

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0006
RULES 7, 8.1, 16, 26.2, 37, 55,)
AND RULE 84 FORMS 11(a), 12(a),)
13(a), AND 14(a), RULES OF CIVIL) **FILED: 8/26/2020**
PROCEDURE)
)
)
)
_____)

**ORDER AMENDING VARIOUS
ARIZONA RULES OF CIVIL PROCEDURE**

A petition having been filed proposing various clarifying and technical amendments to the Arizona Rules of Civil Procedure and having considered the petition and a comment, upon consideration,

IT IS ORDERED that effective January 1, 2021, Rules 7, 8.1, 16, 26.2, 37, 55, and 84 (Forms 11(a), 12(a), 13(a), and 14(a)) of the Arizona Rules of Civil Procedure are amended in accordance with the attachment to this order.

DATED this 26th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
Jodi K. Feuerhelm
Lisa M. Panahi

ATTACHMENT¹
ARIZONA RULES OF CIVIL PROCEDURE

Rule 7. Pleadings Allowed; ~~Form of Motions and Other Documents~~

Only these pleadings are allowed: a complaint; an answer to a complaint; a counterclaim; an answer to a counterclaim designated as a counterclaim; an answer to a crossclaim; a third-party complaint; an answer to a third-party complaint; and, if the court orders one, a reply to an answer.

* * *

Rule 8.1. Assignment and Management of Commercial Cases

* * *

(e) Case Management. From the filing of the complaint unless and until the commercial court assigns the case to a different tier after the Rule 16(d) scheduling conference, cases in the commercial court are deemed to be assigned to Tier 3. Rules 16(a) through 16(j) apply to cases in the commercial court, except:

* * *

Rule 16. Scheduling and Management of Actions

* * *

(c) Filing of Joint Report and Proposed Scheduling Orders.

* * *

(2) Content of Joint Report. The Joint Report must state—to the extent practicable—the parties’ positions on the subjects set forth in Rule 16(b)(2) and (c)(3) and must attach a proposed Scheduling Order. The parties are not required to describe their Early Meeting in the Joint Report, but may do so. Any summary must describe the case with respect to the characteristics in Rule 26.2(b) and (c) to be used in assigning cases to a discovery tier, and must set forth any agreements the parties have reached to streamline the case. In the Joint Report, the parties are not permitted to discuss or criticize the rejection of proposed agreements or to argue that the other party has taken unreasonable positions. Unless ordered by the court, a summary must not exceed 4 pages of text, which length must be split evenly between separate statements of the parties if they do not agree on the summary’s

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike through~~.

contents. The Joint Report must certify that the parties conferred in good faith, either in person or by telephone as required by Rule 7.1(h), attach a good faith consultation certificate under Rule 7.1(h) and certify that the parties conferred regarding the subjects set forth in Rule 16(b)(2) and (c)(3).

* * *

(h) Sanctions.

(1) Generally. Except on a showing of good cause, the court—on motion or on its own—must enter such orders as are just, including, among others, any of the orders in Rule 37(b)(2)(A)(ii) through (vii), if a party or attorney:

- (A)** fails to obey a scheduling or pretrial order or fails to meet the deadlines set in the order;
- (B)** fails to appear at a Scheduling Conference, ~~Comprehensive Pretrial Conference~~, Trial-Setting Conference, or Trial Management Conference;
- (C)** is substantially unprepared to participate in a Scheduling Conference, ~~Comprehensive Pretrial Conference~~, Trial-Setting Conference, or Trial Management Conference;
- (D)** fails to participate in good faith in a Scheduling Conference, ~~Comprehensive Pretrial Conference~~, Trial-Setting Conference, or Trial Management Conference; or
- (E)** fails to participate in good faith in the preparation of a Joint Report and Proposed Scheduling Order or a Joint Pretrial Statement.

* * *

Rule 26.2. Tiered Limits to Discovery Based on Attributes of Cases

* * *

(c) How Courts Assign Cases to Tiers. The tier to which a case is assigned is determined by either: (1) stipulation or motion, for good cause shown; (2) placement by the court based on the characteristics of the case; or (3) the sum of the relief sought in the complaint, and any counterclaims or crossclaims.

* * *

(3) Except as provided in Rule 8.1(e), All cases not assigned a tier by the procedures in Rule 26.2(c)(1) or (2) are deemed to be assigned a tier based on the damages claimed in the action, as defined in Rule 26.2(e).

* * *

Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions

(g) Failure to Preserve Electronically Stored Information.

(1) Duty to Preserve.

(A) *Generally.* A party or person has a duty to take reasonable steps to preserve electronically stored information relevant to an action once it commences the action, once it learns that it is a party to the action, or once it reasonably anticipates the action's commencement, whichever occurs first. A court order or statute also may impose a duty to preserve certain information.

(B) *Reasonable Anticipation.* A party or person reasonably anticipates an action's commencement if:

(i) it knows or reasonably should know that it is likely to be a defendant in a specific action; or

(ii) it seriously contemplates commencing an action or takes specific steps to do so.

(C) *Reasonable Steps to Preserve.*

(i) If Rule 37(g)(1)(A) applies, a party or person must take reasonable steps to prevent the routine operation of an electronic information system or application of a document retention policy from destroying information that should be preserved.

(ii) Factors that a court should consider in determining whether a party or person took reasonable steps to preserve relevant electronically stored information include the nature of the issues raised in the action or anticipated action, the information's probative value, the accessibility of the information, the difficulty in preserving the information, whether the information was lost as a result of the good-faith routine operation of an electronic information system or the good-faith and consistent application of a document retention policy, the timeliness of the ~~party's~~ actions taken, and the relative burdens and costs of a preservation effort in light of the importance of the issues at stake, the resources and technical sophistication of the party or person subject to a duty to preserve, the parties' resources and technical sophistication, and the amount in controversy.

* * *

Rule 55. Default; Default Judgment

* * *

(c) Setting Aside a Default or a Final Default Judgment. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(e**b**).

Rule 84 (Official Forms)

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

In the Superior Court of Arizona

_____ County

)	
Plaintiffs)	Case number
)	
v)	Joint Report
)	
Defendants)	<i>(Tier 1 case)</i>
)	Assigned to:

The parties signing below certify that they have conferred in good faith, either in person or by telephone as required by Rule 7.1(h), 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:

- 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~~ This case is a short cause entitled to a preference for trial pursuant to [identify statute or rule]. The anticipated length of trial is _____ hours.

8. Other Trial 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 certify that they 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

)

)

)

)

)

)

)

v

Defendants

Case number

Joint Report

(Tier 2 case)

Assigned to:

The parties signing below certify that they have conferred in good faith, either in person or by telephone as required by Rule 7.1(h), 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:

- 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 certify that they 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 13(a). Joint Report: Tier 3 Case

In the Superior Court of Arizona

_____ County

)	
Plaintiffs)	Case number
)	
v)	Joint Report
)	
Defendants)	<i>(Tier 3 case)</i>
)	Assigned to:

The parties signing below certify that they have conferred in good faith, either in person or by telephone as required by Rule 7.1(h), about the matters set forth in Rule 16(b)(2) and (c)(3). 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:

- 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 certify that they 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

)

)

)

v

)

)

Defendants

)

)

Case number

Joint Report

(Commercial case)

Assigned to:

The parties signing below certify that they have conferred in good faith, either in person or by telephone as required by Rule 7.1(h), about the matters set forth in Rules 8.1(e) 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(fe)]:*

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:

- 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 certify that they 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