

# **Business Court Advisory Committee**

## **Meeting Agenda**

**Friday, June 6, 2014**

9:00 AM to 12:00 PM

State Courts Building \* 1501 West Washington \* Conference Room 230 \* Phoenix, AZ

Conference call-in number: (602) 452-3288 Access code: 6403

Item no. 1	<b>Call to Order</b> <b>Introductory comments</b> <b>Introduction of committee members and staff</b>	<i>Mr. Rosenbaum, Chair</i> <i>All</i>
Item no. 2 pg 3	<b>Review of Administrative Orders 2014-48 and 2014-58</b>	<i>Mr. Rosenbaum</i>
Item no. 3	<b>Defining the need for a business court</b>  ➤ <b>What are the objectives of a business court? E.g.,</b> - <b>Cost considerations – time to disposition</b> - <b>Specialized dockets – experienced jurists</b> - <b>Other goals</b> ➤ <b>What differentiates a business court from a general civil court?</b>	<i>All</i>
Item no. 4	<b>Identifying business court models and solutions</b>  ➤ <b>What are the characteristics of an effective business court? How should it handle:</b> - <b>Case management</b> - <b>Discovery issues, including electronically stored information (ESI), masters</b> - <b>ADR, trial</b> ➤ <b>What are appropriate case criteria: subject matter, status of the parties, amount in controversy, other?</b>	<i>All</i>
Item no. 5	<b>Roadmap</b>  ➤ <b>Future meeting dates</b>	<i>Mr. Rosenbaum</i>
Item no. 6	<b>Call to the Public</b> <b>Adjourn</b>	<i>Mr. Rosenbaum</i>

*The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.*

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Sabrina Nash at (602) 452-3849. Please make requests as early as possible to allow time to arrange accommodations.

**Note:** Please have your calendar available at the meeting. Future Committee meetings dates are tentatively Friday, July 11 and Friday, August 1; but other dates may be determined at the June 6 meeting.





3. **Meetings.** The Advisory Committee shall meet as necessary, and meetings may be scheduled, cancelled, or moved at the discretion of the Committee chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.
4. **Timing.** The Advisory committee shall submit its recommendations to the Supreme Court of Arizona and the Arizona Judicial Council by December 11, 2014.
5. **Administrative Support.** The AOC shall provide administrative support and staff for the Committee, who may conduct or coordinate research as requested by the Committee.

Dated this 8<sup>th</sup> day of May, 2014.

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REBECCA WHITE BERCH  
Chief Justice

Attachment: Appendix A

**Appendix A**  
**BUSINESS COURT ADVISORY COMMITTEE**

*Chair*

**David Rosenbaum**  
Osborn Maledon, P.A.

*Members*

**Michael R. Arkfeld**  
Attorney  
Arkfeld & Associates

**John Rea**  
Judge  
Superior Court in Maricopa County

**Ray Billotte**  
Court Administrator  
Superior Court in Maricopa County

**Patricia Refo**  
Attorney  
Snell & Wilmer, LLP

**Kyle Bryson**  
Judge  
Superior Court in Pima County

**Marcus Reinkensmeyer**  
Director, Court Services Division  
Administrative Office of the Courts

**Andrew Federhar**  
Attorney  
Fennemore Craig, P.C.

**Mark Rogers**  
Attorney  
Insight Enterprises, Inc.

**Glenn Hamer**  
President and Chief Executive Officer  
Arizona Chamber of Commerce and Industry

**Nicole Stanton**  
Attorney  
Quarles & Brady, LLP

**William Klain**  
Attorney  
Lang Baker & Klain, PLC

**Steve Tully**  
Attorney  
Gordon & Rees, LLP

**Mark Larson**  
Attorney  
Honeywell International, Inc.

**Steven Weinberger**  
Attorney  
Liberty Mutual

**Lisa Loo**  
Attorney  
Arizona State University  
Office of General Counsel

IN THE SUPREME COURT OF THE STATE OF ARIZONA

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In the Matter of: )  
 )  
APPOINTMENT OF MEMBERS TO ) Administrative Order  
THE BUSINESS COURT ADVISORY ) No. 2014 - 58  
COMMITTEE )  
 )  
 )  
 )  
\_\_\_\_\_ )

Administrative Order No. 2014-48 established the Business Court Advisory Committee and appointed its members. The Order provides that the Chief Justice may appoint additional members as needed or desired. Therefore, after due consideration,

IT IS ORDERED that the following individuals are appointed as members of the Business Court Advisory Committee for terms beginning upon signing of this Order and expiring on December 31, 2014.

Honorable Scott Rash  
Superior Court in Pima County

Honorable Christopher Whitten  
Superior Court in Maricopa County

Dated this 28<sup>th</sup> day of May, 2014.

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REBECCA WHITE BERCH  
Chief Justice

**Business Court Advisory Committee  
Rules for Conducting Committee Business and Proxy**

**1. Quorum Policy**

The minimum number for a quorum of members to conduct the business of this Committee is fifty percent plus one (i.e., ten members). In-person attendance is preferred, but a member, if necessary and if electronic conferencing devices are available, may attend a meeting by telephone or by video.

**2. Decision-Making**

Committee decisions will be considered upon a motion that is properly seconded and following discussion on the motion. Committee decisions will be made by majority vote of the members attending the meeting. A numerical vote will be recorded unless the decision is unanimous. The Chair will vote only to break a tie.

**3. Responsibility of Members and Proxy Policy**

Members to the fullest extent possible must actively participate in Committee meetings. However, Committee members may send a proxy to attend meetings when necessary. A member should give twenty-four hours notice to Committee staff for use of a proxy.

- A proxy has all the responsibilities of a member, including voting power. A proxy must review the agenda issues and be prepared for a meeting. The proxy must brief the member on the meeting within a reasonable time thereafter.
- A member may not serve as a proxy.
- Proxies are included in the count of members present to determine a quorum.
- A member may not use a proxy for more than two meetings without approval of the Committee chair.

A proxy form and instructions are on the next page.

**4. Call to the Public**

As provided in A.C.J.A. § 1-202, every meeting agenda shall include a “Call to the Public” provision prior to meeting adjournment. The Chair will announce the opportunity for public comment regardless of whether a member of the public is attending the meeting or has expressed any desire to comment. The Chair may impose reasonable time, place, and manner limitations upon meeting participants, including setting time limits, banning repetition, and prohibiting profanity and disruptive behavior.

**Business Court Advisory Committee  
Proxy Designation Form and Instructions**

- Appointed members of the Business Court Advisory Committee are responsible for providing materials to, and thoroughly briefing, their proxy designees regarding a pending Committee meeting so that the proxy is prepared to conduct Committee business.
- Following a meeting, a proxy must similarly communicate with the member providing the proxy designation concerning substantive events that occurred at the meeting.
- A member wishing to appoint a proxy should complete this form and transmit it to Committee staff indicated below at least one day prior to the scheduled Committee meeting. A separate proxy is required for each meeting where a member will be absent.

Proxy designations should be sent to:

Mark Meltzer, Committee Staff, Administrative Office of the Courts  
Phone number: (602) 452-3242  
Fax number: (602) 452-3480  
E-mail: mmeltzer@courts.az.gov

I (please print your name), \_\_\_\_\_,  
will be unavoidably absent from the meeting of the Business Court Advisory Committee  
scheduled for the \_\_\_\_ day of \_\_\_\_\_, 2014. Accordingly, I hereby  
designate the following individual to act as my proxy for this meeting:

Name of proxy: \_\_\_\_\_

Title of proxy: \_\_\_\_\_

Proxy's e-mail address: \_\_\_\_\_

Proxy's phone number: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Committee Member

**BUSINESS COURT CONCEPT METING**

Friday, March 28, 2014  
12:00 noon – 1:30 pm  
Arizona State Courts Building – Room 339  
Phoenix, Arizona

Meeting Notes

**PRESENT:**

Chief Justice Rebecca Berch  
Vice Chief Justice Scott Bales  
David Byers, Director, AOC  
Don Bivens – Law Offices of Snell & Wilmer  
Andrew Federhar – Fennemore Craig P.C.  
Jodi Jerich, Executive Director, Corporation Commission  
William G. Klain, Lang Baker & Klain, PLC  
Greg Linaman, Chief Operation Officer, Arizona Commerce Authority  
John Ragan, Chief Operations Officer, Arizona State Chamber of Commerce  
Judge John Rea, Superior Court Maricopa County  
Mark N. Rogers, Associate General Counsel, Assistant Secretary, Insight Enterprise, Inc.  
David Rosenbaum, Osborn Maledon, P.A.  
Stephen Tully, Gordon & Rees, LLP  
Sandra Watson, CEO & President, Arizona Commerce Authority  
Steve Weinberger, IHC Committee Chair

**STAFF**

Marcus Reinkensmeyer, Director, Court Services Division, AOC  
Annette Mariani, Administrative Assistant, Court Services Division, AOC

**1. Welcome, Introductions**

Following introductions, Chief Justice Rebecca Berch briefly discussed recent proposals to establish a business court in the Superior Court of Arizona. As envisioned, the business court would serve as forum to resolve cases involving commercial litigation, specifically cases falling above the jurisdiction limits of the mandatory arbitration program and not qualifying for placement in the complex civil court. Chief Justice Berch introduced the two meeting presenters, Attorney Steve Tully and Judge John Rea, and welcomed input from the meeting participants.

**2. The Business Court as an Asset - Steve Tully**

Steve Tully explained that the trials courts are viewed as an important “asset” for the State of Arizona and a major factor in economic development. Establishment of a business court would help to ensure that disputes are resolved as efficiently and effectively as possible, while also increasing consistency in resolution of similar cases. Business court judges would have the necessary training and expertise to hear commercial litigation cases. Mr. Tully suggested that cases might be referred to this type of court on the basis of subject matter, as opposed to case size and complexity. Anticipated benefits of the business court would include the following:

- A stable bench, with judges serving extended terms in the business court assignment
- Reduced delay time in issuance of court rulings
- Greater consistency in rulings
- Reduced risk for business entities due to predictability of case outcomes
- A favorable economic environment and opportunities for marketing Arizona
- Improved inter-branch relations, with the legislature recognizing courts as a valuable asset in need of sufficient funding
- A potential source of revenue to the state government

### **3. Business Court Mission and Design – Judge Rea**

Addressing the need for state courts to better meet modern business needs, Judge Rea noted the declining civil trial rate and the trend for many business entities to “opt out” of the court system. Judge Rea presented a suggested a business court mission statement and outlined a continuum of program options, ranging from modest administrative changes to possible amendments to the State Constitution (e.g., establishment of an Arizona Court of Chancery). He also noted that Arizona courts are well positioned to create a business court, given the structure of a single statewide superior court and the authority of the Supreme Court to establish policies and procedures.

### **4. Discussion and Consensus**

It was the consensus of the meeting participants that establishment of a business court would be a timely and worthwhile initiative, one greatly benefiting the State of Arizona as outlined above. In discussing various business court models, it was suggested that a few pilot projects might be launched in the superior court to evaluate the efficacy of different business court models. Meeting participants identified the following elements which could be brought together to form an effective business court:

- Changes to court rules
- Limitations on discovery
- e-discovery rules
- Early court control of case management, establishing case management plans at the outset of the litigation.
- Expedited case resolution
- Expanded use of alternative dispute resolution (ADR), summary jury trials and other mechanisms for early case resolution
- Use of special masters to address cases involving specialized areas of law, e.g., intellectual property

- A change in the judicial rotation system in Maricopa County: Allowing judges to remain in the business court assignment for several years, thus providing continuity in case management.
- Case eligibility for the business court based upon subject matter, as opposed to case complexity and case size
- Publication of trial court rulings to establish a body of knowledge regarding business cases
- Opportunities for business court judges to receive specialized training

Meeting participants noted that Arizona is fortunate to have a highly trusted state court system, one nationally recognized for best practices in several areas. The history and benefits of the complex civil court program were outlined, along with discussion regarding the limited number of cases in this forum. Establishment of a business court would build upon this foundation, contributing to a healthy business environment and further state-wide economic development.

Also discussed were cutbacks in court funding, resource constraints and the critical need to maintain a quality bench through judicial merit selection. The participants expressed concerns over judicial compensation levels and maintaining a consistently high quality bench.

## **5. Next Steps**

As a next step, Chief Justice Berch suggested that a small workgroup be convened to further outline the design of a business court pilot project(s) and develop supporting recommendations. In the interim, meeting participants are encouraged to contact Chief Justice Berch or Vice Chief Bales with any additional issues or suggestions.



# FENNEMORE CRAIG, P.C.

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November 19, 2010

David K. Byers, Director  
Administrative Office of the Courts  
1501 West Washington, Suite 411  
Phoenix, Arizona 85007

Re: Complex Civil Litigation Court

Dear Mr. Byers:

I am the chair of the Supreme Court's Complex Civil Litigation Court Evaluation Committee. Administrative Order 2009-30 extended the term of this Committee to December 31, 2010. This Order also directed the Committee to submit annual status reports to you on the complex civil litigation pilot program in the Maricopa County Superior Court. This is the second of two annual status reports.

The Committee has met this year to review the status of the complex litigation program, and to prepare for and present a seminar to members of the Bar about the complex litigation program's benefits.

**1. The complex civil bench.** My November 24, 2009 letter to you reported that Judge J. Richard Gama had become the civil presiding judge in June of 2009, and that Judge Gama "actively and enthusiastically" supported the complex litigation program. The position of civil presiding judge is significant because the presiding civil judge serves as the "gatekeeper" for admitting cases to the complex program.<sup>1</sup>

At the end of March 2010, an interim judicial rotation occurred in several divisions of the Maricopa County Superior Court. Judge Robert Oberbillig became the new civil presiding judge. Judge Oberbillig is also a strong supporter of the program.

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<sup>1</sup> See Maricopa County Superior Court Administrative Order 2002-127, which was entered on December 19, 2002.

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One of the rationales of the complex litigation program is the assignment of a trial judge who will stay with a case for its duration. Accordingly, the premise of the program is that judges will be appointed to the complex litigation bench for a full five-year rotation. This objective has been a challenge, as there have been five judges sitting on the three-judge complex panel during just the past two years, none for five years.<sup>2</sup> While every judge who has served on the complex panel has been highly-regarded, frequent rotations are contrary to the model for the complex civil litigation court. The Evaluation Committee members understand that the requirements of the court system transcend the specific needs of the complex litigation program, but to the extent that judges in the program can actually have five-year assignments, as originally intended, both the litigants and this program will benefit.

**2. Case admissions.** As of October 21, 2010, **19 cases** had been admitted to the complex program during calendar year 2010. This figure exceeds the number of admissions during calendar years 2006 and 2007 *combined*, and is roughly on par with the number of admissions during calendar year 2009.

However, the number of admissions does not fully capture the magnitude of the complex program and its impact on the superior court. There are 68 cases pending before the three complex panel judges at this time.

- These 68 cases have on average 46 plaintiffs per case, and 25 defendants per each case. Accordingly, these 68 cases include approximately 4,828 litigants.
- There have been 2,644 substantive motions filed in these 68 open cases, along with 17,895 other motions.
- There have been 151 admissions to the complex program since its inception in 2002, but a substantially higher number of individual cases have been consolidated in the process. There have been 356 cases consolidated by these 151 admissions, involving 11,377 plaintiffs and 3,394 defendants.

The number of civil case filings has doubled over the past several years, yet the number of judges on the civil bench during that time period has remained the same, and each judge's caseload has increased accordingly. A commercial case with several parties or a medical malpractice lawsuit may not meet the criteria for admission to the complex program, but these cases are nonetheless challenging and time-consuming and they must still be managed by the civil judges. If the complex program did not exist, the 68 cases currently handled by the

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<sup>2</sup> Judge Peter Swann was appointed to the Court of Appeals in 2008, and was replaced on the complex panel by Judge Edward Burke. Judge Douglas Rayes became criminal presiding judge in early 2010, and he was replaced on the panel by Judge Gama. Judge John Buttrick has served on the complex panel since June 2007.

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complex panel would need to be distributed among the 21 civil judges, resulting in each civil judge having three highly complex cases in addition to hundreds of other cases with varying levels of complexity. These few highly complex cases would hinder the ability of a judge to timely and effectively manage the hundreds of other cases assigned to that division. The complex program therefore benefits not only each civil judge; it also benefits every civil litigant, who receives more timely and efficient case administration because the program exists.

**3. Complex litigation webinar/seminar.** My November 2009 letter to you reported that planning was underway for a seminar scheduled for April 9, 2010, which would both publicize the program as well as educate current and potential complex case litigators. The 2.5 hour program took place as scheduled. The Evaluation Committee, the Maricopa County Superior Court, and the State Bar of Arizona co-sponsored this seminar. Chief Justice Berch gave welcoming remarks. Presenters included Committee members, complex panel judges, and a complex litigator. Forty-three attorneys participated in the seminar either live or via webcast. Responses to the post-seminar evaluation question, "I can use what I learned," averaged 4.65 on a scale of one to five. An additional fifty-nine purchases, including subscriptions allowing web access to the program or copies of the program CD, have been made since April 9th.

**4. Recommendations.** The Evaluation Committee presents the following recommendations:

a) ***Make the complex program a permanent feature of the superior court.*** This program has been a pilot program for eight years. It has demonstrated its value to the court, to the business community, and to the general public. It is time for the pilot program to become a permanent one.

The Evaluation Committee notes that the \$500 per party fee has allowed the program to be fiscally self-sustaining. This fee has been utilized to provide a full-time law clerk for the complex judges. It could also be used for a second law clerk, for additional training for the judges, for equipment, or for other items. There is currently about \$253,000 in the complex program account.<sup>3</sup>

b) ***Adopt the rules of procedure for complex cases on a permanent basis.*** Several of the Rules of Civil Procedure (Rules 8(h), 8(i), 16.3, and 39.1) were adopted to facilitate the processing of complex cases. These rules expire on December 31, 2010. These rules should be adopted permanently. The Evaluation Committee has prepared a rule petition, a copy of which is enclosed, to accomplish this objective.

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<sup>3</sup> This money may be swept into the County's general fund at the end of the current fiscal year.

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c) ***Continue to educate the bar about the complex program.*** As confirmed at the April seminar, only a limited portion of the bar is familiar with the existence of the complex program, and even fewer attorneys have knowledge of complex case procedures. This situation should be remedied. Additional seminars like the one on April 9<sup>th</sup> that focused exclusively on the complex program aren't necessary, but the complex litigation program could be included as a topic during seminars that involve complex case issues (examples are antitrust, construction law, environmental torts, class actions, or general civil litigation.) The complex program judges have also discussed the establishment of a bench-bar complex civil study group that would meet periodically to discuss issues of mutual interest. The existence of the complex program should be a matter of common knowledge.

d) ***Compile useful information on the complex case program.*** Quantitative as well as qualitative measurements could be used to gauge the future success of the complex program. Qualitative measures could include attorney and litigant comments, formal as well as anecdotal, concerning the program's strength or weakness. The total number of case admissions, numbers of parties and attorney appearances, times to disposition, and manner of disposition (settlement, motion, trial) as well as other select quantitative data would also be useful for evaluating the effectiveness of complex case management and procedures that might enhance complex case administration.

e) ***Disband the Evaluation Committee.*** A.O. 2009-30 extended the term of this Committee until December 31, 2010. It is now time to disband the Evaluation Committee.<sup>4</sup>

The Evaluation Committee has been in existence since November 22, 2002. It has been my honor and pleasure to serve on this Committee. Each member of the Committee thanks the Supreme Court for the opportunity to participate in the establishment of a complex civil litigation court in the State of Arizona.

Several members of this Committee have served continuously since the establishment of this Committee in 2002 (or even since the creation in December 2001 of the predecessor Committee to Study Complex Litigation.) I want to specially note that Committee members William Maledon and Mark Larson have served with commitment and distinction. Marcus Reinkensmeyer has very capably assisted the Committee. Both Jennifer Greene and Mark Meltzer have been extremely committed to the complex litigation program. Court officials Mitch Michkowski and David Jacobs have been very helpful throughout the life of the Evaluation Committee. On behalf of the Committee, I would like to extend thanks to all of them for their help and support.

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<sup>4</sup> The Evaluation Committee members voted to support a recommendation to disband and other recommendations on October 21, 2010.

# FENNEMORE CRAIG, P.C.

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Maricopa County is blessed with a deep and talented judicial bench. Each of the judges who has served on the complex litigation panel, as well as our current and former presiding judges, have assisted and supported this program. Finally, I would like to thank you and Chief Justices Jones, McGregor, and Berch, and Vice Chief Justice Hurwitz, for your ongoing interest in the complex civil litigation program. The litigants and lawyers who have participated in the program owe you all a debt of gratitude.

Sincerely,

FENNEMORE CRAIG, P.C.



Andrew M. Federhar

AMF/kjt

Enclosure

cc: Complex committee members:

Hon. Robert Oberbillig

Mark J. Larson

William J. Maledon

Marcus Reinkensmeyer

Complex panel judges:

Hon. Edward O. Burke

Hon. John A. Buttrick

Hon. J. Richard Gama

Hon. Norman J. Davis

Dr. Mitch Michkowski

David Jacobs

John F. Phelps

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Draft

Mark Meltzer  
Staff to the Complex Civil Litigation  
Court Evaluation Committee  
Administrative Office of the Courts  
1501 W. Washington St., Ste. 410  
Phoenix, AZ 85007  
(602) 452-3242

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO PERMANENTLY )  
ADOPT RULES 8(h), 8(i), 16.3, ) Supreme Court No. R-10-\_\_\_\_  
and 39.1, ARIZONA RULES OF )  
CIVIL PROCEDURE )  
\_\_\_\_\_ )

The Complex Civil Litigation Court Evaluation Committee respectfully petitions this Court to permanently adopt Rules 8(h), 8(i), 16.3, and 39.1 of the Arizona Rules of Civil Procedure.

**I. Background.** Administrative Order 2002-107 was entered on November 22, 2002. This Order authorized the establishment of a complex civil litigation pilot program in Maricopa County.

To facilitate the processes of a complex litigation court, the Order adopted four new or revised rules of civil procedure on an “experimental” basis:

Rule 8(h): Classification of civil actions

Rule 8(i): Complex civil litigation program determination

*Draft*

Rule 16.3: Initial case management conference in cases assigned to the complex civil litigation program

Rule 39.1: Trial of cases assigned to the complex civil litigation program

Pursuant to Administrative Order 2002-107, these rules, the pilot program, and a newly established Complex Civil Litigation Court Evaluation Committee were to end on December 31, 2004. However, they were all extended by subsequent Orders, including 2004-27 (an extension until December 31, 2006), 2006-123 (an extension until December 31, 2008), 2009-11 (an extension until December 31, 2009), and 2009-30 (an extension until December 31, 2010.) Three of these rules as now shown in West's Rules of Court (Rules 8(i), 16.3, and 39.1) contain a preamble that states: *"This experimental rule has been extended by Administrative Order No. 2009-30 to December 31, 2010."*

**II. Content of the proposed rules.** The Complex Civil Litigation Court Evaluation Committee has submitted a progress report to the Administrative Director of the Administrative Office of the Courts recommending that the complex civil litigation program be made a permanent feature of the superior court. If the Supreme Court and the Maricopa County Superior Court concur with the Evaluation Committee's recommendation to make the complex civil litigation program permanent, these four rules should also become permanent. This petition does not seek a change to the content of these four rules.

*Draft*

Petitioner is requesting a change to the content of the comments to Rules 8(i) and 16.3. These comments refer to the rules as “experimental.” The word “experimental” appears one time in each of these two comments. The word “experimental” can be easily deleted, as shown in the Appendix to this petition. The preamble to Rules 8(i), 16.3, and 39.1 referred to above that refers to these rules as “experimental” should also be stricken, as shown in the Appendix.

**III. Comments.** Because this petition does not seek a change to the substance of these rules, it has not been circulated for comment prior to filing.

**IV. Request for expedited adoption.** The four rules affected by this petition are effective until December 31, 2010. Petitioner requests that removal of the December 31, 2010 termination date be given expedited consideration under Supreme Court Rule 28(G) to assure that there is no lapse in the efficacy of these rules.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of December, 2010.

By \_\_\_\_\_  
Mark Meltzer  
Staff to the Complex Civil Litigation Court  
Evaluation Committee  
Administrative Office of the Courts  
1501 W. Washington Street, Suite 410  
Phoenix, AZ 85007  
(602) 452- 3242

Draft

## Appendix

Deletions are shown by ~~strike through~~. Additions are shown by underline.

### **Rule 8(i). Complex Civil Litigation Program Designation**

~~<This experimental rule has been extended by Administrative Order No. 2009-30 to December 31, 2010.>~~

[No change to Rule 8(i).]

#### **COMMENT TO EXPERIMENTAL RULE ~~8(i)~~(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:** This rule sets the standard for determining whether a case is eligible for participation in the complex case program. It also sets out a process for designating a case as complex and for contesting the designation. A ruling on whether a case is eligible for the complex case program is not appealable to promote early final resolution of the issue of eligibility for participation in the program. This is in keeping with one of the overall goals of the program: to achieve finality for complex cases in an expedited manner.

*Draft*

Deletions are shown by ~~strikethrough~~. Additions are shown by underline.

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

~~<This experimental rule has been extended by Administrative Order No. 2009-30 to December 31, 2010.>~~

[No change to Rule 16.3.]

**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.** In considering procedures for management of a complex civil case, the court, in its discretion, may look for guidance to the Manual for Complex Litigation published by the Federal Judicial Center and to similar complex litigation manuals used by courts in other jurisdictions.