

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-10-0036
PETITION TO PERMANENTLY ADOPT)
RULES 8(h)(3), 8(i), 16.3, 39.1)
AND 84 (FORM 10), ARIZONA RULES)
OF CIVIL PROCEDURE)
)
)
) **FILED 09/01/2011**
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)
)
_____)

ORDER

**ADOPTING RULES 8(h)(3), 8(i), 16.3, 39.1 AND 84 (FORM 10), ARIZONA
RULES OF CIVIL PROCEDURE, AS AMENDED, ON A PERMANENT BASIS**

A petition having been filed proposing to adopt Rules 8(h)(3), 8(i), 16.3, 39.1 and 84 (Form 10), Arizona Rules of Civil Procedure, as amended, on a permanent basis, and comments having been received, upon consideration,

IT IS ORDERED that Rules 8(h)(3), 8(i), 16.3, 39.1 and 84 (Form 10), Arizona Rules of Civil Procedure, as amended, be adopted on a permanent basis in accordance with the attachment hereto, effective January 1, 2012.

DATED this _____ day of September, 2011.

REBECCA WHITE BERCH
Chief Justice

TO:
Rule 28 Distribution
David K Byers
John A Furlong
Mwa

ATTACHMENT¹

ARIZONA RULES OF CIVIL PROCEDURE

* * *

Rule 8(h). Civil Cover Sheets; Classification of Civil Actions

(1)-(2) [No change in text.]

(3) In those counties in which a complex civil litigation program has been established, in addition to the ~~the~~ Civil Cover Sheet designation required by subsection (1), the caption shall also identify the action as complex if the action meets the criteria listed in Rule 8(i).

Rule 8(i). Complex Civil Litigation Program Designation

(1) [No change in text.]

(2) **Factors.** In deciding whether a civil action is a complex case under ~~subdivision (a)~~ subsection (1), the court shall consider the following factors:

- (A) ~~N~~numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- (B) ~~M~~management of a large number of witnesses or a substantial amount of documentary evidence;
- (C) ~~M~~management of a large number of separately represented parties;
- (D) ~~C~~coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;
- (E) ~~S~~substantial postjudgment judicial supervision;
- (F) ~~T~~the case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law;
- (G) ~~I~~inherently complex legal issues;
- (H) ~~F~~factors justifying the expeditious resolution of an otherwise complex dispute; and

¹ Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

(1) ~~A~~ny other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) [No change in text.]

(4) **Procedure for opposing designation.** If a plaintiff has certified a case as complex and the court has not previously declared the action to be a complex case, and the defendant disagrees with the plaintiff's assertion as to complexity, the defendant shall file and serve no later than that party's first responsive pleading a response to plaintiff's motion and a controverting certification that specifies the particular reason for the defendant's disagreement with plaintiff's certificate.

(5) **Designation by defendant or joint designation.** A defendant may designate an action as a complex case if the plaintiff has not done so and if the court has not already made a ruling in this matter by filing a motion and the certification of complex case described in subsection (3) at or before the time of filing defendant's first responsive pleading and serving them upon the plaintiff. The parties may join in designating an action as a complex case by filing a joint motion and certification of complex case with or before the filing of defendant's first responsive pleading.

(6)-(7) [No change in text.]

(8) **Program Designation Certification Form.** The certification of a complex case shall be substantially in the ~~following~~ form set forth in Rule 84, Form 10.⚡

~~IN THE SUPERIOR COURT OF ARIZONA~~

~~IN AND FOR THE COUNTY OF MARICOPA~~

)

_____,) Case No. _____

~~Plaintiff~~)

) ~~[] Certification of Complexity~~

vs. _____) ~~[] Joint Certification of Complexity~~

) ~~[] Contravening Certification~~,

_____)

Defendant _____)

)

~~[] The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:~~

~~Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve~~

~~Management of a large number of witnesses or a substantial amount of documentary evidence~~

~~Management of a large number of separately represented parties~~

~~Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:~~

~~Substantial postjudgment judicial supervision~~

~~The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law~~

~~Inherently complex legal issues~~

~~Factors justifying the expeditious resolution of an otherwise complex dispute~~

~~The following other factor(s) warranting designation as a complex case, in the interest of justice:~~

~~_____~~

~~The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:~~

~~_____~~

Dated this _____ day of _____, 200____

(Attorney for) (Plaintiff) (Defendant)

(Attorney for) (Plaintiff) (Defendant)

~~[This certification must be accompanied by a motion]~~

COMMENT TO ~~EXPERIMENTAL~~ RULE 8(i)

~~Experimental Rule 8(i) is intended to establish a process by which the parties can alert the court to the complex nature of their dispute. However, the determination that a case is, in fact, eligible for the complex litigation program is to be made by the presiding judge or designee. The parties are not to self-select in the absence of a determination by the court on good cause shown.~~

Justification for this rule: [No change in text.]

Rule 16.3. Initial Case Management Conference in Cases Assigned to the Complex Civil Litigation Program

(a) **Subjects for Consideration.** Once a case is determined to be a complex civil case, an initial case management conference with all parties represented shall be conducted at the earliest practical date, and a Case Management Order issued by the court promptly thereafter. Among the subjects that should be considered at such a conference are:

- (1) the ~~S~~status of parties and pleadings;
- (2) ~~D~~determining whether severance, consolidation, or coordination with other actions is desirable;
- (3) ~~S~~scheduling motions to dismiss or other preliminary motions;
- (4) ~~S~~scheduling class certification motions, if applicable;
- (5) ~~S~~scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master;
- (6) ~~I~~ssuing protective orders;
- (7) ~~A~~ny 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;
- (8) ~~A~~ny measures the parties must take to preserve discoverable documents or electronically stored information;
- (9) ~~A~~ny agreements reached by the parties for asserting claims of privilege or of protection as to trial-preparation materials after production;
- (10) ~~A~~ppointing liaison counsel and admission of non-resident counsel;
- (11) ~~S~~scheduling settlement conferences;
- (12) ~~N~~otwithstanding Rule 26.1, the establishment and timing of disclosure requirements;
- (13) ~~S~~scheduling expert disclosures and whether sequencing of expert disclosures is warranted;
- (14) ~~S~~scheduling dispositive motions;
- (15) ~~A~~adopting a uniform numbering system for documents and establishing a document depository;
- (16) ~~D~~determining whether electronic service of discovery materials and pleadings is warranted;
- (17) ~~O~~rganizing a master list of contact information for counsel;
- (18) ~~D~~determining whether expedited trial proceedings are desired or appropriate;
- (19) ~~S~~scheduling further conferences as necessary;
- (20) ~~U~~se of technology, videoconferencing and/or teleconferencing;
- (21) ~~D~~determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof;
- and
- (22) ~~S~~such other matters as the court or the parties deem appropriate to manage or expedite the case.

(b)-(e) [No change in text.]

COMMENT

Justification for this rule. Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. ~~Experimental~~ Rule 16.3 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

Case Management Resources. [No change in text.]

* * *

Rule 39.1 Trial of Cases Assigned to the Complex Civil Litigation Program

[No change to the existing text of Rule 39.1.]

COMMENT

Justification for this rule. Rule 39.1, like Rule 16.3, is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial judge may order otherwise. ~~Experimental~~ Rule 39.1 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

* * *

Rule 84. Forms

* * *

Form 10. Certification of a Complex Case

IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

)

_____,) Case No. _____

Plaintiff)

) Certification of Complexity

vs. _____) Joint Certification of Complexity

) Contravening Certification _____

)

Defendant)

)

The (undersigned certifies) (parties certify) that this action is a complex case for the following reasons:

Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve

Management of a large number of witnesses or a substantial amount of documentary evidence

Management of a large number of separately represented parties

Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:

The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law

Inherently complex legal issues

Factors justifying the expeditious resolution of an otherwise complex dispute

The following other factor(s) warranting designation as a complex case, in the interest of justice:

The (undersigned certifies) (parties certify) that this action is not a complex case for the following reasons:

Dated this _____ day of _____, 200_____.

(Attorney for) (Plaintiff) (Defendant)

(Attorney for) (Plaintiff) (Defendant)

[This certification must be accompanied by a motion]