

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDMENTS TO EXPERIMENTAL	)	Administrative Order
RULE 8.1 AND RULE 84, FORM 14(a),	)	No. 2017 - <u>17</u>
ARIZONA RULES OF CIVIL	)	(Affecting Administrative Order
PROCEDURE	)	No. 2015-15 and Replacing
	)	Administrative Order No. 2015-86)
)	

Administrative Order No. 2015-15, entered on February 15, 2015, authorized the Superior Court of Maricopa County to establish a pilot commercial court. That Order adopted a new experimental Arizona Rule of Civil Procedure, Rule 8.1, and two new forms, Rule 84, Forms 14(a) and 14(b), for application to cases in the pilot court. Administrative Order No. 2015-86, entered on September 29, 2015, restyled Experimental Rule 8.1 and adopted certain amendments to that rule to help the pilot commercial court operate more effectively.

Pursuant to Administrative Order No. 2015-15, the first of three annual progress reports concerning the pilot commercial court was presented to the Arizona Judicial Council in December 2016. The report's recommendations included additional amendments to Experimental Rule 8.1, and to Rule 84, Form 14(a), to further promote the effective and efficient operation of the pilot court. The Arizona Judicial Council approved those recommendations.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that effective upon entry of this Order, amended Experimental Rule 8.1 as shown in the attachment supersedes and replaces the version of Experimental Rule 8.1 that was included in Administrative Order No. 2015-86.

IT IS FURTHER ORDERED that effective upon entry of this Order, Rule 84, Form 14(a) as shown in the attachment supersedes and replaces the version of that form as shown in Appendix A of Administrative Order No. 2015-15.

Dated this 8th day of February, 2017.

FOR THE COURT:

SCOTT BALES
Chief Justice

Experimental Rule 8.1. Assignment and Management of Commercial Cases [“Clean version”]

(a) Application; Definitions. This rule applies in counties that have established specialized courts for commercial cases, which are referred to in this rule as “the commercial court.” The commercial court will hear “commercial cases” as defined in this Rule except as provided in Rule 8.1(d).

(1) A “commercial case” is one in which:

(A) At least one plaintiff and one defendant are “business organizations;”

(B) The primary issues of law and fact concern a “business organization;” or

(C) The primary issues of law and fact concern a “business contract or transaction.”

(2) A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

(3) A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations.

(b) Eligible Case Types. A case that meets one of the following descriptions is generally a commercial case:

(1) Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

(2) Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

(3) Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;

(4) Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;

(5) Is a shareholder or member derivative action;

- (6) Arises from a commercial real estate transaction;
- (7) Arises from a relationship between a franchisor and a franchisee;
- (8) Involves the purchase or sale of securities or allegations of securities fraud; or
- (9) Concerns a claim under state antitrust law.
- (10) Arises from a business contract or transaction governed by the Uniform Commercial Code;
- (11) Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
- (12) Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
- (13) Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.

(c) **Ineligible Case Types.** The following case types are generally not commercial cases unless business issues predominate:

- (1) Evictions;
- (2) Eminent domain or condemnation;
- (3) Civil rights;
- (4) Motor vehicle torts and other torts involving personal injury to a plaintiff;
- (5) Administrative appeals;
- (6) Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
- (7) Wrongful termination of employment and statutory employment claims; or
- (8) Disputes concerning consumer contracts or transactions. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

(d) **Compulsory Arbitration.** A commercial case that is subject to compulsory arbitration is not eligible for assignment to commercial court.

(e) Assignment of Cases to Commercial Courts.

- (1) *Plaintiff's Duties.*** A plaintiff seeking assignment of an eligible case to the commercial court must (A) include in the initial complaint's caption the words "eligible for commercial court," and (B) complete a civil cover sheet that indicates the action is an eligible commercial case.
- (2) *Assignment to Commercial Court.*** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge.
- (3) *Motion to Transfer out of Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may transfer the case out of commercial court if the judge determines the matter is not a "commercial case" as defined in this Rule. Any party filing a motion under this Rule must do so no later than 20 days after that party's appearance in the case.
- (4) *Motion to Transfer to Commercial Court.*** On motion of a party filed within 20 days after that party's appearance in the case, or the court's own initiative within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines the matter is a "commercial case" as defined in this Rule.
- (5) *Complex Cases.*** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a complex civil litigation program under Rule 8(i).

(f) Case Management. Rules 16(a) through 16(k) apply to cases in the commercial courts, except:

- (1) *Scheduling Conference.*** Scheduling conferences under Rule 16(d) are mandatory.
- (2) *Initial Conference.*** Before filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:
 - (A)** Requirements and limitations on disclosure and production of ESI;
 - (B)** The form or formats in which the ESI will be disclosed or produced; and
 - (C)** If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.
- (3) *Joint Report.*** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including the following:

- (A) Whether the parties expect ESI to be an issue in the case and, if so, whether they have reached an agreement regarding the discovery of ESI, have filed a stipulated order, and have or anticipate disputes concerning ESI;
 - (B) Whether the parties have reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence and, if so, whether they have filed a stipulated order;
 - (C) Whether any issues have arisen or are expected to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f); and
 - (D) Whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order.
- (4) ***Motions to Dismiss.*** Any motion to dismiss pursuant to Rule 12(b)(6) must attach a good faith consultation certificate complying with Rule 7.1(h) certifying that the parties have been unable to agree that the pleading is curable by a permissible amendment.
- (g) **Motions.** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.

Experimental Rule 8.1. Assignment and Management of Commercial Cases [“Redline” version]

(a) **Application; Definitions.** This rule applies in counties that have established specialized courts for commercial cases, which are referred to in this rule as “the commercial court.” The commercial court will hear “commercial cases” as defined in this Rule except as provided in Rule 8.1(d).

~~—The commercial court will hear “commercial cases,” as defined in Rule 8.1(a)(1), which also meet the criteria of either Rule 8.1(b) or Rule 8.1(c).~~

(1) A “commercial case” is one in which:

(A) At least one plaintiff and one defendant are “business organizations;”

(B) The primary issues of law and fact concern a “business organization;” or

(C) The primary issues of law and fact concern a “business contract or transaction.”

(2) A “business organization” includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, master limited partnership, professional association, joint venture, business trust, or a political subdivision or government entity that is a party to a business contract or transaction. A “business organization” excludes an individual, a family trust, or a political subdivision or government entity that is not a party to a business contract or transaction.

(3) A “business contract or transaction” is one in which a business organization sold, purchased, licensed, transferred, or otherwise provided goods, materials, services, intellectual property, funds, realty, or other obligations. ~~The term “business contract or transaction” excludes a “consumer contract or transaction.”~~

~~(4)~~

(b) ~~Cases with No Amount in Controversy Requirement.~~ Regardless of Eligible Case Types. A case that meets one of the amount in controversy, the commercial court will hear following descriptions is generally a commercial case ~~that~~:

(1) Concerns the internal affairs, governance, dissolution, receivership, or liquidation of a business organization;

(2) Arises out of obligations, liabilities, or indemnity claims between or among owners of the same business organization (including shareholders, members, and partners), or which concerns the liability or indemnity of individuals within a business organization (including officers, directors, managers, member managers, general partners, and trustees);

- (3) Concerns the sale, merger, or dissolution of a business organization, or the sale of substantially all of the assets of a business organization;
- (4) Relates to trade secrets or misappropriation of intellectual property, or arises from an agreement not to solicit, compete, or disclose;
- (5) Is a shareholder or member derivative action;
- (6) Arises from a commercial real estate transaction;
- (7) Arises from a relationship between a franchisor and a franchisee;
- (8) Involves the purchase or sale of securities or allegations of securities fraud; or
- (9) Concerns a claim under state antitrust law.

~~(e) Cases Subject to an Amount in Controversy Requirement. If the amount in controversy is at least \$50,000, the commercial court will hear a commercial case that:~~

~~(1)-(10) Arises from a business contract or transaction governed by the Uniform Commercial Code;~~

~~(2) Involves the sale of services by, or to, a business organization;~~

~~(3)-(11) Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;~~

~~(4)-(12) Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or~~

~~(5)-(13) Concerns a surety bond, or arises under any type of commercial insurance policy purchased by a business organization, including an action involving coverage, bad faith, or a third-party indemnity claim against an insurer.~~

~~(d) Ineligible Case Types. Subject to Rule 8.1(e)(4), the The following case types are generally are not eligible for assignment to the commercial court, cases unless other criteria specified in Rule 8.1(b) and (c) business issues predominate the case:~~

(1) Evictions;

(2) Eminent domain or condemnation;

(3) Civil rights;

(4) Motor vehicle torts and other torts involving physical~~personal~~ injury to a plaintiff;

- (5) Administrative appeals;
- (6) Domestic relations, protective orders, or criminal matters, except a criminal contempt arising in a commercial court case; or
- (7) Wrongful termination of employment- and statutory employment claims; or
- (8) Disputes concerning consumer contracts or transactions. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

(d) Compulsory Arbitration. A commercial case that is subject to compulsory arbitration is not eligible for assignment to commercial court.

(e) Assignment of Cases to Commercial Courts.

- (1) ***Plaintiff’s Duties.*** ~~If a case meets the definition of a “commercial case” as set forth above, and also meets the criteria of either Rule 8.1(b) or Rule 8.1(e), the~~ plaintiff seeking assignment of an eligible case to the commercial court must (A) include in the initial ~~complaint~~ complaint’s caption the words “eligible for commercial court.” ~~At the time of filing the initial complaint, the plaintiff must also,~~ and (B) complete a civil cover sheet that indicates the action is an eligible commercial case.
- (2) ***Assignment to Commercial Court.*** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge.
- (3) ***Motion to ~~Reconsider Assignment to~~ Transfer out of Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the ~~judge’s~~ judge’s own initiative, may ~~reconsider whether assignment of that case to~~ transfer the case out of commercial court ~~is appropriate under Rules 8.1~~ (if the judge determines the matter is not a) through 8.1(d). “commercial case” as defined in this Rule. Any party filing a motion under this Rule must do so no later than 20 days after ~~the defendant files an answer or a motion under Rule 12, or within 20 days after that party’s appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.~~
- (4) ***Motion to Transfer to Commercial Court.*** ~~On the court’s own initiative, or~~ On motion of a party filed within 20 days after ~~a defendant files an answer or a motion under Rule 12, or on motion of a party filed within 20 days of that party’s appearance in the case, or the court’s own initiative within 20 days after the filing of the first responsive pleading or Rule 12 motion,~~ a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines ~~that the matter meets the criteria of Rules 8.1~~ (is a) through 8.1(d). “commercial case” as defined in this Rule.

(5) **Complex Cases.** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to a complex civil litigation program under Rule 8(i).

(f) **Case Management.** Rules 16(a) through 16(k) apply to cases in the commercial courts, except:

(1) **Scheduling Conference.** Scheduling conferences under Rule 16(d) are mandatory.

(2) **Initial Conference.** Before filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:

(A) Requirements and limitations on disclosure and production of ESI;

(B) The form or formats in which the ESI will be disclosed or produced; and

(C) If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.

(3) **Joint Report.** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including the following:

(A) Whether the parties ~~have reached any agreements with regard~~ expect ESI to ESI, what those agreements are, those areas on which they were unable to agree, be an issue in the case and, if so, whether the parties request they have reached an agreement regarding the court to enter an discovery of ESI, have filed a stipulated order, and have or anticipate disputes concerning ESI;

(B) Whether the parties have reached agreements under Rule ~~an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence~~ and, if so, whether they have filed a stipulated order;

(C) Whether any ~~party is requesting the court to enter a protective order under Rule 26(e); and if so, a brief statement concerning the need for a protective order; and~~

~~(D) Whether there are any issues concerning~~ have arisen or are expected to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f-); and

~~(D) Whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order.~~

(4) *Motions to Dismiss.* Any motion to dismiss pursuant to Rule 12(b)(6) must attach a good faith consultation certificate complying with Rule 7.1(h) certifying that the parties have been unable to agree that the pleading is curable by a permissible amendment.

(g) Motions. With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.

Form 14(a) – Joint Report: Commercial Case [“Clean” version]

In the Superior Court of Arizona
_____ County

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

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(d), 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. **Anticipated Areas of Expert Testimony (not binding):**

c. Electronically Stored Information

The parties do not expect Electronically Stored Information (“ESI”) to be at issue in the case.

The parties do expect ESI to be at issue in the case.

Have the parties reached an agreement regarding the discovery of ESI? yes no

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

Do the parties currently have disputes or anticipate particular disputes over ESI?
 yes no

If yes, please describe the dispute(s):

d. 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 26.1(f)? yes no

If so, please describe the issue(s):

Do the parties believe that a protective order is necessary? 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

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 pursuant to 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

Form 14(a) – Joint Report: Commercial Case [“Redline” version]

In the Superior Court of Arizona
_____ County

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

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(d), 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. Anticipated Areas of Expert Testimony (not binding):

c. Electronically Stored Information

~~The parties have reached agreements regarding electronically stored information~~ do not expect Electronically Stored Information (“ESI”) that are appended to this joint report: yes no be at issue in the case.

~~The parties have prepared a stipulated order regarding~~ do expect ESI, attached hereto: yes no to be at issue in the case.

~~he~~ Have the parties have been unable to agree on areas of disclosure or reached an agreement regarding the discovery of ESI, which are described in item 14 below:? yes no

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

Do the parties currently have disputes or anticipate particular disputes over ESI?
 yes no

If yes, please describe the dispute(s):

d. Privilege Issues and Protective Order

Have the parties reached agreements ~~an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence~~ and submit a proposed order that is attached to this report:? yes no

~~he~~ If so, have the parties have agreed on ~~filed a proposed protective~~ stipulated order, attached hereto:? yes no

~~party has raised an issue concerning~~ 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 26.1(f), as further described in item 13 below:? yes no

If so, please describe the issue(s):

Do the parties believe that a protective order is necessary? 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

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 pursuant to 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