Business Court Advisory Committee

Meeting Agenda

Thursday, November 13, 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: 7517

Item no. 1	**Call to Order** **Introductory comments**	*Mr. Rosenbaum, Chair*
Item no. 2 Page 3	**Approval of the October 2, 2014 meeting minutes**	*Mr. Rosenbaum*
Item no. 3 Page 33	**Review and discussion of a revised draft report to the Arizona Judicial Council, including appendices to the report** • **Committee approval of the draft report and appendices, and authorization for the Chair to finalize these documents**	*All*
Item no. 4	**Roadmap**	*Mr. Rosenbaum*
Item no. 5	**Call to the Public** **Adjourn**	*Mr. Rosenbaum*

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: *Future meetings are not currently scheduled.*

Business Court Advisory Committee

State Courts Building, Phoenix

Meeting Minutes: October 2, 2014

Members attending: David Rosenbaum (Chair), Michael Arkfeld, Ray Billotte by his proxy Phil Knox, Andrew Federhar, William Klain, Mark Larson, Lisa Loo, Judge Scott Rash, Judge John Rea, Patricia Refo, Mark Rogers, Stephen Tully, Judge Christopher Whitten

Absent: Judge Kyle Bryson, Glenn Hamer, Nicole Stanton, Marcus Reinkensmeyer, Steven Weinberger

Guests: Peter Kiefer

Staff: Mark Meltzer, Theresa Barrett, Sabrina Nash, Nick Olm

1. Call to Order. The Chair called the meeting to order at 9:05 a.m. After introductions, he requested the members to review draft minutes of the August 29, 2014 meeting.

MOTION: A member moved to approve those minutes. The motion was followed by a second, and it was unanimously passed by the members. **BCAC: 2014-04**

2. Revisions to draft Rule 8.1. The Chair then directed the members to the most recent revisions to proposed Rule 8.1 of the Arizona Rules of Civil Procedure, which was first presented at the August 29 meeting. The members discussed and resolved the following issues concerning the most recent draft of this rule:

(a) Section (d) concerns ineligible cases. If the complaint includes causes of action that are eligible for commercial court, does the presence of an ineligible cause of action under section (d) render the entire case ineligible? Judge Rea noted that when such an issue arises, the court may exercise discretion under section (e), and to emphasize this point, the members added a specific reference in section (d) to section (e). Another member suggested, and the members agreed, that the rule include a tangible standard for judges to consider when deciding this issue. Accordingly, the members added to the first sentence of section (d) the phrase, "unless other criteria specified in Rule 8.1(b) and (c) predominate the case."

(b) The members made other revisions to section (d), including deletion of paragraph (8), which made ineligible "any matter that a statute or other law requires another court or court division to hear." The members concurred that this paragraph was jurisdictional in nature and was not the proper subject of a procedural rule. For the same reason, the members agreed that including a requirement in section (d) that parties exhaust administrative remedies was not appropriate.

(c) The members made revisions to section (e) to conform it to recent revisions to other sections.

(d) The members also made organizational and stylistic revisions to section (f) regarding case management. One member indicated that a provision that required parties to consider cost-shifting at a conference regarding ESI (electronically stored information) was ill-conceived, because the generally accepted practice in Arizona now is for the producing party to pay those costs; the provision could create controversy when none currently exists. A member suggested adding the words "if appropriate" to the provision, and the members agreed that this would address their concerns about mentioning cost-shifting.

Staff suggested that the distinction between section (c) cases, where the amount in controversy was not an eligibility factor, and section (d) cases, which require a $50,000 threshold, was immaterial. Staff reasoned that in Maricopa County, cases under $50,000 proceed to mandatory arbitration; because they are diverted in this manner, it is self-evident those cases would not be eligible for the commercial court. One member expressed a concern that without this monetary distinction, appeals from arbitration awards could overwhelm the commercial court. Staff responded that section (d) could expressly state an exception for arbitration cases. Some members felt that the committee had previously decided this issue after substantial study, and the members should not revisit it. One member asked whether, after some experience with the pilot and an accumulation of data, the committee could recommend adjustments to Rule 8.1's eligibility provisions. The members concluded that they could. The committee now can only speculate about the number of cases that might be assigned to the pilot court, and the committee will revisit the issue once the pilot is underway, if necessary.

A member questioned whether section (f) should make scheduling conferences mandatory. These conferences are time consuming (judges typically need to reserve a full 15 minutes for each conference, even if some conferences only take a few minutes), and if the parties have agreed on everything in the proposed scheduling order prior to a conference, the conference might not be meaningful. The Chair recalled that at prior committee meetings, the members had concurred that a mandatory conference was a key feature of the commercial court. A member observed that whether these conferences would consume a substantial amount of a judge's available time would depend on the actual, and now unknown, volume of commercial cases. The most persuasive reason for making the conference mandatory was that if it was optional, it would probably be omitted in cases where there was a need for one. Moreover, judges should have early involvement in virtually every commercial case. The members' consensus was to keep the requirement of a mandatory scheduling conference, but to reconsider this requirement based on the experience of the pilot program.

The members also discussed whether section (g), which allows a judge to modify the formal motion requirements of Rule 7.1(a), should also permit a judge to modify formal requirements for a Rule 56 motion. The members agreed that proposed section (g) should not allow judges to do that.

3. Revisions to the civil cover sheet. Today's meeting materials included a revised civil cover sheet. (A civil cover sheet is required under existing Rule 8(h).) The cover sheet presented at the last meeting included a list of Rule 8.1 section numbers on the reverse side of the sheet that would require a plaintiff to indicate the basis of a case's

eligibility by checking corresponding boxes. Today's revision eliminated that series of checkboxes, and instead added a single check box on the front side of the cover sheet that states, "Rule 8.1 commercial court pilot program applies." This revision proposed that a plaintiff who checked that box also complete a supplemental cover sheet to specify the applicable eligibility factors. Members' responses to these proposed revisions included the following:

- Counterclaims may trigger commercial court eligibility, but they do not require a cover sheet; by what mechanism would a defendant/counterclaimant request assignment of a case to commercial court?

- If the primary purpose of the cover sheet is to collect relevant data, the BCAC should permit the court administrator to collect data as he determines is appropriate. The BCAC should not try to micromanage this process by a rule or a form.

- The parties should provide in their Rule 16(b) joint report the reasons that the case is eligible for the commercial court.

- A local rule could require the parties to complete a form with necessary data elements and file it with the clerk at the mandatory scheduling conference (with recognition that parties in cases that settle before the scheduling conference would provide no data.)

- A local law school may have interest in assisting the court in compiling data, especially if data compilation requires a review of documents rather than an automated process. A law school could use the data for a research study.

- The court's data collection functions are contingent on its case management system, which is currently being updated. Those functions transcend the scope of this committee, and the committee should defer to the court.

The Chair suggested that the committee go forward with the simpler cover sheet, and let the court determine how to capture detailed case data; the members agreed with his suggestion.

Mr. Klain raised a related issue. If a case is designated as a commercial case solely by a cover sheet that is filed but not served, how would a defendant be aware of the designation and know when to timely file an objection? He suggested adding the words "commercial court assignment requested" to the caption of the complaint, and the members supported this idea. Mr. Kiefer, who is Maricopa County's civil court administrator, said he presumed that a judge would designate a case as commercial by a minute entry, as is done with complex civil cases, and that neither a party nor the court administrator would determine the assignment of a case to the commercial court. This led to a series of comments, including whether a case should be presumptively assigned to the commercial court by the administrator unless and until it is declined by a judge; whether using a distinctive case number prefix could alert a defendant of a

request for assignment to the commercial court; and whether a judge's determination of a case as commercial should be deferred as an issue to be addressed at the mandatory scheduling conference. Mr. Kiefer also informed the members that the court administrator assigns a judge to a specific case by a complex algorithm, and today's discussion might require either modifications to the algorithm, or creation of a process that requires the court administrator to assign a commercial case to a judge manually.

> **Action:** With the concurrence of the members, the Chair directed committee staff to have further conversations with the court administrator on these issues, and to propose the best solutions at the next committee meeting.

4. Revisions to the draft Administrative Order. The members concurred with revisions that had been made to the draft Administrative Order after the August 29 meeting, with one exception: should the order add the judges who are assigned to the commercial court as members of this committee? The Chair believed that the Court has inherent authority to add members to the committee, but he agreed that the draft order should include express language to this effect.

5. A proposed ESI protocol. As noted in the minutes, the Chair established a workgroup at the August 29 meeting (composed of the Chair, Judge Rea, and Mr. Arkfeld) to develop an ESI protocol based on the one used in the Northern District of California. The workgroup thereafter developed, and presented at today's meeting, a proposal that includes a two-page ESI checklist. The intent of the checklist is to make the parties' preliminary meet-and-confer conference concerning ESI productive and comprehensive. The workgroup also presented a two-page explanation sheet that accompanies the checklist, and a proposed, three-page stipulated order regarding ESI.

The members began by discussing the proposed requirement of an ESI liaison. One member felt it was inefficient for the liaison to "be able to learn about" electronic systems after a conference, and suggested that a liaison should be knowledgeable beforehand. Another member responded that a liaison should not be expected to know everything about electronic systems at the initial conference, but should have an opportunity thereafter to acquire that knowledge. While this was the prevailing view, a member expressed concern about the need for a liaison in every commercial case, especially smaller cases. The members exchanged anecdotes about using or not using liaisons that both favored and opposed the liaison practice. The Chair noted that in a simple case, it might be practical if an attorney for a party, or a paralegal, served as a liaison. Another member questioned whether an attorney should be present during the liaisons' discussions; or, if one of the liaisons was an attorney and the other was not, whether this circumstance raised ethical considerations. Mr. Arkfeld observed that the parties should utilize the liaisons in whatever way is most effective, with or without the attorneys present, and in a manner in which the parties are comfortable. In some cases, use of a liaison may be inappropriate. But Mr. Arkfeld emphasized that in other cases, especially those where ESI becomes a procedural bottleneck, costs could be significantly reduced if each side utilized a liaison who understood the relevant nomenclature and technology.

The members agreed to these changes to the protocol documents:

- In the stipulated order, removing that liaisons are mandatory, and making the parties' use of liaisons optional and only if appropriate.

- In the explanations, rather than saying a liaison might assist in "many" cases, changing it to "some" cases.

- In the checklist, requiring a liaison to be knowledgeable about "terminology" as well as systems; and adding the word "media" in the paragraph concerning "location and types of IT systems."

The members also agreed to add to section (f) of Rule 8.1 this phrase: whether in their joint report the parties would request the trial court to enter an ESI order.

6. A repository of commercial court decisions. The Chair informed members that following the August 29 meeting, Mr. Reinkensmeyer contacted Westlaw and Fastcase representatives concerning creation of a repository for the pilot commercial court's decisions, and was advised that both companies were interested in posting the rulings. The Westlaw representative was going to confer with senior management, and the Fastcase representative asked for data on the projected volume of court rulings. Neither representative anticipated any obstacles. The Chair expressed appreciation for Mr. Reinkensmeyer's inquiry, and he looks forward to a follow-up report from Mr. Reinkensmeyer at the next committee meeting.

7. A draft report to the AJC. In light of the amount of time the members spent on previous items on today's agenda, and the expectation that today's changes to Rule 8.1 and other proposed documents will require revisions to staff's draft report, the Chair deferred consideration of the committee's draft report to the Arizona Judicial Council ("AJC") until the next committee meeting.

8. Roadmap; call to the public; adjourn. The members have set their final 2014 meeting for Thursday, November 13. At that time, the members will review and finalize their report and supporting documents for the AJC's consideration. The Chair will present the committee's report to the AJC on December 11, 2014. The Chair added that he would also present on the status of this committee to the Business Law Section of the State Bar in late October, and he encouraged other committee members to conduct outreach to stakeholders regarding the work of this committee. Judge Rea and Mr. Klain agreed to make a presentation to the Committee on Superior Court, which is an AJC standing committee, when it meets on November 7, 2014.

There was no response to a call to the public. The meeting adjourned at 11:40 a.m.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
AUTHORIZING A COMMERCIAL COURT PILOT PROGRAM IN THE SUPERIOR COURT OF MARICOPA COUNTY	)	Administrative Order **No. 2014-____**
	)	
	)	
	)	
	)	

On May 8, 2014, this Court entered Administrative Order 2014-48, which established the Business Court Advisory Committee. The Order required the committee to submit its recommendations to this Court and to the Arizona Judicial Council by December 11, 2014. The committee has now done so, and the committee's recommendations have been adopted by the Arizona Judicial Council.

The committee's report proposes the establishment of a pilot commercial court in the superior court of Maricopa County. The report suggests establishing this pilot court for three years to permit a reasonable period for its evaluation. The report recommends that at the end of three years, the Supreme Court determine the advisability of adopting a commercial court as a permanent feature of the superior court. The report proposes that an evaluation committee monitor the pilot during its three-year phase, and that the evaluation committee submit annual progress reports to the Arizona Judicial Council.

The committee's report also proposes a new rule~~s~~ of civil procedure, a joint report and proposed scheduling order for use in commercial cases, and ~~forms, including a new form~~ a modified civil cover sheet that parties would use to identify cases that ~~are~~ may be eligible for the pilot program, and a protocol for disclosure and discovery of electronically stored information ("ESI").

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution.

IT IS ORDERED authorizing the superior court of Maricopa County to establish a pilot commercial court as follows:

1. **Pilot Court:** The pilot commercial court shall run for a period of three years, beginning July 1, 2015 and ending June 30, 2018.

2. **Rules of Procedure and Forms:** ~~The~~ Rule~~s~~ 8.1 and Rule 84, Forms 14(a) and 14(b), as shown ~~appearing~~ in Appendix A attached hereto, shall apply to cases in the pilot commercial court.

DRAFT

3. **Authority to Establish Additional Local ~~Rules and~~ Procedures and Forms:** In furtherance of the purpose and goals of the pilot commercial court, the presiding judge of the Superior Court in Maricopa County is authorized to ~~establish~~ adopt additional ~~rules and~~ procedures and forms for the pilot commercial court, including a modified civil cover sheet and a protocol for electronically stored information, consisting of a checklist and a model order, as proposed by the committee.

IT IS FURTHER ORDERED that the terms of the Business Court Advisory Committee and its members, who were appointed pursuant to Administrative Orders numbered 2014-47 and 2014-58, are extended until December 31, 2018. When judges have been assigned to the pilot commercial court, this Court will add them to the committee's membership by Administrative Order. The committee will only meet as its chair deems necessary or appropriate. On or before December 31 of calendar years 2016, 2017, and 2018, the committee shall submit a progress report to the Arizona Judicial Council that addresses the following:

A. ~~An analysis of any~~ Superior court data ~~that was collected for the purpose of monitoring~~ that analyzes cases assigned to the pilot commercial court;

B. Levels of user satisfaction with the pilot commercial court;

C. Views of judges concerning the effectiveness and benefits of the pilot commercial court;

D. Recommendations concerning new eligibility criteria for assignment of cases to a pilot commercial court, adoption of additional measurements to evaluate the performance of this pilot commercial court, and proposed changes to rules and forms; and

E. Any other matter that the committee wishes to bring to the attention of the Arizona Judicial Council.

DATED this ___ day of December 2014

SCOTT BALES
CHIEF JUSTICE

DRAFT

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

(a) Application; definitions. This Rule applies in ~~any county~~ counties that ~~has~~ have established ~~a~~ specialized ~~commercial~~ courts for commercial cases, which are referred to in this Rule as "the commercial court." ~~The court administrator of that county will assign to its~~

The c~~C~~ommercial court will hear a~~ny~~ "commercial case," as defined in Rule 8.1(a)(1), ~~if it~~ 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;" ~~or~~

   B. The primary issues of law and fact concern a "business organization;" ~~or a "business contract or transaction."~~ 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 ~~concerning~~ 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 ~~other than concerning~~ 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) Cases with No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court will hear a commercial case ~~will be assigned to the commercial court if the 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.

(c) **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 ~~will be assigned to the commercial court if the 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 or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or

~~5. Involves the sale of services by, or to, a business organization;~~

~~6. Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization; 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. ~~**The following cases are not eligible for commercial court,** even if they meet all other criteria specified in Rule 8.1:~~ Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

1. Evictions ~~actions~~;

2. Eminent domain or condemnation ~~actions~~;

3. Civil rights ~~actions~~;

4. Motor vehicle torts and other torts involving physical injury to a plaintiff;

5. Administrative appeals;

6. Domestic relations, ~~a~~ protective orders, or ~~a~~ criminal matters, except a criminal contempt arising in a commercial court case; or

7. Wrongful termination of employment.~~; or~~

~~8. Any matter that a statute or other law requires another court or division to hear.~~

(e) ~~**Miscellaneous provisions regarding assignment**~~ **Assignment of cases to commercial courts.**

~~1. After assignment of a case to the commercial court by the court administrator, a commercial court judge, upon motion of a party or on the judge's own initiative, may determine whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through (c). Any party filing a motion under this rule must do so not later than 20 days after the defendant files (i) an answer to plaintiff's complaint, or (ii) a motion under Rule 12. If the judge determines that a case is not appropriate for the commercial court, that judge may reassign the case to a general civil court.~~

~~2. 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 the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(c).~~

~~3. Assignment of case to the 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).~~

1. **Plaintiff's duties.** To request assignment of a case to the commercial court, the plaintiff must include in the initial complaint's caption the words "commercial court assignment requested." At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.

2. **Assignment to commercial court.** The court administrator will review complaints filed in accordance with Rule 8.1(e)(1). If a complaint appears appropriate for assignment to the commercial court, the court administrator will refer the case to a commercial court judge. That judge has discretion to enter an order assigning, or declining to assign, a referred case to the commercial court.

3. **Motion to reconsider assignment to 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 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 or a motion under Rule 12. 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, 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(a) through 8.1(d).

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 pursuant to Rule 8(i).

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

9. **Scheduling conference.** ~~S~~ A scheduling Conferences under Rule 16(d) ~~are~~ is mandatory.

~~10. The parties' Rule 16(b) Joint Report* must address the following additional items:~~

~~A. The parties must confer 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) sharing or shifting of costs incurred by the parties for disclosing and producing ESI. The joint report* must state the agreements~~

~~reached by the parties with regard to ESI, and those areas on which they were unable to agree.~~

~~B. The joint report* must state whether the parties reached agreements pursuant to Rule 502 of the Rules of Evidence.~~

~~C. The joint report* must state 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.~~

~~D. The joint report* must state whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).~~

11. **Initial conference.** Prior to 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 (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.

12. **Joint report.** The parties' Rule 16(b) Joint Report must address the following additional items:

    A. Whether the parties have reached any agreements with regard to ESI, what those agreements are, 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~~ With notice to the parties, a commercial court judge ~~of the commercial court 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.

Form 14(a) – Joint Report: Commercial Case

In the Superior Court of Arizona
_____ County

	)	
Plaintiffs	)	Case number _____
	)	
v	)	**Joint Report**
	)	*(Commercial case)*
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: _____.

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**
	)	*(Commercial case)*
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 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.)

[] ~~The~~ 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, ~~that~~ what the parties will include in the first phase
[] Custodians (by name or role) who are most likely to have discoverable ~~information~~ 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." ~~The court may impose sanctions for a failure to cooperate.~~

Liaison: In ~~many~~ some cases, the parties' meet and confer sessions will be aided by the participation of e-discovery liaisons. Each party in those cases ~~must~~ 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

DRAFT

Superior Court of the State of Arizona

Maricopa County

Plaintiff(s), vs. Defendant(s).	Case Number: CV-20xx-xxxxx [MODEL] STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION

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

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

a) Only ESI created or received between _____ and _____ will be preserved;

b) The parties have exchanged a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g., "HR head," "scientist," and "marketing manager." The parties shall add or remove custodians as reasonably necessary;

c) The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;

d) These data sources are not reasonably accessible because of undue burden or cost pursuant to Ariz. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced: [e.g., backup media of [named] system, systems no longer in use that cannot be accessed];

e) Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following: [e.g., backup media created before _____, digital voicemail, instant messaging, automatically saved versions of documents];

f) In addition to the agreements above, the parties agree data from these sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: _____.

5. SEARCH

The parties agree that in responding to an initial Ariz. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

6. PRODUCTION FORMATS

The parties agree to produce documents in ☐ PDF, ☐TIFF, ☐native and/or ☐paper or a combination thereof (check all that apply)] file formats. If particular documents warrant a 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: _____.

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

8. DOCUMENTS PROTECTED FROM DISCOVERY

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

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

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

9. MODIFICATION

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

IT IS SO STIPULATED, through Counsel of Record.

Dated: _____

Counsel for Plaintiff

Dated: _____

Counsel for Defendant

IT IS ORDERED that the forgoing Agreement is approved.

Dated: _____

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:_____

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)

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) _____

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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
(§§1-501, 1-502, 11-1051)

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)

_____

_____

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Business Court Advisory Committee: Report to the Arizona Judicial Council

December 11, 2014

ADVANCING JUSTICE TOGETHER | 2014-2019

Business Court Advisory Committee

Chair:
Mr. David Rosenbaum, Esq., Osborn Maledon, PA

Members:
Mr. Michael R. Arkfeld, Esq., Arkfeld & Associates

Mr. Ray Billotte, Superior Court in Maricopa County

Honorable Kyle Bryson, Superior Court in Pima County

Mr. Andrew M. Federhar, Fennemore Craig

Mr. Glenn Hamer, AZ Chamber of Commerce and Industry

Mr. William G. Klain, Lang Baker & Klain, PLC

Mr. Mark J. Larson, Honeywell international, Inc.

Ms. Lisa S. Loo, Esq., Arizona State University

Honorable Scott Rash, Superior Court in Pima County

Judge John Rea, Maricopa Superior Court

Ms. Patricia Refo, Esq., Snell & Wilmer, LLP

Mr. Marcus Reinkensmeyer, Arizona Supreme Court

Mr. Mark Rogers, Esq., Insight Enterprises, Inc.

Ms. Nicole Stanton, Esq., Quarles & Brady, LLP

Mr. Stephen Tully, Esq., Hinshaw & Culbertson LLP

Mr. Steven Weinberger, Esq., Liberty Mutual

Judge Christopher Whitten, Superior Court in Maricopa County

Staff:
Theresa Barrett, Mark Meltzer, Sabrina Nash, Nick Olm

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2. *Enter a corresponding administrative order in the Superior Court of Arizona in Maricopa County to actually establish the pilot commercial court.*

3. *The foregoing Supreme Court administrative order should adopt for the pilot commercial court a proposed Rule 8.1 of the Arizona Rules of Civil Procedure and Rule 84forms for a joint report to the court and a proposed scheduling order.*

4. *The Superior Court of Maricopa County should adopt a checklist and a model order concerning disclosure and discovery of electronically stored information in a commercial case, and modify its civil cover sheet.*

5. *Create a repository of the decisions of the commercial court judges.*

6. *The Supreme Court should extend the term of the Business Court Advisory Committee and its members for four years.*

Background

Reasons for Arizona to establish a business court

Reasons to establish a pilot court in Maricopa County

Selection of commercial cases

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Executive Summary and Recommendations

The Supreme Court established the Business Court Advisory Committee ("BCAC") on May 8, 2014 by the entry of Administrative Order number 2014-48. The Order directed the committee, after a period of study, to make recommendations on court rules, discovery (including electronic discovery), alternative dispute resolution, judicial staffing, resources, and other elements of a business court model and, if appropriate, to make recommendations for potential pilot projects to evaluate the efficacy of a business court model in the Superior Court of Arizona.

The Order required the committee to submit its recommendations by December 11, 2014. This is the committee's report and its recommendations.

The committee recommends:

1. Entry of a Supreme Court administrative order that would permit the Superior Court of Arizona in Maricopa County to establish a three-year pilot commercial court.

2. Entry of a corresponding administrative order by the Superior Court of Arizona in Maricopa County that would actually establish the pilot commercial court.

3. Adoption by the foregoing Supreme Court administrative order of (A) a proposed Rule 8.1 of the Arizona Rules of Civil Procedure that would define a "commercial case," specify the types of cases that would be eligible for assignment to the commercial court, and provide procedures for judicial management of commercial cases; and (B) modified Rule 84 Forms 14(a) and 14(b) for a joint report and scheduling order for use in commercial cases.

4. Adoption by the Superior Court of Maricopa County of (A) a checklist and model order concerning disclosure and discovery of electronically stored information in a commercial case; and (B) modifications to its civil cover sheet.

5. Creation of a repository of the decisions of the commercial court judges.

6. Inclusion of a provision in the Supreme Court administrative order of a four-year extension of the term of the Business Court Advisory Committee and its members, and adding as members the commercial court judges.

This report further explains these recommendations.

Background. Business courts were established in New York and Illinois in 1993. In the years to follow, North Carolina (1995), New Jersey (1996), Pennsylvania (2000), Massachusetts (2000), Nevada (2000), Rhode Island (2001), Maryland (2003), Florida (2004), Georgia (2005), Oregon (2006), Colorado (2006), South Carolina (2007), Maine (2008), New Hampshire (2008), Alabama (2009), Ohio (2009), and Delaware (2010) created similar courts, (*See,* John F. Coyle, "Business Courts and Interstate Competition," 53 *William and Mary Law Review,* page 1915, 1918 (2012).) Some local jurisdictions also established commercial court dockets.

The Superior Court in Arizona has established several specialty courts in the twenty-first century. These specialty dockets include a drug court, a veterans courts, a mental health court, and a complex civil litigation court. However, and notwithstanding the complex civil litigation program, the Superior Court in Arizona lags other jurisdictions in the creation of a general business or commercial court. Pursuant to Administrative Order 2014-48, the BCAC recommends that Arizona now establish such a court.

The BCAC has eighteen members. The committee's membership includes four judges of the Superior Court (two from Maricopa County and two from Pima County), four in-house counsel (including general counsel from Arizona State University), the court administrator for Maricopa County, the director of the Court Services Division of the Administrative Office of the Courts, the president of the Arizona Chamber of Commerce and Industry (who is also a member of the State Bar of Arizona), and seven attorneys in private practice. Five of those attorneys are members of large law firms, one is a member of a small firm, and one is a sole practitioner and a nationally recognized expert on law office technology. Three members of the BCAC are former members of the Complex Civil Litigation Court Evaluation Committee established by Supreme Court Administrative Order number 2002-107.

The BCAC met five times, typically for three hours, over the course of six months. In addition, it established workgroups to study case eligibility; rules, procedures, and forms; and judge assignment and rotation. Midway through its tenure the committee established a fourth workgroup to address issues involving electronically stored information. Each workgroup reported its conclusions to the full committee.

The BCAC had a plethora of materials from a number of other jurisdictions that established commercial courts. The committee considered materials from Delaware, Florida (Ninth and Eleventh Judicial Circuits), Georgia (Fulton County), Iowa, Maine, Maryland, Massachusetts (Suffolk County), Michigan

(Wayne County), New York, North Carolina, Ohio, Oregon, Pennsylvania (Allegheny County and the Philadelphia Commerce Court), Rhode Island, South Carolina, and West Virginia. The BCAC also reviewed materials from several federal district courts.

Reasons for Arizona to establish a business court. Committee members during their first meeting noted a variety of reasons why Arizona should have a business court, including:

- To make Arizona a more favorable forum for resolving business disputes
- To improve the business community's access to justice
- To expeditiously resolve business cases and reduce litigation costs
- To improve the quality of justice
- To gain the business community's support for the State of Arizona's dispute resolution system

The members shared expectations that a business court in Arizona could (a) process commercial cases efficiently, (b) help to reduce the cost of commercial litigation, and (c) provide businesses with access to judges who are knowledgeable about commercial transactions and business issues. There was unanimity among the committee members that the success of a business court is ultimately dependent first, on the quality of the judges who are assigned to the court, and second, on early and active judicial case management. Committee members agreed that Arizona's merit selection was already an attractive feature to the business community because it has generated confidence in judicial independence, especially compared to some other states. A business court populated with judges especially familiar with commercial disputes would further enhance confidence in Arizona courts as a venue for resolving business controversies.

Reasons to establish a pilot court in Maricopa County. Although the BCAC believes that a business court will be a valuable and effective component of the superior court in the long-term, a "test" program could empirically demonstrate its usefulness in the immediate future, and help to identify improvements before the commercial court achieves a permanent or statewide status. Therefore, the committee recommends establishing the commercial court as a pilot program, as was done in 2002 with the complex civil litigation court. The committee believes that three years is an appropriate length of time to determine if the pilot commercial court meets expectations.

The BCAC further concluded that Maricopa County is the most suitable venue for the pilot. The members reasoned that the pilot court must have a

sufficient case volume to justify its existence. It also concluded that the bench in the county where the pilot is established must be large enough to accommodate the assignment of two or three judges to the program. Given these practical considerations, the BCAC recommends establishment of a pilot commercial court in Maricopa County, which has more civil filings and more judicial officers than any other county. In addition, Maricopa County serves as the location of the complex civil litigation court, and it has developed experience over the past decade with the operation of a specialty civil court.

The committee further recommends that the pilot court commence on July 1, 2015. The BCAC believes this date would be appropriate for commencing a commercial court because it is when the annual judicial rotation occurs in the Maricopa County Superior Court, and a number of Maricopa County judges will be assuming new calendars.

Selection of commercial cases. The BCAC reached consensus that a business court was not an appropriate forum to resolve consumer cases or individual tort cases against businesses. The court's expertise and focus should be on resolving intra- and inter-company controversies, and it should not be viewed as a "pro-business" court. To reinforce that point and avoid misperceptions, the members decided to refer to the program as a "commercial court" rather than a "business court." Several other jurisdictions, such as New York, have adopted a "commercial" court descriptor.

The determination of which cases should be assigned to the pilot commercial court depends on multiple factors, and the BCAC discussed case scenarios at length.

The BCAC concluded that some cases are inherently "commercial" and belong in the commercial court, regardless of the amount in controversy. An example is litigation concerning corporate governance. For cases that are not inherently business in nature, the BCAC discussed monetary floors and ceilings as eligibility factors. The members decided that the floor for eligible cases should be the superior court arbitration limit in Maricopa County, which currently is set at $50,000. A threshold higher than $50,000 would exclude a number of otherwise suitable cases, and committee members did not want to deprive parties in those cases of the benefits of the commercial court. Cases under $50,000 would proceed, like any other civil litigation, through mandatory arbitration under the supervision of a judge assigned to a general civil calendar. The members also agreed that there should be no monetary ceiling for commercial cases; however, an assignment to the commercial court should not preclude subsequent transfer of an eligible case to the complex civil litigation court.

The committee's conclusions were codified in proposed Rule 8.1 (see Appendix 2). In summary, Rule 8.1 provides as follows:

- To request assignment of a case to the commercial court, a plaintiff must include in the caption of the initial complaint the words "commercial court assignment requested." The plaintiff must also complete a cover sheet, as modified, that indicates the action is an eligible commercial case. (See Appendix 6.) The court administrator will review cases that are identified in this manner and, if appropriate, will then refer the case to a commercial court judge. The judge has discretion to enter an order assigning, or declining to assign, a referred case to the commercial court.

- A "commercial case" is one in which either (a) at least one plaintiff and one defendant are "business organizations," or (b) the primary issues of law and fact concern a business organization or a "business contract or transaction." A "business organization" and a "business contract or transaction" are both further defined in the Rule.

- The term "consumer contract or transaction" is also defined in the Rule. The definition of "business contract or transaction" excludes a "consumer contract or transaction."

- Certain types of "commercial cases" are eligible for assignment to the commercial court regardless of the amount in controversy. These case types include those concerning the internal affairs or governance of a business organization, receiverships, and cases involving the sale or dissolution of a business organization, or the sale of substantially all of an organization's assets. They also include shareholder derivative actions, commercial real estate transactions, and cases concerning franchise relationships, securities, or antitrust claims.

- Other types of "commercial cases" are eligible for assignment to the commercial court if the amount in controversy is at least $50,000. These cases include transactions governed by the Uniform Commercial Code, tortious business activity, the sale of services by or to a business organization, and malpractice claims other than one against a medical professional.

- Proposed Rule 8.1 identifies certain case types that are not eligible for the commercial court. Examples are evictions, wrongful termination claims, and condemnation proceedings.

- After assignment of a case to the commercial court, proposed Rule 8.1 allows a commercial court judge, upon motion of a party or on the judge's own initiative, to reconsider whether assignment of the case to the commercial court is appropriate under the factors enumerated in the proposed rule. Another provision allows a judge on a general civil calendar, on the judge's initiative or on a party's motion, to order transfer of a case to the commercial court.

Management of commercial cases. Case management would be generally governed under existing Rules 16(a) through 16(k) of the Arizona Rules of Civil Procedure. But proposed Rule 8.1 adopts for commercial cases refinements that are specifically designed to meet the commercial court's core objectives. It does this in two specific ways.

First, proposed Rule 8.1 would make mandatory in-person or telephonic initial scheduling conferences under Rule 16(d). The committee feels strongly that early judicial management of commercial cases is essential to promote cost-effective and efficient processing of commercial disputes. An early conference will help identify factual and legal issues and focus the parties on discovery that is needed and proportionate to the issues and to the amount in controversy.

Second, to guide the parties and to assist the court, proposed Rule 8.1 adds several other items to the current Rule 16 list that the parties must include in their joint report to the court. Those additional items include electronically stored information (see the next section of this report), agreements pursuant to Rule 502 of the Arizona Rules of Evidence, protective orders, and privilege claims. The committee prepared modified forms for a joint report and a proposed scheduling order that incorporate these additions. (See Appendix 3.)

Commercial court judges may wish to adopt an abbreviated type of motion practice, such as "letter motions," to manage commercial cases efficiently. However, there are a variety of motion practices, and the committee recognizes that each judge may want to use his or her preferred method rather than a uniform practice established by rule. Proposed Rule 8.1 therefore provides that a commercial court judge, with notice to the parties, may modify the formal

requirements of Rule 7.1(a) and adopt a different practice to efficiently and promptly resolve motions.

Electronically stored information. BCAC members observed that potential burdens associated with preservation, collection, review and production of electronically stored information ("ESI"), in many cases, create costs disproportionate to the dollars and issues at stake, especially in smaller business disputes. A $50,000 UCC Article 2 dispute should not generate $75,000 in ESI discovery costs by each side. Early attention to ESI issues by the parties and the court will help produce an understanding of each side's obligations and establish expectations and parameters.

Proposed Rule 8.1 requires the parties early in the case to confer and attempt to reach agreements concerning ESI. To facilitate productive discussions, the committee prepared a four-page protocol. (See Appendix 4.) The protocol, which was modeled on one issued by the United States District Court for the Northern District of California, includes a detailed, comprehensive two-page checklist, and a two-page explanation of specific features of the checklist. Because some attorneys may not be familiar with their clients' electronic document management systems, or with methods of collection and production of electronically stored information, the checklist provides an option that each party designate an "e-discovery liaison" who is "knowledgeable" about the party's IT system. The draft protocol also includes a template for a court order concerning disclosure and discovery of ESI, which the court in most circumstances will enter upon stipulation of the parties. (See Appendix 5.)

The committee's believes that the proposed ESI protocol will benefit the parties, save them time and expense, and allow them to reach agreements on discovery issues without the need for judicial micromanagement of those issues. The committee recommends that the Maricopa County Superior Court adopt the protocol (Appendices 4 and 5) for the pilot program.

Repository of decisions. Appellate court opinions provide the community with some measure of certainty concerning applicable legal rules and principles. This helps guide the community in the day-to-day conduct of business, helps parties and their counsel better assess risks and likely outcomes when disputes arise and, consequently, also helps facilitate settlement. The BCAC believes that publication of trial court decisions issued by judges on the commercial court, while not controlling precedent, would serve a similarly helpful role. Several jurisdictions with business courts post their commercial case decisions on-line to serve these purposes. (These jurisdictions include

Maryland, Maine, Michigan, New Hampshire, New Jersey, New York, Philadelphia, and South Carolina.)

The committee recommends that the Arizona commercial court pilot program develop a similar repository of decisions. One BCAC member spoke with representatives of Westlaw and Fastcase. (Fastcase maintains a comprehensive research database that provides desktop, online access to a variety of case law and other legal authorities; the State Bar of Arizona provides Fastcase access at no cost to members of the Bar.) Westlaw and Fastcase both are interested in publishing the Maricopa County rulings, and neither anticipates any obstacles in doing so. The Maricopa County Superior Court also might be able to post commercial court decisions on a new page of its existing website.

Selection of commercial court judges. This report previously noted that there was unanimity among committee members that the success of a business court is ultimately dependent on the quality of judges who are assigned to the court. Without judges who have strong business law backgrounds and knowledge of commercial transactions, the pilot program would differ little from a general civil calendar. Assignment of the right judges to the pilot program is crucial for its acceptance by the legal and business communities.

The committee also believes that long-term (and even permanent) assignment to the business court would improve its function. While not relevant to the pilot project, if a permanent commercial court is established the committee sees no reason why, in larger counties, the tradition of judicial rotation could not be broken, with new vacancies on the commercial court filled by the Governor for permanent assignment. Among other benefits, this procedure would help attract well-qualified commercial litigators who, at present, may be reluctant to seek appointment to the bench. At a minimum the committee believes that judges should sit on the commercial court for rotations of at least five years.

The committee is mindful that the creation of a pilot court creates challenges to judicial rotations in the Maricopa County Superior Court as that system now exists. The committee therefore suggests that it might be appropriate to assign a commercial docket to one of the complex civil litigation judges, who could manage it simultaneously with a complex case load. It might also be appropriate to assign one of the special assignment judges, or the tax court judge, to the commercial court, because one of those judges might have more flexibility in accommodating a commercial case calendar.

The committee also recommends that those judges assigned to the commercial court have the benefit of continuing education. Continuing education would ideally encompass not only commercial law, but it would also hone the judges' skills in technology and issues concerning electronically stored information. It is uncontroverted that attorneys with commercial practices should do likewise, with special emphasis on increasing competence concerning ever-evolving technology.

Extend the term of the committee. By virtue of Administrative Order number 2014-48, the terms of the members of this committee expire on December 31, 2014. The members request that the Court extend their terms and the term of this committee until December 31, 2018, as set forth in a draft administrative order. (See Appendix 1.)

A decade ago, the complex civil litigation committee overestimated the volume of complex litigation. To avoid a similar misstep, the members of the BCAC believe that it is desirable (a) that data collection be an ongoing element of the commercial court pilot program; and (b) that the BCAC monitor the data on an ongoing basis. (The BCAC reviewed a substantial amount of Maricopa and statewide data. However, because of the specific case type eligibility requirements of proposed Rule 8.1, the committee was unable to accurately estimate the volume of cases that might be assigned to the pilot commercial court.) An extension of its term would allow the committee to monitor data, and also would provide the committee an opportunity to propose modifications to rules or forms, or methods of data collection, as may be necessary or appropriate during the three-year term of the pilot program. The members of this committee all expressed their willingness to serve during an extension of its term. The committee further recommends that the Court appoint to the BCAC the judges who are assigned to the pilot commercial court program.

Conclusion. The recommendations in this report are the unanimous consensus of the committee members, and the committee urges the Supreme Court and the Arizona Judicial Council to adopt these recommendations.

The committee members also express their deep gratitude to the Chief Justice for the extraordinary opportunity to serve on this committee, and to further the vision of the Strategic Agenda of Advancing Justice Together.

Appendices

1. Proposed Supreme Court Administrative Order
2. Proposed Rule 8.1, Arizona Rules of Civil Procedure
3. Proposed forms: joint report and proposed scheduling order
4. Proposed ESI checklist
5. Proposed model order regarding ESI
6. Proposed modifications to Maricopa civil cover sheet

Appendix 1

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
AUTHORIZING A COMMERCIAL	)	Administrative Order
COURT PILOT PROGRAM IN THE	)	**No. 2014-____**
SUPERIOR COURT OF MARICOPA	)	
COUNTY	)	
_____	)	

On May 8, 2014, this Court entered Administrative Order 2014-48, which established the Business Court Advisory Committee. The Order required the committee to submit its recommendations to this Court and to the Arizona Judicial Council by December 11, 2014. The committee has now done so, and the committee's recommendations have been adopted by the Arizona Judicial Council.

The committee's report proposes the establishment of a pilot commercial court in the superior court of Maricopa County. The report suggests establishing this pilot court for three years to permit a reasonable period for its evaluation. The report recommends that at the end of three years, the Supreme Court determine the advisability of adopting a commercial court as a permanent feature of the superior court. The report proposes that an evaluation committee monitor the pilot during its three-year phase, and that the evaluation committee submit annual progress reports to the Arizona Judicial Council.

The committee's report also proposes a new rule of civil procedure, a joint report and proposed scheduling order for use in commercial cases, and a modified civil cover sheet that parties would use to identify cases that may be eligible for the pilot program, and a protocol for disclosure and discovery of electronically stored information ("ESI").

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution.

IT IS ORDERED authorizing the superior court of Maricopa County to establish a pilot commercial court as follows:

1. **Pilot Court:** The pilot commercial court shall run for a period of three years, beginning July 1, 2015 and ending June 30, 2018.

2. **Rules of Procedure and Forms:** Rules 8.1 and Rule 84, Forms 14(a) and 14(b), as shown in Appendix A attached hereto, shall apply to cases in the pilot commercial court.

DRAFT

3. **Authority to Establish Additional Local Procedures and Forms:** In furtherance of the purpose and goals of the pilot commercial court, the presiding judge of the Superior Court in Maricopa County is authorized adopt additional procedures and forms for the pilot commercial court, including a modified civil cover sheet and a protocol for electronically stored information, consisting of a checklist and a model order, as proposed by the committee.

IT IS FURTHER ORDERED that the terms of the Business Court Advisory Committee and its members, who were appointed pursuant to Administrative Orders numbered 2014-47 and 2014-58, are extended until December 31, 2018. When judges have been assigned to the pilot commercial court, this Court will add them to the committee's membership by Administrative Order. The committee will only meet as its chair deems necessary or appropriate. On or before December 31 of calendar years 2016, 2017, and 2018, the committee shall submit a progress report to the Arizona Judicial Council that addresses the following:

A. Superior court data that analyzes cases assigned to the pilot commercial court;

B. Levels of user satisfaction with the pilot commercial court;

C. Views of judges concerning the effectiveness and benefits of the pilot commercial court;

D. Recommendations concerning new eligibility criteria for assignment of cases to a pilot commercial court, adoption of additional measurements to evaluate the performance of this pilot commercial court, and proposed changes to rules and forms; and

E. Any other matter that the committee wishes to bring to the attention of the Arizona Judicial Council.

DATED this ___ day of December 2014

_____

SCOTT BALES
CHIEF JUSTICE

DRAFT

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 "the commercial court."

The commercial court 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:

   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 ~~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) Cases with No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court 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, 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.

(c) 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. 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 or statutorily prohibited 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 assignment to the commercial court, 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.** To request assignment of a case to the commercial court, the plaintiff must include in the initial complaint's caption the words "commercial court assignment requested." At the time of filing the initial complaint, the plaintiff must also complete a civil cover sheet that indicates the action is an eligible commercial case.

2. **Assignment to commercial court.** The court administrator will review complaints filed in accordance with Rule 8.1(e)(1). If a complaint appears appropriate for assignment to the commercial court, the court administrator will refer the case to a commercial court judge. That judge has discretion to enter an order assigning, or declining to assign, a referred case to the commercial court.

3. **Motion to reconsider assignment to 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 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 or a motion under Rule 12. 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, 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(a) through 8.1(d).

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 pursuant to Rule 8(i).

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

1. **Scheduling conference.** A scheduling Conferences 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 checklist, and attempt to reach agreements that may be appropriate in the case 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 must address the following additional items:

   A. Whether the parties have reached any agreements with regard to ESI, what those agreements are, 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. 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

In the Superior Court of Arizona
_____ County

	)	
Plaintiffs	)	Case number _____
	)	
v	)	**Joint Report**
	)	*(Commercial case)*
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:_____.

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. ***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**
	)	*(Commercial case)*
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 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

Superior Court of the State of Arizona

Maricopa County

Plaintiff(s), vs. Defendant(s).	Case Number: CV-20xx-xxxxx [MODEL] STIPULATED ORDER RE: DISCOVERY OF ELECTRONICALLY STORED INFORMATION FOR STANDARD LITIGATION

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

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

a) Only ESI created or received between _____ and _____ will be preserved;

b) The parties have exchanged a list of the types of ESI they believe should be preserved and the custodians, or general job titles or descriptions of custodians, for whom they believe ESI should be preserved, e.g., "HR head," "scientist," and "marketing manager." The parties shall add or remove custodians as reasonably necessary;

c) The parties have agreed/will agree on the number of custodians per party for whom ESI will be preserved;

d) These data sources are not reasonably accessible because of undue burden or cost pursuant to Ariz. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but not searched, reviewed, or produced: [e.g., backup media of [named] system, systems no longer in use that cannot be accessed];

e) Among the sources of data the parties agree are not reasonably accessible, the parties agree not to preserve the following: [e.g., backup media created before _____, digital voicemail, instant messaging, automatically saved versions of documents];

f) In addition to the agreements above, the parties agree data from these sources (a) could contain relevant information but (b) under the proportionality factors, should not be preserved: _____.

5. SEARCH

The parties agree that in responding to an initial Ariz. R. Civ. P. 34 request, or earlier if appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is subject to production in discovery and filter out ESI that is not subject to discovery.

6. PRODUCTION FORMATS

The parties agree to produce documents in ☐ PDF, ☐TIFF, ☐native and/or ☐paper or a combination thereof (check all that apply)] file formats. If particular documents warrant a 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: _____.

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

8. DOCUMENTS PROTECTED FROM DISCOVERY

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

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

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

9. MODIFICATION

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

IT IS SO STIPULATED, through Counsel of Record.

Dated: _____

Counsel for Plaintiff

Dated: _____

Counsel for Defendant

IT IS ORDERED that the forgoing Agreement is approved.

Dated: _____

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:_____

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)

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 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).

☐ THIS CASE IS ELIGIBLE FOR THE COMMERCIAL COURT UNDER RULE 8.1. 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

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) _____

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
(§§1-501, 1-502, 11-1051)

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)

_____

_____