

1 Honorable Randall H. Warner  
2 Civil Department Presiding Judge  
3 Superior Court of Arizona in Maricopa County  
4 101 West Jefferson, Suite 512  
5 Phoenix, AZ 85003  
6 (602) 372-2966

7 ARIZONA SUPREME COURT

8 In the Matter of: ) Supreme Court No. R-17-0010  
9 )  
10 PETITION TO AMEND THE ) COMMENT OF THE SUPERIOR  
11 ARIZONA RULES OF CIVIL ) COURT OF ARIZONA, MARICOPA  
12 PROCEDURE, TO MODIFY RULES ) COUNTY OPPOSING  
13 8, 8.1, 11, 16, 26, 26.1-.2, 29, 30, 31, ) ABROGATION OF RULES  
14 33-37, 45, 45.2; ABROGATE RULE ) GOVERNING THE COMPLEX  
15 16.3; ADOPT NEW RULES 26.2 and ) LITIGATION PROGRAM  
16 45.2 AND MODIFY RULE 84 )

17 On behalf of the Superior Court of Arizona in Maricopa County, the Civil  
18 Department Presiding Judge files this comment to Petition No. R-17-0010. This  
19 comment addresses the proposed elimination of Rules 8(h) and 16.3, which  
20 govern the Complex Litigation Program. We request that those rules remain in  
21 place. Further, if the Petition is granted, we recommend that Rule 16.3 be  
22 modified to (1) exempt cases in the Complex Litigation Program from the  
23 discovery limits of Rule 26.2, but (2) require the court to impose discovery  
24 limits that are proportional to the needs of the case.

25 The Supreme Court created the Complex Litigation Program in 2002 on  
26 the recommendation of its Committee to Study Complex Litigation. In  
27 Administrative Order No. 2002-107, the Court established the Program as a pilot  
28 program in Maricopa County, and adopted Rules 8(i) (now 8(h)) and 16.3 to

1 govern it. The Court made the Program permanent in 2011 by formally adopting  
2 those Rules.

3 The Rules contemplate that complex cases are the most complicated of  
4 civil litigation. There are currently 34 active complex cases in Maricopa County  
5 divided among four judges. They include class actions, multi-party construction  
6 defect cases, tort cases involving multiple plaintiffs or defendants (e.g., toxic  
7 tort, product liability and medical device cases), large consumer protection  
8 cases, and unusually complicated commercial cases. Requests to be placed in  
9 the Complex Litigation Program are decided by the Civil Presiding Judge as the  
10 Presiding Judge’s designee.

11 The body of Petition R-17-0010 does not discuss eliminating the Complex  
12 Litigation Program, but the attached appendices show Rules 8(h) and 16.3 as  
13 abrogated. Based on discussions with members of the Committee on Civil  
14 Justice Reform, we understand the idea was that “Tier 3” cases would  
15 encompass the most complex cases, so there would be no need for a Complex  
16 Litigation Program. Under proposed Rule 26.2, Tier 3 presumptively includes  
17 cases where the amount at stake is \$300,000 or more, or where other factors  
18 make the case more complicated. It is our experience that cases in which  
19 damages sought are in the \$300,000 to \$750,000 range often are not very  
20 complex. They include personal injury cases with moderate injuries, mid-sized  
21 contract disputes, and condemnation cases involving medium-sized properties.

22 By contrast, cases in the Complex Litigation Program typically involve  
23 damages in the millions – often the tens or hundreds of millions – or non-  
24 monetary relief that affects numerous people. They usually involve multiple  
25 plaintiffs, defendants or both. Some require coordination with federal Multi-  
26 District Litigation or other cases outside Arizona. They are, by definition,  
27 extraordinary cases that require individualized and continuous case management.  
28

1 Even with the amendments proposed in the Petition, there is a need for the  
2 Complex Litigation Program for these cases.

3 When the Commercial Court Pilot Program was created in 2015, some  
4 thought it would subsume or obviate the Complex Litigation Program. It has  
5 not. Though there is overlap between the programs – a fair number of complex  
6 cases are also commercial – many complex cases do not qualify for the  
7 Commercial Court Pilot Project. These include consumer class actions, multi-  
8 party tort cases and consumer protection cases.

9 In our discussions with members of the Committee on Civil Justice  
10 Reform, it was suggested that Rules 8(h) and 16.3 be relocated to the Maricopa  
11 County Local Rules. We do not oppose that in principle. But like any rule  
12 change, moving the Rules would cause some disruption for the lawyers. And  
13 there is no countervailing benefit because there is no problem that relocating  
14 Rules 8(h) and 16.3 would solve. The simpler course is just to leave Rules 8(h)  
15 and 16.3 as they are. And retaining them in the Rules of Civil Procedure  
16 recognizes the Supreme Court’s continued involvement in the Complex  
17 Litigation Program.

18 For these reasons, we recommend that Rules 8(h) and 16.3 not be  
19 abrogated. In addition, we recommend amending Rule 16.3 to add the following  
20 as subsection (f):

21 **(f) Discovery Limits.** The court must impose discovery  
22 limits that are proportional to the needs of the case. The  
23 requirements of Rule 26.2 do not apply to civil actions  
designated complex under Rule 8(h).

24 This amendment would serve two purposes. First, because cases in the  
25 Complex Litigation Program are both unusually complex and actively managed,  
26 they should be exempt from the presumptive discovery limits in Rule 26.2. In  
27 these cases, judges can and do tailor discovery to the particular needs of the case.  
28

1 Second, however, the Rule should make clear that Rule 26.2's policy of  
2 proportional discovery applies to complex cases as it does to all cases.

3 There is one concern. If this language is added, we may see an increase in  
4 requests for complex designation by those seeking to avoid Rule 26.2's limits.  
5 But the Civil Presiding Judge remains the gatekeeper for which cases go into the  
6 Complex Litigation Program, so we do not expect this to be a significant  
7 problem.

8 For the foregoing reasons, the Superior Court in Maricopa County  
9 opposes abrogating Rules 8(h) and 16.3 of the Arizona Rules of Civil Procedure  
10 and recommends that Rule 16.3 be modified as set forth above.

11 Respectfully submitted this 17th day of May, 2017.

12  
13 /s/ Randall H. Warner  
14 Honorable Randall H. Warner  
15 Civil Department Presiding Judge  
16 Superior Court of Arizona in Maricopa  
County

17 Electronic copy filed with  
18 the Clerk of the Supreme  
19 Court of Arizona this 17th  
day of May, 2017.