

Rule 8.1: Assignment and management of commercial cases [New]

(a) Application; definitions. This rule applies in counties that have established specialized courts for commercial cases, which are referred to in this rule as “commercial courts.”

Commercial courts will hear a “commercial case,” as defined in Rule 8.1(a)(1), when the case also meets the criteria of either Rule 8.1(b) or Rule 8.1(c).

1. A “commercial case” is one in which either
 - A. At least one plaintiff and one defendant are “business organizations;”
 - B. The primary issues of law and fact concern a “business organization;”
 - 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 a 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. A “consumer contract or transaction” is one that is primarily for personal, family, or household purposes.

(b) Regardless of the amount in controversy, commercial courts will hear 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, 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.

(c) If the amount in controversy is at least \$50,000, commercial courts will hear a commercial case that:

1. Arises from a contract or transaction governed by the Uniform Commercial Code;
2. Involves the sale of services by, or to, a business organization;
3. Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;
4. Arises out of tortious business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or
5. 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 following case types generally are not eligible for commercial courts, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

1. Evictions;
2. Eminent domain or condemnation;

3. Civil rights;
4. Motor vehicle torts and other torts involving physical 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.

(e) Assignment of cases to commercial courts.

1. **Plaintiff's duties.** Before filing an original complaint in a commercial case, the plaintiff must add to the complaint's caption the words "commercial court assignment requested." At the time of filing the original complaint, the plaintiff must also complete a civil cover sheet that indicates it is an eligible commercial case.
2. **Assignment to commercial court.** The court administrator will review complaints filed under Rule 8.1(e)(1). If a complaint appears appropriate for a commercial court, the court administrator will send the case to a commercial court judge, and the judge has discretion to enter an order assigning, or declining to assign, the case to the commercial court.
3. **Motion to reconsider assignment to commercial court.** After assignment of a case to a commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through (d). Any party filing a motion under this rule must do so not later than 20 days after the defendant files an answer to plaintiff's complaint or a motion under Rule 12. If a commercial court judge concludes that a case is not appropriate for 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 to plaintiff's complaint or a motion under Rule 12, a judge of a general civil court may order transfer of a case to a commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).
5. **Complex cases.** Assignment of a case to a commercial court does not impair the right of a party to request assignment of the case to a complex civil litigation program pursuant to Rule 8(i).

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

1. **Scheduling conference.** A scheduling Conference under Rule 16(d) is mandatory.
2. **Initial conference.** Prior to filing a Joint Report, the parties must confer, as set forth in the commercial court’s ESI protocol, and attempt to reach agreement concerning the disclosure and production of electronically stored information (“ESI”), including (i) requirements and limitations on disclosure and production of ESI; (ii) the form or formats in which the ESI will be disclosed or produced; and (iii) 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 (Form 14(a)) must address the following additional items:
 - A. Whether the parties have reached any agreements with regard to ESI, what those agreements are, and those areas on which they were unable to agree; and whether the parties request the court to enter an order concerning ESI;
 - B. Whether the parties reached agreements pursuant to Rule 502 of the Rules of Evidence;
 - C. Whether any party is requesting the court to enter a protective order pursuant to Rule 26(c), and if so, a brief statement concerning the need for a protective order; and
 - D. Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

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

**Superior Court in Maricopa County: Commercial Court
Checklist for Rule 16(b) Joint Report Discussions Regarding ESI**

The court requires the parties to have a meet-and-confer discussion concerning electronically stored information (“ESI”) at the earliest possible time in the litigation, and followed by ongoing discussions as necessary. The parties’ discussions should occur in the context of the claims and defenses in their particular case. The parties should use this checklist on some of the most common ESI topics to guide their conversations. The applicability of specific topics in this checklist, the sequence in which the parties discuss these topics, and whether the parties should defer discussion of certain topics, often depend on the nature and complexity of the litigation.

1. Liaison: (See the explanation that follows.)

If appropriate, the identification by each party of a person who is knowledgeable about a party’s IT system (also known as an “e-discovery liaison.”)

2. Location and Types of IT Systems and Media:

- Description of systems that store potentially discoverable information
- Location of systems that store potentially discoverable information
- How those systems store potentially discoverable information
- How discoverable ESI can be collected from systems, and the media in which systems store ESI
- Identification of the systems from which the parties will prioritize discovery (e.g., email, finance, HR systems)

3. Preservation of ESI: (See the explanation that follows.)

- The ranges of creation dates, or receipt dates, for ESI that the parties will agree to preserve
- The names, general job titles, or descriptions of custodians for whom the parties will preserve ESI (e.g., “HR head,” “scientist,” “marketing manager,” etc.)
- A list of systems, if any, that contain ESI not associated with individual custodians, such as enterprise databases, that the parties will preserve
- The existence and status of any document destruction policies or activities, such as on-going erasures of e-mails, voicemails, and other electronically-recorded material
- A description of data from sources that are not reasonably accessible and that the parties will not produce or review for responsiveness, but which the parties will nonetheless preserve
- A description of data from sources that (a) a party believes could contain relevant information, but (b) has determined under the proportionality factors in Part 8 will not be preserved
- Any other issues related to the scope of preservation, or the manner of preservation, of ESI

4. Phased Discovery of ESI:

- Whether it is appropriate to conduct discovery of ESI in phases
- Sources of ESI that are most likely to contain discoverable information and, if there is phased production, what the parties will include in the first phase
- Custodians (by name or role) who are most likely to have discoverable ESI, and whose ESI will be included in the first phase of document discovery
- Sources of ESI that are less likely to contain discoverable information, and from which the parties will postpone or avoid discovery
- Custodians (by name or role) who are less likely to have discoverable information, and from

whom the parties will postpone or avoid discovery

The interaction between document requests under Rule 34 and the ESI methods or protocols of production agreed upon by the parties

5. Search for ESI:

The time period during which discoverable information was most likely created or received

The search protocols or methods, including specific words or phrases – or other methodology – that will be used to identify discoverable ESI and filter out ESI that is not subject to discovery

Whether the parties should use Technology Assisted Review (“TAR”), such as predictive coding, to reduce the costs and time for filtering and reviewing ESI

The quality control method that the producing party will use to evaluate whether production is missing relevant ESI or contains substantial amounts of irrelevant ESI

6. Production of ESI:

The formats (for example, PDF-searchable, TIFF, native, Load Files, paper, or combinations of the foregoing) in which the parties will produce structured ESI (database, collaboration sites, etc.)

The formats (see the preceding checkbox) in which the parties will produce unstructured ESI (email, word processing, presentations, etc.)

The extent, if any, to which the parties will produce metadata, and if so, the fields of metadata the parties will produce

The production format(s) that will ensure that when ESI is produced, any of its inherent searchability is not degraded

Whether to engage in deduplication, denisting, or other filtering methods

7. Privilege Considerations: (See the explanation that follows.)

How the parties will handle the production of privileged or work product protected information

Whether the parties can agree upon alternative ways to identify documents that are withheld on grounds of privilege or work product, such as identification by category, to reduce the burdens of identification

Whether the parties will enter into a stipulation and order under Rule 502(d) of the Arizona Rules of Evidence that addresses inadvertent or agreed production, or whether a party will file a motion to address these issues

8. Proportionality and Costs under Rule 26(b)(1)(C):

The nature and the amount of the claims made by the parties

The nature and scope of burdens associated with proposed discovery and preservation of ESI

The importance of particular issues at stake in the litigation as they relate to ESI

The likely benefit of the proposed discovery

Limitations on the parties’ resources

Placing limits on the scope of preservation, or other cost-saving measures

Costs that the parties agree to share, or will shift, to reduce overall ESI discovery expenses, such as using a common electronic discovery vendor, a shared document repository, or other cost-saving measures

The Court's Explanations Regarding the Checklist

Generally: The court requires the parties to meet and confer about discovery of ESI at the earliest reasonable stage of litigation. Early discussion will assist the parties in efficiently requesting and responding to ESI discovery, it will reduce costs and delay, and it will assist the court in the event the parties are unable to resolve a dispute concerning ESI. ESI discovery as used in this checklist encompasses affirmative obligations of the parties to disclose ESI even in the absence of a specific discovery request.

Cooperation: The court requires the parties to cooperate on issues relating to the preservation, collection, search, review, and production of ESI. Conducting discovery in a cooperative manner is compatible with zealous representation. Note also that Rule 1 of the Rules of Civil Procedure requires construction of the rules "to secure the just, speedy, and inexpensive determination of every action."

Liaison: In some cases, the parties' meet and confer sessions will be aided by the participation of e-discovery liaisons. Each party in those cases should designate an e-discovery liaison who is knowledgeable about, and responsible for discussing, ESI. The e-discovery liaison could be an attorney (either in-house or outside counsel), an employee of a party, or a third-party consultant. "Knowledgeable" means that this liaison will:

- (a) Be familiar with the technical aspects of e-discovery in the case, including electronic document storage, organization, retrieval technology, and search methodology;
- (b) Know about the location, nature, accessibility, and format of ESI in the case, and the collection, search for, and production of that ESI, or have access to others who know;
- (c) Be familiar with, or be able to learn about, the party's electronic systems and capabilities in order to explain those systems and to answer related questions;
- (d) Be familiar with the party's e-discovery requests;
- (e) Be prepared to participate in e-discovery dispute resolution in order to limit the need for court intervention.

Preservation: A party is not required to use a preservation letter to notify another party of the preservation obligation. However, if a party uses a preservation letter, the court discourages the use of overbroad letters. Instead, such a letter should provide as much detail as possible, such as the names of parties, a description of claims, potential witnesses, the relevant time period, sources of ESI the sending party knows or believes are likely to contain relevant information, and any other information that might assist the receiving party in determining what information to preserve.

Privilege: When discussing privilege and work product, the parties should consider Rule 25.1(f)(2), which provides:

- (1) *Information Withheld.* When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of

the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

- (2) *Information Produced.* If a party contends that information subject to a claim of privilege or of protection as trial-preparation material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has made and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

Proportionality: The proportionality standard in Rule 26(b)(1)(C) should provide direction to the parties in preparing their discovery plan, including the preservation, collection, search, review, and production of ESI. This Rule provides:

The frequency or extent of use of the discovery methods set forth in subdivision (a) may be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or obtainable from some other source that is either more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, given the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

Disputes: Before bringing a dispute concerning the preservation or discovery of ESI to the court, the parties and their liaisons should fully discuss the issue, and should consider bringing the issue to a special master or to an agreed-upon expert for resolution. If notwithstanding these efforts the parties are unable to resolve the dispute, they should present it to the court at the earliest possible opportunity

Form 14(a) – Joint Report: Commercial Case

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 44 15 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: _____.
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)]:**
The parties have reached agreements regarding electronically stored information (“ESI”) that are appended to this joint report: yes no

The parties have prepared a stipulated order regarding ESI, attached hereto: yes no

The parties have been unable to agree on areas of disclosure or discovery of ESI, which are described in item 14 below: yes no

The parties have reached agreements pursuant to Rule 502 of the Rules of Evidence and submit a proposed order that is attached to this report: yes no

The parties have agreed on a proposed protective order, attached hereto: yes no

A party has raised an issue concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f), as further described in item 13 below: 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. Scheduling conference:** The parties request a Rule 16(d) scheduling conference. yes no~~
If requested, the reasons for having a conference are _____
_____.

- 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(b) – Proposed Scheduling Order: Commercial Case

In the Superior Court of Arizona
_____ County

Plaintiffs)	Case number _____
)	
v)	Proposed Scheduling Order
)	<i>(Commercial case)</i>
Defendants)	Assigned to:
)	

Upon consideration of the parties' Joint Report, the court orders as follows:

1. **Initial disclosure:** The parties have exchanged their initial disclosure statements, or will exchange them no later than _____.

2. **Expert witness disclosure:** The parties shall simultaneously disclose areas of expert testimony by _____. (Alternative: Plaintiff shall disclose areas of expert testimony by _____, and Defendant shall disclose areas of expert testimony by _____.)

The parties shall simultaneously disclose the identity and opinions of experts by _____. (Alternative: Plaintiff shall disclose the identity and opinions of experts by _____, and Defendant shall disclose the identity and opinions of experts by _____.)

The parties shall simultaneously disclose their rebuttal expert opinions by _____.

3. **Lay (non-expert) witness disclosure:** The parties shall disclose all lay witnesses by _____. (Alternative: The parties shall disclose lay witnesses in the following order, and by the following dates: _____.)

4. **Final supplemental disclosure:** Each party shall provide final supplemental disclosure by _____. This order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available.

No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the court for good cause shown or upon a written or an on-the-record agreement of the parties.

5. **Discovery deadlines:** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by _____. The parties will complete the depositions of parties and lay witnesses by _____, and will complete the depositions of expert witnesses by _____. The parties will complete all other discovery by _____.

("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. Settlement conference or private mediation: [choose one]:

Referral to ADR for a settlement conference: The clerk or the court will issue a referral to ADR by a separate minute entry.

Private mediation: The parties shall participate in mediation using a private mediator agreed to by the parties. The parties shall complete the mediation by _____.

All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith in this mediation, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the mediator grants the request prior to the mediation date, a non-attorney representative may appear telephonically.

No settlement conference or mediation: A settlement conference or private mediation is not ordered.

7. Dispositive motions: The parties shall file all dispositive motions by _____.

8. Trial setting conference: On _____ [the court will provide this date], the court will conduct a telephonic trial setting conference. Attorneys and self-represented parties shall have their calendars available for the conference.

9. Plaintiff Defendant will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at _____ [division's telephone number] at the scheduled time.

10. Firm dates: No stipulation of the parties that alters a filing deadline or a hearing date contained in this scheduling order will be effective without an order of this court approving the stipulation. Dates set forth in this order that govern court filings or hearings are firm dates, and may be modified only with this court's consent and for good cause. This court ordinarily will not consider a lack of preparation as good cause.

11. Further orders: The court further orders as follows: _____
_____.

Date

Judge of the Superior Court

**Superior Court of Arizona
In Maricopa County**

Case Number

CIVIL COVER SHEET- NEW FILING ONLY
(Please Type or Print)

Plaintiff's Attorney:

Attorney's Bar
Number: _____

Plaintiff's Name(s): (List all)

Plaintiff's Address:

(List additional plaintiffs on page two and/or attach a separate sheet).

Defendant's Name(s): (List all.)

(List additional defendants on page two and/or attach a separate sheet).

EMERGENCY ORDER SOUGHT:
(if applicable)

- Temporary Restraining Order
- OSC – Order to Show Cause
- Employer Sanction

- Provisional Remedy
- Election Challenge
- Other _____

~~RULE 8(i) COMPLEX LITIGATION DOES NOT APPLY. (Mark appropriate box under Nature of Action).~~

RULE 8(i) COMPLEX LITIGATION APPLIES Rule 8(i) of the Rules of Civil Procedure defines a "Complex Case" as civil actions that require continuous judicial management. A typical case involves a large number of witnesses, a substantial amount of documentary evidence, and a large number of separately represented parties. (Mark appropriate box on page two as to complexity, **in addition** to the Nature of Action case category).

RULE 8.1 THIS CASE IS ELIGIBLE FOR THE COMMERCIAL COURT UNDER RULE 8.1. PILOT PROGRAM APPLIES. Rule 8.1 defines a "commercial case" and establishes eligibility criteria for the commercial court. Generally, a commercial case involves either a business organization or issues arising from a business contract or business transaction. Check this box if this is an eligible commercial case. In addition, mark the appropriate box below in the "Nature of Action" case category. The words "commercial court assignment requested" must appear in the caption of the original complaint. **In addition, complete the commercial court pilot program supplemental cover sheet.**

NATURE OF ACTION

(Place an "X" next to the **one** case category that most accurately describes your primary case.)

100 TORT MOTOR VEHICLE:

- 101 Non-Death/Personal Injury
- 102 Property Damage
- 103 Wrongful Death

110 TORT NON-MOTOR VEHICLE:

- 111 Negligence
- 112 Product Liability – Asbestos
- 112 Product Liability – Tobacco

- 112 Product Liability – Toxic/Other
- 113 Intentional Tort
- 114 Property Damage
- 115 Legal Malpractice
- 115 Malpractice – Other professional
- 117 Premises Liability
- 118 Slander/Libel/Defamation
- 116 Other (Specify) _____

Is Interpreter Needed? Yes No

If yes, what language: _____

To the best of my knowledge, all information is true and correct.

Attorney/Pro Per Signature (If no attorney, YOUR signature)

120 MEDICAL MALPRACTICE:

- 121 Physician M.D. 123 Hospital
- 122 Physician D.O 124 Other

130 CONTRACTS:

- 131 Account (Open or Stated)
- 132 Promissory Note
- 133 Foreclosure
- 138 Buyer-Plaintiff
- 139 Fraud
- 134 Other Contract (i.e. Breach of Contract)
- 135 Excess Proceeds - Sale
- Construction Defects (Residential/Commercial)
 - 136 Six to Nineteen Structures
 - 137 Twenty or More Structures

150-199 OTHER CIVIL CASE TYPES:

- 156 Eminent Domain/Condemnation
- 151 Eviction Actions (Forcible and Special Detainers)
- 152 Change of Name
- 153 Transcript of Judgment
- 154 Foreign Judgment
- 158 Quiet Title
- 160 Forfeiture
- 175 Election Challenge
- 179 Employer Sanction Action (A.R.S. §23-212)
- 180 Injunction against Workplace Harassment
- 181 Injunction against Harassment
- 182 Civil Penalty
- 186 Water Rights (Not General Stream Adjudication)
- 187 Real Property
- Sexually Violent Persons (A.R.S. §36-3704)
(Except Maricopa County)
- Minor Abortion (See Juvenile in Maricopa County)
- Special Action Against Lower Courts
(See lower court appeal cover sheet in Maricopa)
- 194-Immigration Enforcement Challenge

150-199 UNCLASSIFIED CIVIL CASE TYPES:

- Notice of Appeal pursuant to A.R.S. § 12-904
(formerly "Administrative Review")
(Use lower court appeal cover sheet in Maricopa)
- 150 Tax Appeal
(All other tax matters must be filed in the AZ Tax Court)

Case No. _____

- 155 Declaratory Judgment
- 157 Habeas Corpus
- 184 Landlord Tenant Dispute - Other
- 159 Restoration of Civil Rights (Federal)
- 159 Clearance of Records (A.R.S. §13-4051)
- 190 Declaration of Factual Innocence (A.R.S. §12-771)
- 191 Declaration of Factual Improper Party Status
- 193 Vulnerable Adult (A.R.S. §46-451)
- 165 Tribal Judgment
- 167 Structured Settlement (A.R.S. §12-2901)
- 169 Attorney Conservatorships (State Bar)
- 170 Unauthorized Practice of Law (State Bar)
- 171 Out-of-State Deposition for Foreign Jurisdiction
- 172 Secure Attendance of Prisoner
- 173 Assurance of Discontinuance
- 174 In-State Deposition for Foreign Jurisdiction
- 176 Eminent Domain—Light Rail Only
- 177 Interpleader— Automobile Only
- 178 Delayed Birth Certificate (A.R.S. §36-333.03)
- 183 Employment Dispute - Discrimination
- 185 Employment Dispute - Other
- 195(a) Amendment of Marriage License
- 195(b) Amendment of Birth Certificate
- 163 Other

(Specify)

COMPLEXITY OF THE CASE

If you marked the box on page one indicating that Complex Litigation applies, place an "X" in the box of no less than one of the following:

- Antitrust/Trade Regulation
- Construction Defect with many parties or structures
- Mass Tort
- Securities Litigation with many parties
- Environmental Toxic Tort with many parties
- Class Action Claims
- Insurance Coverage Claims arising from the above-listed case types
- A Complex Case as defined by Rule 8(i) ARCP

Additional Plaintiff(s)

Additional Defendant(s)

Superior Court of the State of Arizona

Maricopa County

Case Number: CV-20xx-xxxxx

[MODEL] STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION

Plaintiff(s),

vs.

Defendant(s).

1. PURPOSE

This Order will govern discovery of electronically stored information (“ESI”) in this case as a supplement to the Arizona Rules of Civil Procedure, this Court’s protocol for the Discovery of Electronically Stored Information, and any other applicable orders and rules.

2. COOPERATION

The parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court’s protocol for the Discovery of ESI.

3. LIAISON (Note: Use of this section is optional; include it only when appropriate.)

The parties have identified liaisons to each other who are and will be knowledgeable about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature, accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court intervention.

4. PRESERVATION

The parties have discussed their preservation obligations and needs and agree that preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the

1 costs and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 2 a) Only ESI created or received between _____ and _____ will be preserved;
- 3 b) The parties have exchanged a list of the types of ESI they believe should be
- 4 preserved and the custodians, or general job titles or descriptions of custodians, for
- 5 whom they believe ESI should be preserved, e.g., “HR head,” “scientist,” and
- 6 “marketing manager.” The parties shall add or remove custodians as reasonably
- 7 necessary;
- 8 c) The parties have agreed/will agree on the number of custodians per party for whom
- 9 ESI will be preserved;
- 10 d) These data sources are not reasonably accessible because of undue burden or cost
- 11 pursuant to Ariz. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be
- 12 preserved but not searched, reviewed, or produced: [e.g., backup media of [named]
- 13 system, systems no longer in use that cannot be accessed];
- 14 e) Among the sources of data the parties agree are not reasonably accessible, the
- 15 parties agree not to preserve the following: [e.g., backup media created before
- 16 _____, digital voicemail, instant messaging, automatically saved versions of
- 17 documents];
- 18 f) In addition to the agreements above, the parties agree data from these sources (a)
- 19 could contain relevant information but (b) under the proportionality factors, should
- 20 not be preserved: _____.

21 **5. SEARCH**

22 The parties agree that in responding to an initial Ariz. R. Civ. P. 34 request, or earlier if

23 appropriate, they will meet and confer about methods to search ESI in order to identify ESI

24 that is subject to production in discovery and filter out ESI that is not subject to discovery.

25 **6. PRODUCTION FORMATS**

26 The parties agree to produce documents in PDF, TIFF, native and/or paper or

27 a combination thereof (check all that apply)] file formats. If particular documents warrant a

28 different format, the parties will cooperate to arrange for the mutually acceptable production of

such documents. The parties agree not to degrade the searchability of documents as part of the

document production process.

7. PHASING

When a party propounds discovery requests pursuant to Ariz. R. Civ. P. 34, the parties

agree to phase the production of ESI and the initial production will be from the following

sources and custodians: _____.

1 Following the initial production, the parties will continue to prioritize the order of subsequent
2 productions.

3 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

4 a) Pursuant to Ariz. R. Evid. 502(d), the production of a privileged or work-product-
5 protected document, whether inadvertent or otherwise, is not a waiver of privilege
6 or protection from discovery in this case or in any other federal or state proceeding.
7 For example, the mere production of privileged or work-product-protected
8 documents in this case as part of a mass production is not itself a waiver in this case
9 or in any other federal or state proceeding.

10 b) The parties have agreed upon a “quick peek” process pursuant to Ariz. R. Civ. P.
11 26.1(f)(2) and reserve rights to assert privilege as follows _____
12 _____.

13 c) Communications involving trial counsel that post-date the filing of the complaint
14 need not be placed on a privilege log. Communications may be identified on a
15 privilege log by category, rather than individually, if appropriate.

16 **9. MODIFICATION**

17 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
18 Court for good cause shown.

19 **IT IS SO STIPULATED**, through Counsel of Record.

20 Dated: _____
21 Counsel for Plaintiff

22 Dated: _____
23 Counsel for Defendant

24 **IT IS ORDERED** that the forgoing Agreement is approved.

25 Dated: _____
26 Judge of the Superior Court