

1 Honorable Janet E. Barton
2 Presiding Judge
3 Superior Court of Arizona in Maricopa County
4 125 W. Washington Street
5 Phoenix, Arizona 85003
6 (602) 506-5340

7
8 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

9 In the Matter of:

} Supreme Court No. R-18-0033

10 PETITION TO PERMANENTLY
11 ADOPT AND AMEND RULE 8.1,
12 ARIZONA RULES OF CIVIL
13 PROCEDURE

} COMMENT TO PROPOSED
} ADOPTION AND AMENDMENT
} OF RULE 8.1

14 Pursuant to Rule 28, Arizona Rules of the Supreme Court, the Presiding
15 Judge of the Superior Court of Arizona in Maricopa County submits the
16 following comment and suggested changes regarding the proposed permanent
17 adoption and amendment to Rule 8.1 of the Arizona Rules of Civil Procedure.

18 The proposed rule as currently written gives authority to a commercial
19 court judge to transfer a case out of the commercial court and to a general civil
20 court if the commercial court judge “determines the matter is not an eligible
21 commercial case.” Rule 8.1(d)(5). The proposed rule should be amended to
22 clarify that decisions regarding reassignment of cases are to be made by the
23 presiding judge or their designee. In the Maricopa County Superior Court the
24 designee is the presiding judge of the civil department. The civil department
25 presiding judge is in the best position to view the distribution of caseloads
26 among the judges of the civil department, and is in the best position to make fair
27 and equitable decisions regarding case reassignments. Sometimes these
28 decisions might be to leave a case with a commercial court judge even if the case

1 is otherwise ineligible for commercial court. Commercial court judges also have
2 a smaller number of cases assigned to them, and there is potential for tension
3 amongst judges if the decision to transfer a case from commercial court to a
4 general civil court judge can be made by the commercial court judge handling
5 the case.

6 In the current proposal, paragraph (d)(7) of Rule 8.1 provides that “a
7 judge of a general civil court may request the presiding judge or designee to
8 transfer a case to the commercial court if that judge determines the matter is an
9 eligible commercial case.” Paragraph (d)(5) should be amended to place a
10 similar requirement on a commercial court judge seeking to transfer a case that
11 is not eligible for commercial court. A proposed amendment is attached to this
12 comment.

13 Respectfully submitted this 24th day of September, 2018.

14 /s/ Janet E. Barton

15 _____
16 Hon. Janet E. Barton
17 Presiding Judge
18 Superior Court of Arizona in Maricopa
19 County

19 Original e-filed this 24th day of
20 September, 2018 via the Court
21 Rules Forum on www.azcourts.gov.

Appendix

(New language is underlined and deletions are ~~struck through~~)

Rule 8.1. Assignment and Management of Commercial Cases.

(a) through (c): No changes.

(d) Assignment of Cases to the Commercial Court.

(1) *Request.* A party to an eligible commercial case may request assignment of the case to the commercial court.

(2) *By Plaintiff.* A plaintiff seeking assignment of an eligible case to the commercial court must do so at the time of filing the complaint by (A) including in the initial complaint’s caption the words “commercial court assignment requested,” and (B) completing a civil cover sheet that indicates the action is an eligible commercial case.

(3) *By Other Parties.* If a plaintiff has not sought assignment to the commercial court, another party, within 20 days after that party’s appearance, may file a separate notice stating that the case is eligible for, and requesting assignment of the case to, the commercial court.

(4) *Assignment.* Upon the filing of a complaint by a plaintiff requesting assignment to the commercial court under (e)(2), or the filing by another party of a Notice Requesting Assignment to the Commercial Court under (e)(3), the case will be assigned to the commercial court.

(5) *Transfer out of Commercial Court by ~~a Commercial Court~~ the Presiding Judge.* After assignment of a case to the commercial court, a if the commercial court judge, on the judge’s own initiative, may transfer the case out of commercial court if the judge determines the matter is not an eligible commercial case-, then the judge may either keep the case or request that the presiding judge or designee transfer the case out of the commercial court. If the presiding judge or designee agrees to transfer the case out of the commercial court, the presiding judge or designee may either leave the case with the judge to whom it is currently assigned or reassign the case to a general civil court.

(6) *Discretion of Presiding Judge.* The presiding judge or designee may reassign any case that qualifies under Rule 8.1(b)(6), (7), (10), or (11) to a general civil court.

(7) *Judicial Request to Transfer to the Commercial Court.* Within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a

1 general civil court may request the presiding judge or designee to transfer a case
2 to the commercial court if that judge determines the matter is an eligible
commercial case.

3 **(8) *Complex Cases.*** Assignment of a case to the commercial court does not
4 impair the right of a party to request reassignment of the case to the Maricopa
5 County complex civil litigation program under applicable local rules.

6 **(e) through (g): No changes.**

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