Case Management System Includes an Enforcement**  
10 **Mechanism**

11 The Pima County Civil Bench Comment suggests that the Petition will only  
12 worsen the problems of delays because the proposed system includes no enforcement  
13 mechanism and will only serve to push back parties seeking scheduling orders from the  
14 date of the 150-day order to the 180 day outside date established by the proposed Rule  
15 16 amendments. The current problem, however, is not with parties seeking scheduling  
16 orders when the clerk issues a 150-day order (a procedure followed in Maricopa County  
17 but called into question by the Court’s recent decision in *Am. Asphalt & Grading Co. v.*  
18 *CMX, L.L.C.*, 227 Ariz. 117, 253 P.3d 1240 (2010)). Rather the problem is that  
19 scheduling orders oftentimes are not established until approximately a year into the case  
20 when it has been or is about to be placed on the inactive calendar. *See, e.g.*, cases cited  
21 in n.2, *supra*. Under the changes proposed by the Petition, a proposed scheduling order  
22 will get filed no later than six months after the case commenced (and sooner depending  
23 upon when disclosure statements are exchanged), which will help prevent cases from  
24 lingering without an established schedule.

25

1 In addition, there is an enforcement mechanism in place to ensure the parties  
2 follow these requirements. Namely, under proposed Rule 16(i):

3 if no appearance is made on behalf of a party at a scheduling or pretrial  
4 conference, or if a party or party's attorney is substantially unprepared  
5 to participate in the conference, or if a party or party's attorney fails to  
6 participate in good faith in a scheduling or pretrial conference or in the  
7 preparation of the joint report of joint pretrial statement, the judge,  
8 upon motion or the judge's own initiative, shall, except upon a showing  
9 of good cause, make such orders with regard to such conduct as are  
10 just, including, among others, any of the orders provided in Rule  
11 37(b)(2)(B), (C), or (D).

12 Under this Rule, a judge is empowered to sanction a party for failing to meet and  
13 confer and propose a scheduling order as required. While the State Bar  
14 understands that this may require a shift in the culture for both the bench and the bar, the  
15 State Bar believes that litigants and the bench are better served by such a shift rather than  
16 the continuation of Rules that lawyers know are not followed and generally can be  
17 ignored with impunity.

18 **PRESUMPTIVE DEADLINE OF 13**  
19 **MONTHS TO COMPLETE DISCOVERY**

20 The Maricopa Attorney's Office Comment questions the proposed presumptive  
21 13-month deadline for completing discovery and holding a settlement  
22 conference/mediation. As explained in the Petition, in developing the proposed  
23 amendments, the State Bar heard concerns that changes to the case management system  
24 might lead to unintended lengthening of cases due to parties proposing unnecessarily  
25 drawn out schedules. The presumptive 13-month deadline for completing discovery and  
holding a settlement conference/mediation is meant to prevent this result. It was also  
proposed with due regard to the Supreme Court's guidelines for timely case processing  
by the superior courts.

1 While the Maricopa Attorney's Office Comment correctly notes that "[t]hirteen  
2 months is an unrealistic assessment of the life of every single case, and the lawyers  
3 should be left to maturely and professionally determine the realistic time frame needed,"  
4 the proposed Rule changes do not require a 13-month outer limit in all cases. Instead,  
5 the proposed Rule change states, "Unless otherwise ordered by the court for good cause  
6 shown, the parties' proposed schedule shall set the deadline for completing discovery  
7 and for holding a Rule 16.1 settlement conference or private mediation to occur no more  
8 than 13 months after the commencement of the action." Thus, if the lawyers and the  
9 court determine that 13 months is insufficient for a given case, the court has discretion to  
10 set a longer schedule.

11 In addition, the proposed 13-month presumptive deadline causes no change from  
12 the presumption that exists today. Currently, counsel must file a motion to set within  
13 nine months of the case commencing. If it is not filed by that deadline, the case is placed  
14 on the inactive calendar subject to dismissal if the motion to set is not filed within the  
15 next 60 days (i.e., two months). Once the motion to set is filed, it must certify  
16 (depending on the county) that discovery has been completed, will be completed within  
17 60 days, or will be completed no later than ten days before trial. The only current  
18 exception to these deadlines is if they are waived or extended for good cause shown.  
19 Thus, in fact, the presumptive 13-month deadline for discovery proposed by the Petition  
20 (with an exception for good cause shown) is not effecting any change from what the  
21 Rules already provide.

#### 22 TIMING OF TRIAL SETTINGS

23 The Pima County Civil Bench Comment and the Judge Cornelio Comment argue  
24 against the Petition's proposal for setting trials later in cases when the parties and court  
25 are better able to determine how many trial days are needed and trial dates are less likely

1 to be moved. The Comments argue that such a process leads to increased costs by  
2 requiring a later trial setting status conference and potentially leads to abuse of the  
3 disclosure rules. The State Bar believes the Petition addresses these concerns.

4 First, while as explained in the Petition the State Bar believes there are benefits to  
5 setting trials later in a case, the Petition's proposal does not require such later trial  
6 settings. Instead, proposed Rule 16(c) provides that the scheduling order is to set either  
7 (1) a trial date or (2) a date later in the case for a Rule 16(f) trial setting status  
8 conference. Thus, if they prefer, judges have discretion to set trial dates early in cases.

9 Second, the State Bar had the same concerns regarding potential disclosure abuses  
10 raised by the Judge Cornelio Comment. While courts have occasionally suggested that  
11 late-disclosed evidence will not be excluded if no trial date has been set, an impending  
12 trial date is but one form of prejudice that can result from a late disclosure, with others  
13 including the need to re-open or engage in duplicative discovery. *See, e.g., Czarnecki v.*  
14 *Volkswagen of Am.*, 172 Ariz. 408, 418 (App. 1991) (refusing to allow new theory of  
15 recovery after close of discovery because to add an "entirely new theory of liability at  
16 that date would have required additional research and discovery, resulting in substantial  
17 delays"). To account for this fact and to prevent parties from using later trial settings as  
18 an excuse for late disclosures, the Petition proposes amendments to clarify that the lack  
19 of a trial date does not leave parties free to make late disclosures without fear of  
20 consequence. Namely, the Petition proposes: (1) inclusion in scheduling orders under  
21 proposed Rules 16(b) and 16(c) of a deadline for final supplementation of Rule 26.1  
22 disclosures; (2) amendment of Rule 37(c)(2) to require a party to obtain leave of court to  
23 use information "disclosed later than (a) the deadline set in a scheduling order or (b), in  
24 the absence of such a deadline, sixty (60) days before trial" rather than the current  
25 deadline of 60 days before trial; and (3) amendment of current Rule 16(f) (what would

1 be Rule 16(i) under the proposed amendments) to include a sentence that, “The fact that  
2 a trial date has not been set does not preclude sanctions under this Rule, including the  
3 exclusion from evidence of untimely disclosed information.” In fact, this very principle  
4 was recently recognized in *Marquez v. Ortega*, 65 Ariz. Adv. Rep. 18 (Feb. 28, 2013),  
5 where the court held that prejudice can arise from late disclosure regardless of whether a  
6 trial date has been set. *Id.* at ¶ 22.

### 7 REQUIREMENT OF ADR BEFORE TRIAL IS SET

8 The Petition proposes adding a provision to Rule 16 generally requiring  
9 participation in a Rule 16.1 settlement conference or private mediation -- namely,  
10 “Absent good cause, a trial date shall not be set unless and until the parties certify that  
11 they have engaged in good faith in a settlement conference or private mediation.” As  
12 stated in the Petition, the State Bar believes that most litigants will benefit from  
13 participating in a settlement conference or mediation before trial, and such participation  
14 is in fact already required in most cases. In view of the fact that the overwhelming  
15 majority of civil cases are resolved by means other than trial, the State Bar believes that  
16 this is a sensible approach.

17 The Comments raise two general concerns to the Petition’s proposal for ADR.  
18 First, the Maricopa Attorney’s Office Comment argues that “[s]ome cases simply do not  
19 lend themselves to” a settlement conference or mediation, and offers as an alternative  
20 that the parties need merely certify that they have engaged in “a” form of ADR,  
21 including an informal settlement offer and response by the two sides. The State Bar  
22 carefully considered this issue, including gaining feedback from its ADR Committee,  
23 and believes that most litigants will benefit from using a neutral third party in attempting  
24 to resolve their matters. As noted in Judge Cornelio’s Comment, Pima County has  
25 implemented a very active and successful settlement program that was estimated to save

1 nearly 500 trial days in 2012. As a general rule, the State Bar does not believe litigants  
2 should be permitted to end their efforts at resolving a case with a settlement offer and  
3 response between the parties. While the State Bar agrees that not every case is going to  
4 benefit from a settlement conference or mediation, in cases where the court believes that  
5 this form of ADR will not benefit the parties, it has discretion under the good cause  
6 component of the proposed Rule to relieve the parties from this requirement.

7         Second, while the Comments of the Pima County Civil Bench and Judge Cornelio  
8 (the ADR Presiding Judge in Pima County) do not appear to oppose the general  
9 requirement of ADR before trial, they disagree with requiring that it occur before the  
10 trial date is set. The Comments argue that if a judge sets a trial date as part of the  
11 scheduling order (which is within the judge's discretion under the proposed  
12 amendments), the case will oftentimes not be ready for a settlement conference. The  
13 Judge Cornelio Comment further argues that cases are better positioned to settle when an  
14 impending trial date exists. Finally, the Judge Cornelio Comment argues that because  
15 trial dates are established earlier in cases in Pima County, to require settlement  
16 conferences or mediations before setting the trial date would overburden Pima County's  
17 settlement program.

18         The State Bar believes there are benefits to requiring the parties to engage in  
19 ADR and make a good faith effort at settlement before the court's calendar is taken up  
20 with a trial date that may not be necessary. The State Bar, however, recognizes that  
21 some judges view trial settings differently and believe they should be established early in  
22 the case. It was for this reason that the Petition gives judges the discretion, if they  
23 prefer, to set the trial date in a scheduling order rather than later in a case. In furtherance  
24 of this flexibility given to judges, the State Bar does not oppose amending the proposed  
25 revision regarding ADR to give judges greater discretion on the timing of ADR. The

1 State Bar thus supports amending the sentence regarding ADR found in proposed Rule  
2 16(c) as follows: “Absent good cause for not engaging in a settlement conference or  
3 private mediation, a trial date shall not be set unless and until the parties shall certify that  
4 they have engaged in good faith in a settlement conference or private mediation before a  
5 trial date is set or will do so by such other date as established by the court.” This  
6 revision addresses the concerns raised by the Pima County Civil Bench and Judge  
7 Cornelio Comments by giving a judge discretion to set a trial date early in the case while  
8 setting a subsequent deadline for the parties to engage in a settlement conference or  
9 mediation. Importantly, with this change, the proposed Rule continues to foster the  
10 benefits of requiring ADR before putting the parties and court through the time and  
11 expense of a trial.

12  
13 **CONCLUSION**

14 One group of the State Bar of Arizona respectfully requests that the Court amend  
15 Rules 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74 and 77 of the Arizona Rules of Civil  
16 Procedure as proposed in the Petition with the two modifications addressed above and  
17 below:

18 (1) That group of the State Bar supports amending the language of proposed  
19 Rules 16(b)(1) and 16(b)(2) to identify the name to be given to the joint report and  
20 proposed scheduling order to be filed by the parties. Namely, the State Bar supports  
21 amending the second sentences of proposed Rules 16(b)(1) and 16(b)(2) to read: “No  
22 later than 14 days after the parties meet and confer, they shall file a Joint Report and  
23 Proposed Scheduling Order with the court stating, to the extent practicable, their  
24 positions on the subjects set forth in Rule 16(d) and proposing a scheduling order that  
25 specifies by calendar date, month, and year deadlines for the following....” The State

1 Bar further supports amending proposed Rule 38.1(f) to replace the phrase “joint report”  
2 with the phrase “Joint Report and Proposed Scheduling Order” in the first sentence of  
3 that section and in subsection (1) of that section. These modifications will remedy the  
4 concerns raised by the Pima County Civil Bench Comment that court administration will  
5 have a difficult time monitoring cases to determine compliance with the amended Rule  
6 16.

7 (2) That group of the State Bar further supports amending the sentence in  
8 proposed Rule 16(c) regarding ADR requirements as follows: “Absent good cause for  
9 not engaging in a settlement conference or private mediation, a trial date shall not be set  
10 unless and until the parties shall certify that they have engaged in good faith in a  
11 settlement conference or private mediation before a trial date is set or will do so by such  
12 other date as established by the court.” This revision remedies the concerns raised by the  
13 Pima County Civil Bench and Judge Cornelio Comments over the timing of when the  
14 parties should be required to engage in ADR.

15 As noted above, however, there is another group of the Bar (which includes the  
16 Pima County Civil Bench and the Pima County Bar Association) that opposes the  
17 amendments to case management proposed by the Petition and this Amended Petition.  
18 Because of these differing viewpoints, both groups of the State Bar respectfully request  
19 that the Court form a Committee to further examine the issues raised by the Petition  
20 regarding case management.

21 Attached as Appendix A is a redline showing these revisions to the proposed  
22 amended Rules. Please be mindful that the attached redlined Appendix A as it pertains to  
23 amendments to Rule 16(c) are not fully supported by the Bar.

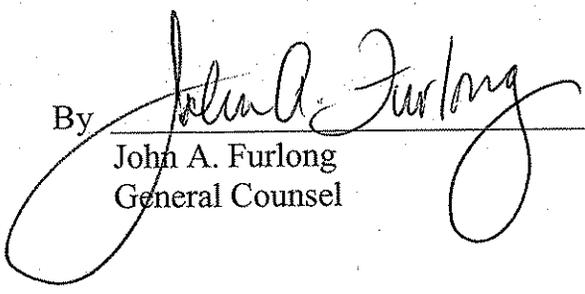
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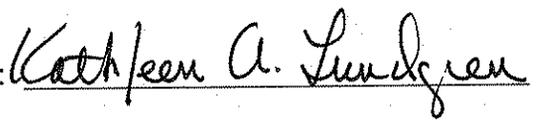
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RESPECTFULLY SUBMITTED this 2<sup>ND</sup> day of May

2013.

By   
John A. Furlong  
General Counsel

Electronic copy filed with the Clerk  
of the Supreme Court of Arizona this  
3<sup>rd</sup> day of May, 2013.

By: 

# APPENDIX A

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# APPENDIX A

**State Bar's Proposed Amended Rules 16, 16.1, 26, 37, 38, 38.1, 72, 73, 74, and 77 of the Arizona Rules of Civil Procedure**

**Rule 16. Pre-trial conferences; scheduling; management**

**Rule 16(a). Pretrial conferences; objectives**

In any action, the court may direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate, either in person or, with leave of court, by telephone, in a conference or conferences before trial for such purposes as:

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation; and

(5) facilitating settlement.

**Rule 16(b). Conference and Joint Report of the Parties Regarding Scheduling and Case Management**

(1) Except in medical malpractice cases and cases subject to compulsory arbitration under Rule 72(b), no later than 14 days after the deadline for serving initial disclosures under Rule 26.1(b) or 180 days after commencement of the action, whichever occurs first, the parties shall meet and confer regarding the subjects set forth in Rule 16(d). No later than 14 days after the parties meet and confer, they shall file a Joint Report and Proposed Scheduling Order ~~joint report~~ with the court stating, to the extent practicable, their positions on the subjects set forth in Rule 16(d) and proposing a scheduling order that specifies by calendar date, month, and year deadlines for the following:

(A) service of initial disclosures under Rule 26.1 if they have not already been served;

(B) identification of areas of expert testimony;

- (C) identification of and disclosure of expert witnesses and their opinions in accordance with Rule 26.1(a)(6);
- (D) propounding of written discovery;
- (E) disclosure of non-expert witnesses;
- (F) completion of non-expert depositions;
- (G) completion of expert depositions;
- (H) completion of all discovery;
- (I) final supplementation of Rule 26.1 disclosures;
- (J) holding a Rule 16.1 settlement conference or private mediation; and
- (K) filing dispositive motions.

Unless otherwise ordered by the Court for good cause shown, the parties' proposed schedule shall set the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 13 months after the commencement of the action. The joint report shall certify that the parties met and conferred regarding the subjects set forth in Rule 16(d). The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and participating in the conference, for attempting in good faith to agree on a proposed schedule, and for filing the joint report with the court.

(2) In medical malpractice cases, no later than 21 days before the comprehensive pretrial conference required by Rule 16(e), the parties shall meet and confer regarding the subjects set forth in Rule 16(e). No later than 14 days after the parties meet and confer, they shall file a Joint Report and Proposed Scheduling Order ~~joint report~~ with the court stating, to the extent practicable, their positions on the subjects set forth in Rule 16(e) and proposing a scheduling order that specifies by calendar date, month, and year deadlines for the following:

- (A) service of initial disclosures under Rule 26.1 if they have not already been served;
- (B) identification of areas of expert testimony;
- (C) identification of and disclosure of expert witnesses and their opinions in accordance with Rule 26.1(a)(6);
- (D) propounding of written discovery;
- (E) disclosure of non expert witnesses;

- (F) completion of non-expert depositions;
- (G) completion of expert depositions;
- (H) completion of all discovery;
- (I) final supplementation of Rule 26.1 disclosures;
- (J) holding a Rule 16.1 settlement conference or private mediation; and
- (K) filing dispositive motions.

Unless otherwise ordered by the Court for good cause shown, the parties' proposed schedule shall set the deadlines for completing discovery and for holding a Rule 16.1 settlement conference or private mediation to occur no more than 13 months after the commencement of the action. The joint report shall certify that the parties met and conferred regarding the subjects set forth in Rule 16(e). The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging and participating in the conference, for attempting in good faith to agree on a proposed schedule, and for filing the joint report with the court.

#### **Rule 16(c). Scheduling Orders**

Except in cases subject to compulsory arbitration under Rule 72(b), the court shall issue a scheduling order as soon as practicable after receiving the parties' joint report under Rule 16(b) or after holding a comprehensive pretrial conference. The scheduling order shall establish calendar deadlines specifying the month, date and year for each of the items included in the proposed scheduling order submitted pursuant to Rule 16(b). The scheduling order shall also set either (1) a trial date or (2) a date for a trial setting status conference under Rule 16(f) at which a trial date may be set. ~~Absent good cause, a trial date shall not be set unless and until the parties certify that they have engaged in good faith in a settlement conference or private mediation.~~ Absent good cause for not engaging in a settlement conference or private mediation, the parties shall certify that they have engaged in a settlement conference or private mediation before a trial date is set or will do so by such other date as established by the court. The scheduling order may include other appropriate matters. The dates established in a scheduling order may be modified only for good cause and with the court's consent. Once a trial date is set, it may be modified only pursuant to Rule 38.1.

**Rule 16(d). Scheduling and Subjects to Be Discussed at Comprehensive Pretrial Conference in Non-Medical Malpractice Cases**

Except in medical malpractice cases, upon written request of any party the court shall, or upon its own motion the court may, schedule a comprehensive pretrial conference. At any comprehensive pretrial conference under this rule, except for conferences conducted in medical malpractice cases, the court may:

- (1) Determine the additional disclosures, discovery and related activities to be undertaken and a schedule therefor.
- (2) Determine whether the court should enter orders addressing one or more of the following:
  - (A) setting forth any requirements or limitations for the disclosure or discovery of electronically stored information, including the form or forms in which the electronically stored information should be produced;
  - (B) setting forth any measures the parties must take to preserve discoverable documents or electronically stored information; and
  - (C) adopting any agreements the parties reach for asserting claims of privilege or of protection as to trial preparation materials after production.
- (3) Determine a schedule for the disclosure of expert witnesses and the method of such disclosure, including whether signed reports from the experts should be required.
- (4) Determine the number of expert witnesses or designate expert witnesses as set forth in Rule 26(b)(4)(D).
- (5) Determine a date for the disclosure of non-expert witnesses and the order of their disclosure.
- (6) Determine a deadline for the filing of dispositive motions.
- (7) Resolve any discovery disputes.
- (8) Eliminate non-meritorious claims or defenses.
- (9) Permit the amendment of the pleadings.

- (10) Assist in identifying those issues of fact which are still at issue.
- (11) Obtain stipulations as to the foundation or admissibility of evidence.
- (12) Determine the desirability of special procedures for management of the case.
- (13) Consider alternative dispute resolution.
- (14) Determine whether any time limits or procedures set forth in the discovery rules or set forth in these rules or Local Rules of Practice should be modified or suspended.
- (15) Determine whether Rule 26.1 has been appropriately complied with by the parties.
- (16) Determine a date for filing the joint pretrial statement required by subpart (g) of these Rules.
- (17) Determine a deadline for the parties to hold a settlement conference or private mediation.
- (18) Discuss the imposition of time limits on trial proceedings or portions thereof, the use of juror notebooks, the giving of brief pre-voir dire opening statements and preliminary jury instructions, and the effective management of documents and exhibits.
- (19) Determine how verbatim record of future proceedings in the case will be made.
- (20) Discuss such other matters and make such other orders as the court deems appropriate.

**Rule 16(e). Scheduling and Subject Matter at Comprehensive Pretrial Conferences in Medical Malpractice Cases**

In medical malpractice cases, within five days of receiving answers or motions from all defendants who have been served, plaintiff shall notify the court to whom the case has been assigned so that a comprehensive pretrial conference can be set. Within 60 days of receiving that notice, the court shall conduct a comprehensive pretrial conference. At that conference, the court and the parties shall:

(1) Determine the discovery to be undertaken and a schedule therefor. The schedule shall include the depositions to be taken, any medical examination which defendant desires to be made of plaintiff and what additional documents, electronically stored information, and other materials are to be exchanged. Only those depositions specifically authorized in the comprehensive pretrial conference shall be allowed except upon stipulation of the parties or upon motion and a showing of good cause. The court, upon request of any defendant, shall require an authorization to allow the parties to obtain copies of records previously produced under Rule 26.2(A)(2) of these Rules or records ordered to be produced by the court. If records are obtained pursuant to such authorization, the party obtaining the records shall furnish complete copies to all other parties at the sole expense of the party obtaining the records.

(2) Determine a schedule for the disclosure of standard of care and causation expert witnesses. Except upon good cause shown, such disclosure shall be simultaneous and within 30 to 90 days after the conference, depending upon the number and complexity of the issues. No motion for summary judgment based upon the lack of expert testimony will be filed prior to the expiration of the date set for the simultaneous disclosure of expert witnesses except upon a showing of good cause.

(3) Determine the order of and dates for the disclosure of all other expert and non-expert witnesses, provided that the date for disclosure of all witnesses, expert and non-expert, shall be at least 45 days before the close of discovery. Any witnesses not appropriately disclosed shall be precluded from testifying at trial unless there is a showing of extraordinary circumstances.

(4) Limit the number of experts as provided in Rule 26(b)(4)(D) of these Rules.

(5) Determine whether additional non-uniform interrogatories and/or requests for admission or production are necessary and, if so, limit the number.

(6) Resolve any discovery disputes.

(7) Discuss alternative dispute resolution, including mediation, and binding and non-binding arbitration.

(8) Assure compliance with A.R.S. § 12-570.

- (9) Set a date for a mandatory settlement conference.
- (10) Set a date for filing the joint pretrial statement required by subpart (g) of this Rule.
- (11) Set a trial date.
- (12) Determine how verbatim record of future proceedings in the case will be made.
- (13) Discuss such other matters and make such other orders as the court deems appropriate.

**Rule 16(f). Trial Setting Status Conference**

- (1) If the Court has not already set a trial date in a scheduling order or otherwise, the court shall hold a trial setting status conference, as set by the scheduling order, for the purpose of setting a trial date. The conference shall be attended in person or telephonically (as permitted by the court) by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.
- (2) In addition to setting a trial date, the court may at the trial setting status conference discuss:
  - (A) The status of discovery and any dispositive motions that have been or will be filed.
  - (B) A date for holding a final pretrial conference under Rule 16(g).
  - (C) The imposition of time limits on trial proceedings or portions thereof.
  - (D) The use of juror questionnaires.
  - (E) The use of juror notebooks.
  - (F) The giving of brief pre-voir dire opening statements and preliminary jury instructions.
  - (G) The effective management of documents and exhibits.
  - (H) Such other matters as the court deems appropriate.

(3) If for any reason a trial date is not set at the trial setting status conference, the court shall schedule another trial setting status conference as soon as practicable for the setting of a trial date.

**Rule 16(g). Joint Pretrial Statement: Preparation; Final Pretrial Conference**

(1) Counsel or the unrepresented parties who will try the case and who are authorized to make binding stipulations shall confer and prepare a written joint pretrial statement, signed by each counsel or party, that shall be filed five days before the date of the final pretrial conference, or if no conference is scheduled, five days before trial. Plaintiffs shall submit their portion of the joint pretrial statement to all parties no later than twenty days before the statement is due. All other parties shall submit their portion of the joint pretrial statement to all parties no later than fifteen days before the statement is due.

(2) The joint pretrial statement shall contain the following:

(A) Stipulations of material fact and law;

(B) Such contested issues of fact and law as counsel can agree are material or applicable;

(C) A separate statement by each party of other issues of fact and law believed by that party to be material;

(D) A list of witnesses intended to be used by each party during trial. Each party shall list any objections to a witness and the basis for that objection. No witness shall be used at the trial other than those listed, except for good cause shown. Witnesses whose testimony will be received by deposition testimony only will be so indicated;

(E) Each party's final list of exhibits to be used at trial for any purpose, including impeachment. Plaintiffs shall deliver copies of all of their exhibits to all parties twenty days before the final pretrial conference. All other parties shall deliver copies of all their exhibits to all parties fifteen days before the final pretrial conference. Any exhibit that cannot be reproduced must be made available for inspection to all parties on or before the deadlines stated above. Each party shall list any objections to an exhibit and the basis for that objection. No exhibit shall be used at the trial other than those listed, except for good cause shown. The parties shall indicate any exhibits which the parties stipulate can be

admitted into evidence, such stipulations being subject to court approval;

(F) A statement by each party indicating any proposed deposition summaries or designating portions of any deposition testimony to be offered by that party at trial, other than for impeachment purposes. Deposition testimony shall be designated by transcript page and line numbers. A copy of any proposed deposition summary and written transcript of designated deposition testimony should be filed with the Joint Pretrial Statement. Each party shall list any objections to the proposed deposition summaries and designated deposition testimony and the basis for any objections. Except for good cause shown, no deposition testimony shall be used at trial other than that designated or counter-designated or for impeachment purposes;

(G) A brief statement of the case to be read to the jury during voir dire. If the parties cannot agree on this statement, then each party shall submit a separate statement to the judge who will decide the contents of the statement to be read to the jury;

(H) Technical equipment needed or interpreters requested;

(I) The number of jurors and alternates agreed upon, whether the alternates may deliberate, and the number of jurors required to reach a verdict;

(J) Whether any party will be invoking Rule 615 of the Arizona Rules of Evidence regarding exclusion of witnesses from the courtroom; and

(K) A brief description of settlement efforts.

(3) At the time of the filing of the joint pretrial statement, the parties shall file (A) an agreed-upon set of jury instructions, verdict forms, and voir dire questions, (B) any additional jury instructions, verdict forms, and voir dire questions requested, but not agreed upon, and (C) a statement by each party on how a verbatim record of the trial will be made.

(4) A party intending to submit a jury notebook to the jurors shall serve a copy of the notebook on the other parties five days before the final pretrial conference, or, if no conference is scheduled, five days before the trial.

(5) Any trial memoranda shall be filed five days before the final pretrial conference, or, if no conference is scheduled, five days before the trial.

(6) Any final pretrial conference scheduled by the court shall be held as close to the time of trial as reasonable under the circumstances. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(7) The provisions of this rule may be modified by order of the court.

#### **Rule 16(h). Pretrial Orders**

After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference under Rule 16(g) shall be modified only to prevent manifest injustice.

#### **Rule 16(i). Sanctions**

If a party or attorney fails to obey a scheduling or pretrial order or fails to meet the discovery, disclosure and other deadlines set forth therein, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith in a scheduling or pretrial conference or in the preparation of the joint report or joint pretrial statement, the judge, upon motion or the judge's own initiative, shall, except upon a showing of good cause, make such orders with regard to such conduct as are just, including, among others, any of the orders provided in Rule 37(b)(2)(B), (C), or (D). The fact that a trial date has not been set does not preclude sanctions under this Rule, including the exclusion from evidence of untimely disclosed information. In lieu of or in addition to any other sanction, the judge shall require the party, or the attorney representing the party, or both, to pay the reasonable expenses incurred as the result of any noncompliance with this Rule, including attorneys' fees, or payment of an assessment to the clerk of the court, or both, unless the judge finds that the noncompliance was substantially justified, or that other circumstances make an award of expenses unjust.

#### **Rule 16(j). Alternative Dispute Resolution**

Upon motion of any party, or upon its own initiative after consultation with the parties, the court may direct the parties in any action to submit the dispute which is the subject matter of the action to an alternative dispute resolution program created or authorized by appropriate local court rules.

**Rule 16(k). Time Limitations**

The court may impose reasonable time limits on the trial proceedings or portions thereof.

**Rule 16.1 Settlement Conferences: Objectives**

**(a) Mandatory Settlement Conferences.** Except in appeals from a lower court, medical malpractice cases, and cases subject to compulsory arbitration under Rule 72(b), at the request of any party made after the parties have met and conferred regarding case management under Rule 16(b), or as set forth in the scheduling order, the court shall, except for good cause shown, direct the parties, the attorneys for the parties and, if appropriate, representatives of the parties having authority to settle, to participate either in person or, with leave of court, by telephone, in a conference or conferences before trial for the purpose of facilitating settlement. Unless otherwise ordered by the court, all requests for settlement conferences shall be made not later than 60 days prior to trial. The court may also schedule a settlement conference upon its own motion.

In medical malpractice cases, the court shall conduct a mandatory settlement conference no earlier than four (4) months after the Rule 16(e) conference and no later than thirty (30) days before trial.

**Rule 26. General provisions governing discovery**

....

**Rule 26(b). Discovery Scope and Limits**

....

(5) *Non-party at Fault.* Any party who alleges, pursuant to A.R.S. § 12-2506(B), that a person or entity not currently or formerly named as a party was wholly or partially at fault in causing any personal injury, property damage or wrongful death for which damages are sought in the action shall provide the identity, location, and the facts supporting the claimed liability of such non-party within one hundred fifty (150) days after the filing of that party's answer. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any non-party whose identity is not disclosed in accordance with the requirements of this paragraph except upon written agreement of the parties or upon motion establishing good cause, reasonable diligence, and lack of unfair prejudice to other

parties.

**RULE 37. Failure to make disclosure or discovery; Sanctions**

....

**Rule 37(c). Failure to Disclose; False or Misleading Disclosure; Untimely Disclosure**

....

(2) A party seeking to use information which that party first disclosed later than (a) the deadline set in a scheduling order or (b), in the absence of such a deadline, sixty (60) days before trial, must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) that the information would be allowed under the standards of subsection (c)(1); and

(ii) that the information was disclosed as soon as practicable after its discovery.

**RULE 38. Right to a Jury Trial; Demand; Waiver**

**Rule 38(a). Right preserved**

The right of trial by jury shall be preserved inviolate to the parties.

**Rule 38(b). Demand**

Any person may demand a trial by jury of any issue triable of right by jury. The demand may be made by any party by filing and serving a demand therefor in writing at any time after the commencement of the action, but not later than the date on which the court sets a trial date or ten days after the date a joint report under Rule 16(b) or Rule 16.3 is filed, whichever first occurs. The demand for trial by jury shall not be endorsed on or be combined with any other motion or pleading filed with the court.

### **Rule 38(c). Demand; specification of issues**

In the demand a party may specify the issues which the party wishes to have tried by a jury; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party may, within ten days after service of the demand or such lesser time as the court may order, serve a demand for trial by jury of any other or all issues of fact in the action triable by jury.

### **Rule 38(d). Waiver**

A party waives a jury trial unless its demand is properly served and filed. A proper demand may be withdrawn only if the parties consent.

## **Rule 38.1. Setting of Civil Cases for Trial; Postponements; Scheduling Conflicts; Dismissal Calendar**

### **Rule 38.1(a). Setting for Trial**

Civil actions shall be set for trial pursuant to Rule 16 or Rule 77. Preference shall be given to short causes and cases that by reason of statute, rule or court order are entitled to priority. The parties shall be given at least 30 days notice of the trial date.

### **Rule 38.1(b). Postponements**

Unless otherwise provided by local rule, when an action has been set for trial on a specified date by order of the court, no postponement of the trial shall be granted except for sufficient cause, supported by affidavit, or by consent of the parties, or by operation of law.

### **Rule 38.1(c). Application for Postponement; Grounds; Effect of Admission of Truth of Affidavit by Adverse Party**

On an application for a postponement of the trial, if the ground for the application is the want of testimony, the party applying therefor shall provide an affidavit showing the materiality of the testimony and that the party has used due diligence to procure such testimony, stating such diligence and the cause of failure to procure such testimony, if known, and that such testimony cannot be obtained from any other source. If the ground for the application is the absence of a witness, the party applying shall state the name and residence of the witness and what the party expects to prove by the witness. The application in either case shall also state that the postponement is not sought for delay only, but that justice may be done. If

the adverse party admits that such testimony would be given and that it will be considered as actually given on the trial, or offered and overruled as improper, the trial shall not be postponed. Such testimony may be controverted as if the witness were personally present.

**Rule 38.1(d). Deposition of Witness or Party; Consent**

The party obtaining a postponement shall, if required by the adverse party, consent that the testimony of any witness or adverse party in attendance be taken by deposition. The testimony so taken may be read at the trial by either party as if the witnesses were present.

**Rule 38.1(e). Scheduling conflicts between courts**

(1) *Notice to the court.* Upon learning of a scheduling conflict between a case in Superior Court and a case in United States District Court, or between cases in the Superior Courts of different counties, or between cases in different courts within a county, counsel shall promptly notify the judges and other counsel involved in order that the conflict may be resolved.

(2) *Resolution of conflicts.* Upon being advised of a scheduling conflict, the judges involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. While neither federal nor state court cases have priority in scheduling, the following factors may be considered in resolving the conflict:

- (A) the nature of the cases as civil or criminal, and the presence of any speedy trial problems;
- (B) the length, urgency, or relative importance of the matters;
- (C) a case which involves out-of-town witnesses, parties or counsel;
- (D) the age of the cases;
- (E) the matter which was set first;
- (F) any priority granted by rule or statute; and
- (G) any other pertinent factor.

(3) *Inter-division Conflicts.* Conflicts in scheduling between divisions of the same court may be governed by local rule or general order.

**Rule 38.1(f). Dismissal Calendar**

The clerk of the court or court administration shall place on the Dismissal Calendar every civil action in which a Joint Report and Proposed Scheduling Order ~~joint report~~ under Rule 16 or Rule 16.3 or an arbitrator's notice of decision under Rule 76 has not been filed with the court within 270 days after the commencement thereof. A case remaining on the Dismissal Calendar for 60 days shall be dismissed without prejudice for lack of prosecution, and the court shall make an appropriate order as to any bond or other security filed therein, unless prior to the expiration of such 60 day period:

(1) a Joint Report and Proposed Scheduling Order ~~joint report~~ under Rule 16(b) or Rule 16.3 is filed with the court;

(2) the court, on motion for good cause shown, orders the case to be continued on the Dismissal Calendar for a specified period of time without dismissal; or

(3) a notice of decision has been filed with the clerk of the court in a case assigned to arbitration.

#### **Rule 38.1(g) Notification**

The clerk of the court or court administrator, whoever is designated by the presiding judge, shall promptly notify counsel in writing when a case is placed on the Dismissal Calendar, and no further notice shall be required prior to dismissal.

#### **Rule 72. Compulsory Arbitration; Arbitration by Reference; Alternative Dispute Resolution; Determination of Suitability for Arbitration**

....

##### **(d) Alternative Dispute Resolution.**

(1) Compulsory arbitration under A.R.S. § 12-133 and these rules is not binding. Any party may appeal and all appeals are *de novo* on the law and facts. Therefore, before a hearing in accordance with Rule 75 of these rules is held, counsel for the parties, or the parties if not represented by counsel, shall confer regarding the feasibility of resolving their dispute through another form of alternative dispute resolution, including but not limited to private mediation or binding arbitration with a mediator or arbitrator agreed to by the parties.

(2) The court shall waive the arbitration requirement if the parties file a written stipulation to participate in good faith in an alternative dispute resolution proceeding, and the court approves the method selected by the parties. The

stipulation shall identify the specific alternative dispute resolution method selected. The court may waive the arbitration requirement for other good cause upon stipulation of all parties. If the alternative dispute resolution method selected under this Rule fails, the case shall be set for trial in accordance with Rule 16 of these Rules and shall not be subject to the rules governing compulsory arbitration.

### **Rule 73. Appointment of Arbitrators**

**(a) Lawyer or Non-Lawyer Arbitrators.** The parties, by written stipulation and by written consent of the proposed arbitrator filed with the clerk of the court with conformed copies to the court administrator, may agree that the case be assigned to a single lawyer or non-lawyer arbitrator named in the stipulation. All other cases subject to arbitration shall be heard by an arbitrator selected as provided below.

**(b) List of Arbitrators.** Except as the parties may stipulate under the provisions of subdivision (a) of this rule, the arbitrator shall be appointed by the clerk of the court or court administrator from a list of persons, as provided by local rule, which shall include the following:

(1) all residents of the county in which the court is located who, for at least four years, have been active members of the State Bar of Arizona.

(2) other active and inactive members of the State Bar of Arizona residing anywhere in Arizona, and members of any other federal court or state bar, who have agreed to serve as arbitrators in the county where the court is located.

### **(c) Appointment of Arbitrators; Timing of Appointment; Notice of Appointment; Right to Peremptory Strike**

(1) *Appointment of arbitrator from list.* The clerk of the court or court administrator, under the supervision of the presiding judge or that judge's designee, shall prepare a list of arbitrators who may be designated by their area of concentration, specialty or expertise. The clerk of the court or court administrator shall randomly select and then assign to each case one arbitrator from the list.

(2) *Timing of appointment.* Appointment of an arbitrator to a case shall occur no later than 120 days after an answer is filed.

(3) *Notice of appointment of arbitrator.* The clerk of the court or court administrator shall promptly mail written notice of the arbitrator selected to the parties and the arbitrator. The written notice shall advise the parties that the time

periods specified in Rule 38.1(f) of these Rules for placing a case on the Dismissal Calendar shall apply.

(4) *Right to peremptory strike.* Within ten days after the mailing of the notice of appointment of arbitrator, or within ten days after the appearance of a party if the arbitrator was appointed before that party appeared, either side may peremptorily strike the assigned arbitrator and request that a new arbitrator be appointed. Each side shall have the right to only one peremptory strike in any one case. A motion for recusal or motion to strike for cause shall toll the time to exercise a peremptory strike.

**(d) Disqualifications and Excuses.**

(1) Upon written motion and a finding of good cause therefore, the presiding judge or that judge's designee may excuse a lawyer from the list of arbitrators.

(2) An arbitrator, after appointment, may be disqualified from serving in a particular assigned case upon motion of either party to the judge assigned to the case, for an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.

(3) An arbitrator may be excused by the presiding judge or that judge's designee from serving in a particular assigned case upon a showing by the arbitrator that such individual has completed contested hearings and ruled as an arbitrator pursuant to these Rules in two or more cases assigned during the current calendar year and shall be excused on a detailed showing that such individual has an ethical conflict of interest or other good cause shown as defined in A.R.S. §§ 12-409 or 21-211, submitted in accord with the procedure set out in Rule 42(f)(2) of these Rules.

(4) After an arbitrator has been disqualified or excused from a particular case under this subdivision (d), a new arbitrator shall be appointed in accordance with the procedure set forth in subdivision (c) of this Rule.

**Rule 74. Powers of Arbitrator; Scheduling of Arbitration Hearing; Permitted Rulings by Arbitrator; Time for Filing Summary Judgment Motion; Receipt of Court File; Settlement of Cases.**

....

**(c) Rulings by Arbitrator.**

(1) *Authorized rulings.* After a case has been assigned to an arbitrator, the arbitrator shall make all legal rulings, including rulings on motions, except:

(A) motions to continue on the Dismissal Calendar or otherwise extend time allowed under Rule 38.1 of these Rules;

(B) motions to consolidate cases under Rule 42 of these Rules;

(C) motions to dismiss;

(D) motions to withdraw as attorney of record under Rule 5.1 of these Rules; or

(E) motions for summary judgment that, if granted, would dispose of the entire case as to any party.

**Rule 77. Right of Appeal**

**(a) Notice of Appeal.** Any party who appears and participates in the arbitration proceedings may appeal from the award or other final disposition by filing a notice of appeal with the clerk of the court within 20 days after the award is filed or 20 days after the date upon which the notice of decision becomes an award under Rule 76(b), whichever occurs first. The notice of appeal shall be entitled "Appeal from Arbitration and Motion to Set for Trial" and shall request that the case be set for trial in the Superior Court and state whether a jury trial is requested and the estimated length of trial.

**(b) Deposit on Appeal.** At the time of filing the notice of appeal, and as a condition of filing, the appellant shall deposit with the clerk of the court a sum equal to one hearing day's compensation of the arbitrator, but not exceeding ten percent (10%) of the amount in controversy. If the court finds that the appellant is unable to make such deposit by reason of lack of funds, the court shall allow the filing of the appeal without deposit.

# APPENDIX B

# A P P E N D I X B

# APPENDIX B



**Case Information**

Case Number: C20113008

Filing Date: 4/22/2011

Caption: CRAIG A GROETHE VS. TOWN OF SAHUARITA

Judge: JAMES E MARNER



**Party Information**

Party Full Name	Party Role	Name Type	DOB
CRAIG A GROETHE	Plaintiff	True	
CRAIG A GROETHE	Plaintiff	True	
TOWN OF SAHUARITA	Defendant	True	



**Case/Document Information**

Document Type	Document SubType	Document Caption	File Date	Image
Court/Notice	Inactive Notice	IN CHAMBERS RE: SETTLEMENT NOTICE AND PLACEMENT ON INACTIVE CALENDAR	3/1/2013	Available
Notice	Notice Of Settlement/Offer	NOTICE OF SETTLEMENT	2/25/2013	Available at Courthouse

ME	Status Conference	STATUS CONFERENCE	1/14/2013	Available
ME	Motions	MOTIONS IN LIMINE	1/11/2013	Available
Motion	Motion For Supplemental Proceedings	MOTION FOR SUPPLEMENT THE JOINT PRETRIAL STATEMENT	1/7/2013	Available at Courthouse
Motion	Motion In Limine	PLT'S MOTION IN LIMINE #2 REGARDING PRIOR CONVICTIONS	1/2/2013	Available at Courthouse
Prestate	Pretrial Statement	JOINT PRETRIAL STATEMENT	1/2/2013	Available at Courthouse
Motion	Motion In Limine	PLT'S MOTION IN LIMINE #3 RE: CIVIL LAWSUIT	1/2/2013	Available at Courthouse
Order	Order	ORDER JOINT PRETRIAL STATEMENT MOTIONS IN LIMINE MARKED DEPOSITIONS SHALL BE FILED BY 1/4/2013	12/20/2012	Available at Courthouse
Motion	Motion To Amend/Modify	JOINT MOTION TO MODIFY DATES & REQUEST FOR HEARING ON MOTIONS IN LIMINE & OBJECTIONS TO DEPOSITION T	12/19/2012	Available at Courthouse
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFTS 5TH SUPPLEMENTAL DISCLOSURE STATEMENT	12/13/2012	Available at Courthouse
Ruling	In Chambers Under Advisement Re:	IN CHAMBERS UNDER ADVISEMENT RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	10/18/2012	Available at Courthouse
ME	Motions	THE TOWN OF SAHUARITA'S MOTION FOR SUMMARY JUDGEMENT	10/9/2012	Available
Answer	Reply In Support/In Opposition	TOWN OF SAHUARITA'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	10/2/2012	Available at Courthouse
Order	Order Granting	ORDER GRANTING STIPULATION TO EXTEND REPLY DATE TO MOTION FOR SUMMARY JUDGMENT	8/23/2012	Available at Courthouse
Stipulation	Stipulation To Extend	STIPULATION TO EXTEND DATE TO FILE REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT & TO EXTEND HEAR!	8/21/2012	Available at Courthouse
CourtNotice	Notice Re: Reassignment	Notice Re: Reassignment	8/7/2012	Available
Answer	Answer/Response To Statement Of Facts	PLTFS RESPONSE TO STATEMENT OF FACTS IN SUPPORT OF OPPOSITION TO DERNS MOTION FOR SUMMARY JUDGMENT	7/27/2012	Available at Courthouse
Oppose	Opposition To Motion	PLAINTIFFS OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	7/27/2012	Available at Courthouse
ME	Status Conference	STATUS CONFERENCE/PLAINTIFFS MOTION IN LIMINE	7/17/2012	Available
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFENDANTS 4TH SUPPLEMENTAL RULE 26.1 DISCLOSURE STATEMENT	6/29/2012	Available at Courthouse

Notice	Notice Of Service	NOTICE OF SERVICE OF DEFENDANT'S 3RD SUPPLEMENTAL RULE 26.1 DISCLOSURE STATEMENT	6/28/2012	Available at Courthouse
Notice	Notice Of Hearing	NOTICE OF HEARING OF THE TOWN OF SAHUARITA'S MOTION FOR SUMMARY JUDGMENT	6/25/2012	Available at Courthouse
Statement/Facts	Statement Of Facts	DEFENDANT'S SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	6/22/2012	Available at Courthouse
Motion	Motion For Summary Judgment	THE TOWN OF SAHUARITA'S MOTION FOR SUMMARY JUDGMENT	6/22/2012	Available at Courthouse
Order	Order To Extend/Shorten	ORDER GRANTING STIPULATION TO EXTEND DATE TO FILE MOTION FOR SUMMARY JUDGMENT	6/14/2012	Available at Courthouse
Stipulation	Stipulation To Extend	STIPULATION TO EXTEND DATE TO FILE MOTION FOR SUMMARY JUDGMENT	6/13/2012	Available at Courthouse
Notice	Notice Of Appearance	NOTICE OF APPEARANCE	5/16/2012	Available at Courthouse
Answer	Answer/Response To Opposition	REPLY TO DEFTS OPPOSITION TO PLTF'S MOTION IN LIMINE #1	5/12/2012	Available at Courthouse
Court/Notice	In Chambers	IN CHAMBERS RE: PLAINTIFF'S MOTION IN LIMINE #1	4/30/2012	Available
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFT'S SECOND SUPPLEMENTAL DISCLOSURE STATEMENT	4/23/2012	Available at Courthouse
Oppose	Opposition To Motion	OPPOSITION TO PLNTFF'S MOTION IN LIMINE #1	4/23/2012	Available at Courthouse
Notice	Notice Of Deposition/Disclosure/Interrogatories/Discovery	SECOND AMENDED NOTICE OF VIDEO-TAPED DEPOSITION	4/20/2012	Available at Courthouse
Order	Order Granting	ORDER GRANTING STIPULATION TO EXTEND RESPONSE DATE TO MOTION IN LIMINE	4/17/2012	Available at Courthouse
Stipulation	Stipulation To Extend	STIPULATION TO EXTEND RESPONSE DATE TO MOTION IN LIMINE	4/16/2012	Available at Courthouse
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFT'S INITIAL RULE 26.1 DISCLOSURE STATEMENT	3/27/2012	Available at Courthouse
Motion	Motion In Limine	MOTION IN LIMINE #1 - PLAINTIFFS	3/27/2012	Available at Courthouse
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFT'S OBJECTIONS & RESPONSES TO UNIFORM INTERROGATORIES	3/13/2012	Available at Courthouse
Court/Notice	Trial Notice	IN CHAMBERS CIVIL TRIAL NOTICE	2/17/2012	Available
Motion	Motion To Set & Certificate of Readiness	MOTION TO SET & CERTIFICATE OF READINESS	1/25/2012	Available at Courthouse
Court/Notice	Inactive Notice	INACTIVE NOTICE	1/20/2012	Available

FIRST ALLEIGHED NOTICE OF VIDEO TAPED

Notice Of

Notice	NOTICE OF Deposition/Disclosure/Interrogatories/Discovery	FIRST APPEARANCE NOTICE OF VIDEO-TAPED DEPOSITION	11/23/2011	APPEARANCE AT Courtthouse
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFT'S INTERROGATORIES	11/8/2011	Available at Courtthouse
Notice	Notice Of Deposition/Disclosure/Interrogatories/Discovery	NOTICE OF VIDEO-TAPED DEPOSITION	11/8/2011	Available at Courtthouse
Receipt	All Money Receipts	All Money Receipts #1550478	5/25/2011	Available at Courtthouse
Answer	Answer/Response To Complaint	ANSWER OF DEFENDANT	5/25/2011	Available at Courtthouse
Affidavit	Affidavit Of Service	AFFIDAVIT OF SERVICE	4/27/2011	Available at Courtthouse
Receipt	All Money Receipts	All Money Receipts #1534050	4/22/2011	Available at Courtthouse
Arbitration	Certificate Of Compulsory Arbitration	Certificate of Compulsory Arbitration	4/22/2011	Available at Courtthouse
Open	Petition & Complaint	Petition & Complaint	4/22/2011	Available at Courtthouse

**FILED**  
PATRICIA A. NOLAND  
SUPERIOR COURT

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF PIMA**

**12 JAN 20 PM 2:31**

**CRAIG A GROETHE VS. TOWN OF SAHUARITA**

**BY: J. ORR. DEPUTY**

**CASE: C20113008**  
**DATE: 1/20/2012**

\*\*\*\*\*  
**INACTIVE NOTICE**

Please take notice that pursuant to Rule 38.1(d), Arizona Rules of Civil Procedure, this case has been placed on the inactive calendar. All unadjudicated claims and /or temporary orders will be dismissed without further notice after 60 days unless:

- (1) A proper Motion to Set and Certificate of Readiness is filed pursuant to Rule 38.1(a), Arizona Rules of Civil Procedure, and Local Rule 3.5, or
- (2) The court orders, for good cause shown that the case be continued on the inactive calendar for a specific time; or
- (3) A final judgment is entered.

If you have reason to believe this notice has been issued in error, please call **CASE MANAGEMENT SERVICES, INACTIVE/DISMISSAL OFFICE, at 520-740-3551.**

BY: GAIL RUEHL  
Case Management Services

\*\*\*\*\*

PLAINTIFF	VS	DEFENDANT
GROETHE, CRAIG A		TOWN OF SAHUARITA

cc: DONALD T. AWERKAMP, ESQ.  
IVELISSE BONILLA-TORRADO, ESQ.  
TODD E. HALE, ESQ.

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. SCOTT RASH  
JUDGE

CASE NO. C20113008

DATE: February 17, 2012

CRAIG A GROETHE  
Plaintiff

VS.

TOWN OF SAHUARITA  
Defendant

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**NOTICE**

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**IN CHAMBERS CIVIL TRIAL NOTICE**

**IT IS ORDERED** setting a **Jury Trial** on **September 11, 2012 at 9:00 AM**, for **8 days**.

**IT IS FURTHER ORDERED** setting a **Status Conference** on **July 16, 2012, at 9:00 A.M.** The purpose of the Mandatory Status Conference is to have counsel confer with the Court approximately 60 days prior to trial to resolve any discovery matters or other matters relevant to the trial of the case and to explore settlement options.

**IT IS FURTHER ORDERED:**

- (1) All requests to modify the trial date, including notice of trial conflicts are to be filed by **March 5, 2012**.
- (2) All dispositive motions shall be filed no later than **June 13, 2012, OR** if the original trial date is continued, 90 days prior to trial.
- (3) Final disclosures are to be made no later than **June 28, 2012, OR** if the original trial date is continued, 75 days prior to trial.
- (4) All discovery is to be completed no later than **July 13, 2012, OR** if the original trial date is continued, 60 days prior to trial (discovery request must be served so they may be completed by the 60 day deadline. This deadline does not relieve the parties of their continuing obligation to supplement the disclosure as otherwise required under Arizona Rules of Civil Procedure Rule 26 through 37.)
- (5) All Motions in Limine shall be filed in accordance with Arizona Rules of Civil Procedure 7.2; Before filing a Motion in Limine, parties are encouraged to review *Berger v. Sup. Ct.*, 108 Ariz. 396 (1972).

Kristi Karlik  
Judicial Administrative Assistant

## NOTICE

- (6) If there is a settlement or the case is otherwise resolved, counsel will immediately advise the Court. One day's jury fees will be assessed unless the Court is notified of the settlement before 12:00 noon on the judicial day before trial.
- (7) A joint pretrial statement, compliant with Arizona Rule of Civil Procedure 16(d), shall be filed, with a copy to this Division, not less than twenty (20) days prior to trial; failure to do so may cause assignment of this case to the Inactive Calendar and its dismissal in 60 days without further notice. Failure in good faith to prepare or assist in the preparation of the joint pretrial statement shall subject offending counsel to the sanctions set forth in Arizona Rules of Civil Procedure 16(f).
- (8) As a general rule, if an objection of non-disclosure is made at trial, the burden shall be on the party offering the particular line of testimony, exhibit or the like, to show that **written notice was timely given** (at least 60 days prior to trial) of the testimony/document in dispute. Counsel are advised to have all disclosure statements, correspondence or other written documents establishing notice, available in the courtroom, at trial. A party's failure to produce such written evidence, immediately after an objection of non-disclosure is made, will generally result in the exclusion of that evidence.
- (9) In addition to the requirement of the Arizona Rules of Civil Procedure Rule 16(d)(2)(F), the parties shall submit to the trial judge twenty (20) days prior to the trial, one copy of each deposition transcript. On that copy, each party's offered testimony shall be highlighted in separate colors (e.g., yellow/Plaintiffs, blue/Defendants). It is the obligation of the counsel to arrange a hearing to obtain rulings on objections prior to trial. This should be, at the time of hearing on Motions in Limine and not later than one week prior to trial. Failure to do so will result in either waiver of objections or rejection of offered testimony. The Court cautions counsel regarding over designation of transcript testimony. Further, summaries are an effective means of giving information to the jury. This Court may require, at the request of any party, a deposition summary and will consider sanctions for unreasonable objections.
- (10) The Friday before the first day of jury trial, counsel shall submit to the trial judge an original and one copy of all instructions, forms of verdict; a joint draft of preliminary instructions; and interrogatories which counsel intend to request the Court submit to the jury, if any, and counsel's suggestions for questions on Voir Dire.
- (11) During the week before trial, the trial lawyers shall make an appointment for themselves or their knowledgeable assistants to meet with the clerk of this Division or the Second Floor Clerk's Office with all exhibits. Please advise the clerk which exhibits may be marked directly into evidence. Trial counsel shall also provide to the Judge a set of the paper exhibits.
- (12) Exhibits: Each separate exhibit intended to be offered shall be listed together with specific objections. Counsel are cautioned as to unnecessary foundation objections. See *Shepherd v. Crow*, 192 Ariz. 539, 968 P.2d 612 (1998).

Kristi Karlik

Judicial Administrative Assistant

## NOTICE

- (13) All parties are advised that multiple cases are set before this Division and all other division each week. Generally, the matter with the lowest case number is entitled to preference if two or more cases are prepared to proceed to trial on a given date. It is the obligation of counsel to check with the J.A.A. in this Division as the trial date approaches in order to determine the status of their particular case in terms of trial priority.
- (14) Trial Continuances: Trial continuances will not automatically be granted and a hearing is necessary. Further, the *Pima County Superior Court Policy Re: Continuances of Civil Trial Settings for Good Cause Shown* must be complied with. A copy of this policy is available upon request.
- (15) No discovery motion will be set or heard without compliance with Rule 26(g), which requires **personal** consultation, not an exchange of correspondence. Counsel/parties are reminded of sanctions under Rule 26(f). The Court encourages the scheduling of joint Telephonic Conferences on minor issues.
- (16) Pursuant to Pima County Local Rules of Practice, Rule 3.5, the Court will not give out hearing dates over the telephone for motions, other than on an emergency basis. Hearing dates must be obtained by bringing the motion and separate notice of hearing, together with appropriate copies, to this Division for scheduling. Pursuant to Rule 3.5(b) of Pima County Rules, any motions for which hearing dates are not requested will be decided without oral argument, unless the other party(ies) request(s) a hearing.
- (17) The American College of Trial Lawyers has an adopted Code of Pretrial Conduct and Code of Trial Conduct. This Code describes professional Pretrial and Trial Conduct which this Court will expect and enforce except to the extent that other rules or law may apply. These Codes may be found at [www.actl.com](http://www.actl.com).
- (18) Status Conferences may be heard by telephone conference call. Counsel requesting a telephonic status conference are to obtain the Court's approval and contact opposing counsel to obtain approval and offer that he/she/they may appear telephonically in a conference call arranged by requesting counsel. Requesting counsel are to initiate any conference call on the date and time scheduled. The Court's telephone number is: (520) 740-8045 / 740-8314.
- (19) Counsel are to ensure that copies of documents (motions, oppositions, etc.) necessary for a Judicial ruling or decision are to be delivered to this Division. See Pima County Local Rule 5.4. The original shall be filed with the Clerk of Court. The parties are to refrain from lodging with this Division copies of "Notice of Service" of any discovery papers or pleadings.

cc: Donald T. Awerkamp, Esq.  
Ivelisse Bonilla-Torrado, Esq.  
Todd E. Hale, Esq.  
Case Management Services - Civil

Kristi Karlik  
Judicial Administrative Assistant

FILED  
PATRICIA NOLAND  
CLERK, SUPERIOR COURT  
7/17/2012 3:30:13 PM  
By: Brenda Ramirez

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. SCOTT RASH  
JUDGE

CASE NO. C20113008

COURT REPORTER: Diane Sonntag  
Courtroom - 774

DATE: July 16, 2012

CRAIG A GROETHE  
Plaintiff

Donald T. Awerkamp, counsel for Plaintiff

VS.

TOWN OF SAHUARITA  
Defendant

Todd E. Hale, counsel for Defendant

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**MINUTE ENTRY**

---

**STATUS CONFERENCE//PLAINTIFF'S MOTION IN LIMINE**

No parties are present.

Mr. Awerkamp and Mr. Hale argue their respective positions to the Court.

The Court and counsel further discuss the matter.

Based upon the pleadings and arguments of counsel,

IT IS ORDERED that the Plaintiff's Motion in Limine is DENIED. The Plaintiff is given leave to renew the motion at the time of trial after presentation of testimony.

At the request of counsel and the Court believing additional discovery may be necessary in this case,

IT IS ORDERED that the Jury Trial currently set for September 11, 2012, is reset to January 15, 2013, at 9:00 a.m. Estimated time for trial is eight (8) days. All discovery/disclosure deadlines shall abide the previous trial notice.

cc: Hon. Scott Rash  
Donald T. Awerkamp, Esq.  
Todd E. Hale, Esq.

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Brenda Ramirez  
Deputy Clerk

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

NOTICE RE: REASSIGNMENT

Plaintiff: CRAIG A GROETHE

CASE: C20113008

Defendant: TOWN OF SAHUARITA

DATE: 8/6/2012

\*\*\*\*\*

This case is reassigned to HON. JAMES E. MARNER, DIV. 10

for all further proceedings EFFECTIVE 8/6/2012

BY: CASSANDRA URIAS  
CALENDAR SERVICES

CC: CALENDAR SERVICES

FILED  
PATRICIA NOLAND  
CLERK, SUPERIOR COURT  
1/14/2013 2:51:12 PM  
By: Cassandra Kerton

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JAMES E MARNER

CASE NO. C20113008

COURT REPORTER: Karen Kahle  
Courtroom - 774

DATE: January 10, 2013

CRAIG A GROETHE  
Plaintiff

Donald T. Awerkamp, Esq., Appearing  
Telephonically, counsel for Plaintiff

VS.

TOWN OF SAHUARITA  
Defendant

Todd E. Hale, Esq., Appearing Telephonically,  
counsel for Defendant

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**MINUTE ENTRY**

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**STATUS CONFERENCE**

No parties are present.

The Court and counsel confer regarding the status of the case.

Counsel advise the Court that this case may resolve, and counsel agree to continue the trial date.

IT IS ORDERED that the trial date set on January 15, 2013, is continued to February 26, 2013, at 9:00 AM in Division 10 for eight days.

Mr. Awerkamp withdraws the Plaintiff's Motion in Limine #2 regarding "after acquired" evidence; the motion may be re-filed at a later date if necessary.

cc: Hon. James E Marner  
Donald T. Awerkamp, Esq.  
Todd E. Hale, Esq.

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Cassandra Kerton  
Deputy Clerk

# APPENDIX C

# A P P E N D I X C

# APPENDIX C



**Case Information**

Case Number: C20111080

Filing Date: 2/10/2011

Caption: NATIONAL BANK OF ARIZONA VS. MW2 DEVELOPMENT CORPORATION ET AL.

Judge: KENNETH LEE



**Party Information**

Party Full Name	Party Role	Name Type	DOB
NATIONAL BANK OF ARIZONA	Plaintiff	True	
MW2 DEVELOPMENT CORPORATION	Defendant	True	
WAYNE SMITH	Defendant	True	
PETRINA SMITH	Defendant	True	
MARK H WRIGHT	Defendant	True	
MARY LOU WRIGHT	Defendant	True	
M & J BANK	Garnishee	True	



**Case/Document Information**

<http://www.agave.cosc.pima.gov/PublicDocs/GetCase2.aspx?ID=1102629>

Document Type	Document SubType	Document Caption	File Date	Image
Notice	Notice Of Dismissal	NOTICE OF DISMISSAL OF WRIT OF GARNISHMENT	9/6/2012	Available at Courthouse
Answer	Answer/Response To Garnishment/Garnishee	ANSWER OF GARNISHEE	9/4/2012	Available at Courthouse
Order	Order Of Dismissal/Dismissing	ORDER FOR DISMISSAL WITH PREJUDICE AS TO WAYNE SMITH, PETRINA SMITH, MARK H WRIGHT & MARY LOU WRIGHT	8/30/2012	Available at Courthouse
Affidavit	Affidavit Of Service	AFFIDAVIT OF SERVICE UPON M & I BANK	8/28/2012	Available at Courthouse
Stipulation	Stipulation To Dismiss	STIPULATION FOR DISMISSAL W PREJUDICE AS TO W SMITH/P SMITH/M WRIGHT AND MARY LOU WRIGHT ONLY	8/24/2012	Available at Courthouse
Application	Application For Writ	APPLICATION FOR WRIT OF GARNISHMENT FOR MONIES OR PROPERTY	8/23/2012	Available at Courthouse
ME	Settlement Conference	SETTLEMENT CONFERENCE (CIVIL)	8/13/2012	Available
Mail	Outgoing/Incoming Mail/E-Mail	JUDGMENT/DECREE LETTER	8/13/2012	Available at Courthouse
Judgment	Judgment & Order	RULE 54B JUDGMENT AGAINST MW2 DEVELOPMENT CORPORATION	8/12/2012	Available at Courthouse
Notice	Statement Of Cost & Notice Of Cost	STATEMENT OF COSTS & NOTICE OF TAXATION OF COSTS AGAINST MW2 DEVELOPMENT CORP	5/21/2012	Available at Courthouse
Application	Application For Attorney Fees & Cost	PLTS APPLICATION FOR AN AWARD OF ATTORNEYS FEES AGAINST MW2 DEVELOPMENT CORP	5/21/2012	Available at Courthouse
Notice	Notice Of Lodging	NOTICE OF LODGING PROPOSED FORM OF JUDGMENT AGAINST MW2 DEVELOPMENT CORP	5/21/2012	Available at Courthouse
Order	In Chambers Re:	IN CHAMBERS ORDER RE PLAINTIFFS OBJECTION TO JURY TRIAL	4/30/2012	Available at Courthouse
Answer	Reply In Support/In Opposition	PLNTFS REPLY IN SUPPORT OF OBJECTION TO JURY TRIAL	4/26/2012	Available at Courthouse
Answer	Answer/Response To Opposition	RESPONSE TO OPPOSITION TO OBJECTION TO JURY TRIAL	4/16/2012	Available at Courthouse
CourtNotice	In Chambers	IN CHAMBERS	4/10/2012	Available
CourtNotice	In Chambers	IN CHAMBERS	4/9/2012	Available
Misc	Request For Hearing/Continuance	REQUEST FOR SETTLEMENT CONFERENCE	4/4/2012	Available at Courthouse
Notice	Notice Change Of Law Firm Or	NOTICE OF FIRM NAME CHANGE	4/4/2012	Available at

Case No.	Case Name	Attorney Address	Case Description	Date	Location
Oppose	Opposition/Objection		OBJECTION TO JURY TRIAL	3/30/2012	Courthouse Available at Courthouse
CourtNotice	Trial Notice		DIVISION 3	2/22/2012	Available
Motion	Motion To Set & Certificate of Readiness		CONVERTING MOTION TO SET & CERTIFICATE OF READINESS	2/3/2012	Available at Courthouse
Motion	Motion To Set & Certificate of Readiness		MOTION TO SET & CERTIFICATE OF READINESS FOR TRIAL	2/1/2012	Available at Courthouse
CourtNotice	Inactive Notice		INACTIVE NOTICE	12/16/2011	Available
ME	Motions		PLT'S MOTION FOR SUMMARY JUDGMENT (7-18-11)/DEFT SMITHS & WRIGHTS CROSS MOTION FOR SUMMARY JUDGMENT/P	11/18/2011	Available
Affidavit	Affidavit Of A Person		AFFIDAVIT OF KAREN PLUNKETT	11/4/2011	Available at Courthouse
Notice	Notice Of Filing		NOTICE OF FILING ORIGINAL AFFIDAVIT OF KAREN PLUNKETT	11/4/2011	Available at Courthouse
Oppose	Opposition/Objection		PLAINTIFF'S OBJECTION TO DEFENDANTS SMITH & WRIGHT'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JU	11/1/2011	Available at Courthouse
Notice	Notice Of Hearing		NOTICE OF HEARING	10/25/2011	Available at Courthouse
Misc	Declaration		DECLARATION OF PAULA TRIMMER	10/24/2011	Available at Courthouse
Notice	Notice Of Service		NOTICE OF SERVICE OF FIRST SUPPLEMENTAL DISCLOSURE STATEMENT	10/24/2011	Available at Courthouse
Misc	Request For Appearance		REQUEST TO ALLOW PLAINTIFF'S COUNSEL TO APPEAR TELEPHONICALLY	10/24/2011	Available at Courthouse
Statementfacts	Statement Of Facts		SMITH AND WRIGHT'S SUPPLEMENTAL STATEMENT OF FACTS IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT	10/24/2011	Available at Courthouse
Answer	Reply In Support/In Opposition		SMITH'S REPLY IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT	10/24/2011	Available at Courthouse
Order	Order To Extend/Shorten		ORDER EXTENDING TIME FOR DEFTS SMITH AND WRIGHT TO REPLY IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDG	10/13/2011	Available at Courthouse
Stipulation	Stipulation To Extend		STIPULATION TO EXTEND TIME FOR DEFTS TO REPLY IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT	10/12/2011	Available at Courthouse
Answer	Reply In Support/In Opposition		REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT & OPPOSITION	9/26/2011	Available at Courthouse
Answer	Answer/Response To Statement Of Facts		ANSWER TO SMITH & WRIGHT'S CONTROVERTING STATEMENT OF FACTS IN OPPOSITION TO MOTION	9/26/2011	Available at Courthouse
Order	Order To Extend/Shorten		ORDER EXTENDING PLTF'S TIME TO FILE ITS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	9/14/2011	Available at Courthouse

Stipulation	Stipulation To Extend	STIPULATION TO EXTEND PLTF'S TIME TO FILE ITS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	9/12/2011	Available at Courthouse
Affidavit	Affidavit In Support	DECLARATION OF DEFT WAYNE SMITH IN SUPPORT OF CONTROVERTING STATEMENT OF FACTS IN OPPOSITION	8/22/2011	Available at Courthouse
Affidavit	Affidavit In Support	DECLARATION OF DEFT MARK WRIGHT IN SUPPORT OF CONTROVERTING STATEMENT OF FACTS IN OPPOSITION	8/22/2011	Available at Courthouse
Statement of Facts	Statement Of Facts	DEFTS SMITH & WRIGHTS CONTOVERTING STATEMENT OF FACTS IN OPPOSITION TO PLNTF'S MOTION FOR SUMMARY	8/22/2011	Available at Courthouse
Oppose	Opposition To Motion	OPPOSITION TO PLNTF'S MOTION FOR SUMMARY JUDGMENT & DEFTS SMITH & WRIGHTS CROSS MOTION	8/22/2011	Available at Courthouse
Answer	Answer/Response To Motion	DEFT MW2 DEVELOPMENT CORP.'S RESPONSE TO PLNTF'S MOTION FOR SUMMARY JUDGMENT	8/22/2011	Available at Courthouse
Notice	Notice Of Errata/Error	PLTF'S NOTICE OF ERRATA	7/22/2011	Available at Courthouse
Affidavit	Affidavit Of A Person	AFFIDAVIT OF KAREN PLUNKETT	7/18/2011	Available at Courthouse
Motion	Motion For Summary Judgment	MOTION FOR SUMMARY JUDGMENT	7/18/2011	Available at Courthouse
Statement of Facts	Statement Of Facts	PLTF'S STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	7/18/2011	Available at Courthouse
Notice	Notice Of Service	NOTICE OF SERVICE OF DEFNS' INITIAL DISCLOSURE STATEMENT	5/25/2011	Available at Courthouse
Receipt	All Money Receipts	All Money Receipts #1515863	3/18/2011	Available at Courthouse
Answer	Answer/Response To Complaint	ANSWER AND DEMAND FOR JURY TRIAL	3/18/2011	Available at Courthouse
Affidavit	Affidavit Of Service	AFFIDAVIT OF SERVICE UPON MARK H. WRIGHT	2/24/2011	Available at Courthouse
Affidavit	Affidavit Of Service	AFFIDAVIT OF SERVICE UPON MW2 DEVELOPMENT CORP.	2/16/2011	Available at Courthouse
Affidavit	Affidavit Of Service	AFFIDAVIT OF SERVICE ON WAYNE SMITH & PETRINA SMITH	2/15/2011	Available at Courthouse
Receipt	All Money Receipts	All Money Receipts #1496777	2/10/2011	Available at Courthouse
Arbitration	Certificate Of Compulsory Arbitration	Certificate of Compulsory Arbitration	2/10/2011	Available at Courthouse
Open	Petition & Complaint	Petition & Complaint	2/10/2011	Available at Courthouse



2

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF PIMA**

**NATIONAL BANK OF ARIZONA VS. MW2 DEVELOPMENT CORPORATION ET AL.**

CASE: C20111080  
DATE: 12/16/2011

FILED  
PATRICIA A. NOLAN  
CLERK, SUPERIOR COURT  
2011 DEC 16 PM 4:13  
J. MITCHELL, DEPUTY

**INACTIVE NOTICE**

Please take notice that pursuant to Rule 38.1(d), Arizona Rules of Civil Procedure, this case has been placed on the inactive calendar. All unadjudicated claims and /or temporary orders will be dismissed without further notice after 60 days unless:

- (1) A proper Motion to Set and Certificate of Readiness is filed pursuant to Rule 38.1(a), Arizona Rules of Civil Procedure, and Local Rule 3.5, or
- (2) The court orders, for good cause shown that the case be continued on the inactive calendar for a specific time; or
- (3) A final judgment is entered.

If you have reason to believe this notice has been issued in error, please call **CASE MANAGEMENT SERVICES, INACTIVE/DISMISSAL OFFICE, at 520-740-3551.**

BY: GAIL RUEHL  
Case Management Services

PLAINTIFF

VS

DEFENDANT

NATIONAL BANK OF ARIZONA

SMITH, WAYNE  
SMITH, PETRINA  
WRIGHT, MARK H  
WRIGHT, MARY LOU

cc: EVAN L. THOMPSON, ESQ.  
HEATHER BOYSEL, ESQ.  
KEVIN J. BLAKLEY, ESQ.  
RUSSELL E. KRONE, ESQ.

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. KENNETH LEE  
JUDGE

CASE NO. C20111080

DATE: February 22, 2012

NATIONAL BANK OF ARIZONA  
Plaintiff

VS.

MW2 DEVELOPMENT CORPORATION,  
WAYNE SMITH, PETRINA SMITH,  
MARK H WRIGHT, and  
MARY LOU WRIGHT  
Defendants

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**NOTICE**

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**DIVISION 3--JURY TRIAL**

IT IS ORDERED setting a **Jury Trial** on **Tuesday, December 18, 2012, at 9:00 AM, for 3 Days.**

IT IS FURTHER ORDERED setting a **Status Conference** on **Tuesday, October 09, 2012, at 9:00 AM.**

IT IS FURTHER ORDERED:

- (1) All discovery is to be completed not later than 60 days prior to trial.
- (2) Final disclosures are to be made not later than 60 days prior to trial.
- (3) All dispositive motions shall be filed not later than 90 days prior to trial.
- (4) Any Motion challenging the admissibility of an expert's opinion, pursuant to A.R.S. §12-2203, shall be filed not later than 90 days before trial.
- (5) All Motions in Limine shall be filed not later than 30 days prior to trial; responses to Motions in Limine shall be filed not later than 20 days prior to trial; no replies are to be filed.
- (6) If there is a settlement or the case is otherwise resolved, counsel will immediately advise the Court. One day's jury fees will be assessed unless the Court is notified of the settlement before 12:00 noon on the judicial day before trial.
- (7) Pursuant to Pima County Local Rules of Practice, Rule 3.5, the Court will not give out hearing dates over the telephone for motions, other than on an emergency basis. Hearing dates must be obtained by bringing the motion and separate notice of hearing, together with appropriate copies, to this Division for scheduling. Pursuant to Rule 3.5(b) of Pima County Rules, any motions for which hearing dates are not requested will be decided without oral argument, unless the

Mary Ann Ritz

Judicial Administrative Assistant

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other party(ies) request(s) a hearing.

- (8) A joint pretrial statement, compliant with Arizona Rules of Civil Procedure Rule 16(d), shall be filed, with a copy to this Division, not less than twenty (20) days prior to trial; failure to do so will cause assignment of this case to the Inactive Calendar and its dismissal in 60 days without further notice. Failure in good faith to prepare or assist in the preparation of the joint pretrial statement shall subject offending counsel to the sanctions set forth in Arizona Rules of Civil Procedure Rule 16(f).
- (9) As a general rule, if an objection of non-disclosure is made at trial, the burden shall be on the party offering the particular line of testimony, exhibit or the like, to show that **written notice was timely given** (at least 60 days prior to trial) of the testimony/document in dispute. Counsel are advised to have all disclosure statements, correspondence or other written documents establishing notice, available in the courtroom, at trial. A party's failure to produce such written evidence, immediately after an objection of non-disclosure is made, will generally result in the exclusion of that evidence.
- (10) In addition to the requirement of the rule [Arizona Rules of Civil Procedure Rule 16(d)], the parties shall submit to the trial judge twenty (20) days prior to the trial, one copy of each deposition transcript. On that copy, each party's offered testimony shall be highlighted in separate colors (e.g., yellow/Plaintiffs, blue/Defendants). It is the obligation of the counsel to arrange a hearing to obtain rulings on objections prior to trial. This should be, at the time of hearing on Motions in Limine and not later than one week prior to trial. Failure to do so will result in either waiver of objections or rejection of offered testimony. The Court cautions counsel regarding over designation of transcript testimony. Further, summaries are an effective means of giving information to the jury. This Court may require, at the request of any party, a deposition summary and will consider sanctions for unreasonable objections.
- (11) The Friday before the first day of jury trial, counsel shall submit to the trial judge an original and one copy of all instructions, forms of verdict; a joint draft of preliminary instructions; and interrogatories which counsel intend to request the Court submit to the jury, if any, and counsel's suggestions for questions on Voir Dire.
- (12) During the week before trial, the trial lawyers shall make an appointment for themselves or their knowledgeable assistants to meet with the clerk of this Division or the Second Floor Clerk's Office with all exhibits. Please advise the clerk which exhibits may be marked directly into evidence. Trial counsel shall also provide to the Judge a set of the paper exhibits.
- (13) The purpose of the Mandatory Status Conference is to have counsel confer with the Court approximately 60 days prior to trial to resolve any discovery matters or other matters relevant to the trial of the case and to explore settlement options.
- (14) Requests for Continuance of the trial date will be considered in light of the Court's policy on trial continuance. Copy available upon request.

Mary Ann Ritz

Judicial Administrative Assistant

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Date: February 22, 2012

Case No.: C20111080

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cc: Hon. Kenneth Lee  
Christopher L Hering, Esq.  
Evan L. Thompson, Esq.  
Heather Boysel, Esq.  
Kevin J. Blakley, Esq.  
Russell E. Krone, Esq.

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**Mary Ann Ritz**  
Judicial Administrative Assistant