

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-18-0018
RULES 38, 39, 49, 77 AND 84,)
RULES OF CIVIL PROCEDURE)
) **FILED 8/28/2018**
)
)
)
)
_____)

**ORDER ADOPTING AMENDMENTS TO
RULES 38, 39, 49, 77, 84, ARIZONA RULES OF CIVIL PROCEDURE**

A petition having been filed proposing to amend Arizona Rules of Civil Procedure 38, 39, 49, 77, and 84, and comments having been received, upon consideration,

IT IS ORDERED that Rules 38, 39, 49, 77, 84, Arizona Rules of Civil Procedure, be amended in accordance with the attachment hereto, effective January 1, 2019.

DATED this 28th day of August, 2018.

_____/s_____
SCOTT BALES
Chief Justice

TO:

Rule 28 Distribution

Lisa M Panahi

Hon. David L Mackey

Kay Radwanski

ATTACHMENT*

ARIZONA RULES OF CIVIL PROCEDURE

Rule 38. Right to a Jury Trial; Waiver

- (a) **Right Preserved.** The right of trial by jury is preserved to the parties inviolate. On any issue triable of right by a jury, a party need not file a written demand or take any other action in order to preserve its right to trial by jury.
- ~~(b) **Demand.** On any issue triable of right by a jury, a party may obtain a jury trial as follows:~~
- ~~(1) *Non-Medical Malpractice Actions.* In all actions other than a medical malpractice action, a party may obtain a jury trial by filing and serving a written demand at any time after the action is commenced, but no later than the date on which the court sets a trial date or 10 days after the date a Joint Report and Proposed Scheduling Order under Rule 16(b) or a joint report under Rule 16.3(b) are filed, whichever occurs first. The demand may not be combined with any other motion or pleading filed with the court.~~
 - ~~(2) *Medical Malpractice Actions.* In a medical malpractice action, no written demand needs to be filed or served. The parties may affirmatively waive the right to a jury trial by filing a written stipulation, signed by all parties, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading.~~
- ~~(c) **Specifying Issues.** In its demand, a party may specify the issues that it wishes to have tried by a jury; otherwise, the party is deemed to have demanded a jury trial on all issues triable by jury. If a party has demanded a jury trial on only some issues, any other party may within 10 days after the demand is served or within a shorter time ordered by the court serve a demand for jury trial on any other or all factual issues triable by jury.~~
- ~~(d) **Waiver; Withdrawal.** Except as provided in Rule 38(b)(2), a party waives a jury trial unless its demand is properly filed and served. A proper demand may be withdrawn only if all parties consent.~~
- (b) Waiver.** The parties may be deemed to have waived, under these rules, a right to trial by jury only if they affirmatively waive that right by filing a written stipulation, signed by all parties who appear at trial, at any time after the action is commenced, but no later than 30 days before the trial is scheduled to begin. The stipulation may not be combined with any other motion or pleading. In the stipulation, the parties may specify any issues that

* Changes or additions in rule text are indicated by underscoring, and deletions from text are indicated by ~~strikeouts~~.

they wish to have tried by a jury; otherwise, the parties will be deemed to have waived trial by a jury on all issues. Alternatively—with court approval and subject to such conditions that the court considers proper, including but not limited to the assessment of jury fees—all parties who appear at trial may waive the right to a jury trial later than 30 days before the trial is scheduled to begin either by written stipulation or oral stipulation in open court and entered in the minutes.

Rule 39. Trial by Jury or by the Court

~~(a) **If a Demand Is Made.** If a jury trial is demanded under Rule 38, the action must be designated on the docket as a jury action. The trial on all issues so demanded must be by jury unless:~~

- ~~(1) all parties file a stipulation to a nonjury trial or so stipulate on the record; or~~
- ~~(2) the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.~~

(a) If No Waiver Is Effected. If there is no waiver of the right to trial by jury under Rule 38(b), the trial must be by jury unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all issues.

~~(b) **If No Demand Is Made.** The court must try all issues on which a jury trial is not properly demanded. The court may, on motion, order a jury trial on any issue for which a jury might have been demanded.~~

(b) If a Waiver Is Effected. If the parties waive the right to trial by jury under Rule 38(b), the court must try all issues.

(c) If a Limited Waiver Is Effected. If the parties' waiver to trial by jury under Rule 38(b) specifies certain issues to be tried by a jury, the trial must be by jury on those issues unless the court, on motion or on its own, finds that there is no right to a jury trial on some or all of those issues.

(d) Advisory Jury; Jury Trial by Consent. In an action—or on any issue—not triable of right by a jury, the court, on motion or on its own:

- (1) may try any issue with an advisory jury; or
- (2) may, with the parties' consent, order a jury trial on any issue, and the verdict will have the same effect as if a jury trial had been held as a matter of right.

Rule 49. Special Verdict; General Verdict and Questions; Proceedings on Return of Verdict; Form of Verdict

(a)-(b). [no change in text]

(c) Written Questions in Actions Seeking Equitable Relief. If a jury is ~~demanded~~impaneled in an action seeking equitable relief and more than one material issue of fact is presented, the court may submit written questions to the jury covering all or part of the issues of fact. The questions may be submitted only if the court approves them, and each question must be confined to a single question of fact and framed so that it can be answered yes or no. The jury's answers are advisory only and are not binding on the court.

(d)-(f). [no change in text]

Rule 77. Appeal

(a) Filing a Notice of Appeal. Any party who appears and participates in the arbitration proceedings may appeal an arbitrator’s award by filing a notice of appeal with the clerk. The notice of appeal must be entitled “Appeal from Arbitration and Motion for Trial Setting.” It must request that the action be set for trial in the superior court, ~~and must state whether a jury trial is demanded,~~ and must state the estimated length of trial, and must state whether there is a right to a jury trial and, if so, whether that right has been waived in whole or part.

(d)-(f). [no change in text]

Rule 84. Forms

Form 11(a). Joint Report: Tier 1 Case

In the Superior Court of Arizona

_____ County

Plaintiffs

)

)

)

)

)

)

)

Case number _____

Joint Report

(Tier 1 case)

Assigned to:

v

Defendants

The parties signing below certify that they have conferred about the matters contained in Rule 16(b)(2) and (c)(3), and they further certify that:

- (a) Every defendant has been served or dismissed, and every defendant who has not been defaulted has filed a responsive pleading;
- (b) There are no third party claims; and
- (c) This case is not subject to the mandatory arbitration provisions of Rule 72.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary's contents:

With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 12 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. Brief description of the case:

- If a claimant is seeking other than monetary damages, specify the relief sought:

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

- The parties will be ready for a settlement conference or a private mediation by _____.
- If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

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

4. Jury: ~~A trial by jury is demanded. yes no~~

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

5. Length of trial: The estimated length of trial is ___ days.

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

7. Short cause: A non-jury trial will not exceed one hour. yes no

8. Preference: This case is entitled to preference for trial under this statute or rule:

_____.

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

an interpreter (specify language) _____

10. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes
no

If requested, the reasons for having a conference are: _____

_____.

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

_____.

12. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

Form 12(a). Joint Report: Tier 2 Case

In the Superior Court of Arizona

_____ County

)	
Plaintiffs)	Case number _____
)	
v)	Joint Report
)	
Defendants)	<i>(Tier 2 case)</i>
)	
)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rule 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 13 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

Optional Summary of Rule 16(b) Early Meeting (not to exceed 4 pages of text), split evenly between separate statements of the parties if they do not agree on the summary's contents:

1. Brief description of the case:

- _____
- If a claimant is seeking other than monetary damages, specify the relief sought _____.

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

- Every party who has not been defaulted has filed a responsive pleading. yes no

- Explanation of a “no” response to either of the above statements: _____

_____.

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

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

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

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

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

6. Jury: ~~A trial by jury is demanded.~~ yes no

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

7. Length of trial: The estimated length of trial is ___ days.

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

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

_____.

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

an interpreter (specify language) _____

11. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes no
If requested, the reasons for having a conference are

_____.

12. Other matters: Other matters that the parties wish to bring to the court’s attention that may affect management of this case:

_____.

13. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

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

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

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

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

6. Jury: ~~A trial by jury is demanded. yes no~~

- There is a right to a trial by jury. yes no
- If there is such a right, it has been waived by the parties. yes no

7. Length of trial: The estimated length of trial is ___ days.

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

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

_____.

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

an interpreter (specify language) _____

11. Scheduling conference: The parties request a Rule 16(d) scheduling conference. yes no
If requested, the reasons for having a conference are

_____.

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

_____.

13. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

The parties must attach a good faith consultation certificate under Rule 7.1(h) to this Joint Report.

Dated this ___ day of _____, 20 ___.

For Plaintiff

For Defendant

Form 14(a). Joint Report: Commercial Case

In the Superior Court of Arizona

_____ County

Plaintiffs)
) Case number _____
)
) **Joint Report**
) **v**)
) *(Commercial case)*
Defendants)
)
) Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(b)(2) and (c)(3), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. Brief description of the case: _____

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

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

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

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

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

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

a. Approximate Amount in Controversy \$_____

b. The commercial court should assign this case to a tier other than Tier 3 for the following reasons:

c. Anticipated Areas of Expert Testimony (not binding):

d. Electronically Stored Information

The parties do not expect electronically stored information to be at issue in this case.

The parties do expect electronically stored information to be at issue in this case.

Have the parties reached an agreement regarding the discovery of electronically stored information? yes no

If yes, have the parties filed a stipulated order? yes no

Do the parties currently have disputes or anticipate particular disputes over electronically stored information? yes no

If yes, please describe the dispute(s):

e. Privilege Issues and Protective Order

Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence? yes no

If so, have the parties filed a stipulated order? yes no

Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26(b)(6) or Rule 26.1(h)? yes no

If so, have the parties filed a stipulated protective order? yes no

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

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

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

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

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

- There is a right to a trial by jury. ~~yes no~~
- If there is such a right, it has been waived by the parties. ~~yes no~~

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

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

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

_____.

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

an interpreter (specify language) _____

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

_____.

14. Items upon which the parties do not agree: The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:

_____.

Dated this ____ day of _____, 20 ____.

For Plaintiff

For Defendant