

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AUTHORIZING A COMPLEX)	Administrative Order
CIVIL LITIGATION PILOT PROGRAM)	No. 2002-107
APPLICABLE IN MARICOPA)	
COUNTY)	
_____)	

On October 17, 2002, the Arizona Judicial Council unanimously approved the final report and recommendations of the Committee to Study Complex Litigation, created by Administrative Order No. 2001-122. That report recommends the establishment of a pilot program to experiment with a Complex Civil Litigation Court in the Superior Court in Maricopa County. It is anticipated that the program will accelerate the time-to-disposition of complex civil disputes, allow for the more effective utilization of court resources, and permit improvements to the processing of civil cases generally. The Honorable Colin F. Campbell, Presiding Judge of the Superior Court in Maricopa County, has indicated his readiness to implement the experimental program in the near future.

The report proposes several new or amended rules of civil procedure and a new form for use in identifying cases eligible for the program and to promote their effective management by the judiciary.

The report suggests the need for an evaluation committee to monitor the program in its pilot phase. The program should be permitted to run for a period of two years to permit a reasonable period of evaluation and adjustment, after which, the Supreme Court can then determine the advisability of adopting Complex Civil Litigation Court rules as part of the Arizona Rules of Court.

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

IT IS ORDERED authorizing the establishment of a Complex Litigation Program on an experimental basis in the Superior Court of Maricopa County as follows:

1. **EXPERIMENTAL PROGRAM:** The Superior Court in Maricopa County is designated a pilot site to experiment with a Complex Civil Litigation Court. The experiment shall run for a period not to exceed two years beginning January 1, 2003 and ending December 31, 2004.
2. **RULES OF PROCEDURE APPLICABLE UNDER THIS ORDER:** The Rules appearing in Appendix A attached hereto shall apply to cases in the Complex Civil Litigation Court pilot program.

3. **AUTHORITY TO ESTABLISH ADDITIONAL LOCAL RULES AND PROCEDURES:** In keeping with the purposes and goals of the pilot project and consistent with the requirements of Supreme Court Rule 124, the presiding judge of the Superior Court in Maricopa County is authorized to establish additional rules and procedures for the pilot program to implement electronic filing and management of court documents and other appropriate automated services designed to reduce costs and accelerate case processing times.

IT IS FURTHER ORDERED that the Committee to Study Complex Litigation established on December 20, 2001 by Administrative Order No. 2001-122 is disbanded effective upon entry date of this order.

IT IS FURTHER ORDERED that the Complex Civil Litigation Court Evaluation Committee is established as follows:

1. **PURPOSE:** With the assistance of the Presiding Judge of the Superior Court in Maricopa County, the Evaluation Committee shall:
 - monitor the pilot program,
 - evaluate and report on changes in civil case processing in Maricopa Superior Court attributable to the pilot program,
 - draft recommendations for modifications to applicable procedural rules, staffing and funding parameters as needed, and
 - draft recommendations for implementing the program in other counties and/or on a statewide basis, as the committee deems appropriate.
2. **ORGANIZATION:** The Chief Justice shall appoint the chairperson of the Committee and other members as needed to accomplish the Committee's purpose.
3. **MEMBERSHIP:** The membership of the Committee is attached to this order as Appendix B. The Chief Justice may appoint additional members as may be deemed necessary.
4. **MEETINGS:** Meetings shall be scheduled at the discretion of the Committee Chair. All meetings shall be noticed and open to the public.
5. **REPORTS:** The presiding judge of the Superior Court in Maricopa County and the Committee shall file a joint report on this pilot project to the Supreme Court at its conclusion.

DATED this 22 nd day of November 2002.

CHARLES E. JONES
CHIEF JUSTICE

[revised] Rule 8(h). Classification of Civil Actions

(1) Counsel for plaintiff or petition shall describe in the caption of each complaint or petition filed with the court the nature of the civil action or proceeding, as follows: Tort Motor Vehicle, Tort Non-Motor Vehicle, Contract, Domestic Relations, Eminent Domain or Non-classified Civil, Writ of Garnishment.

(2) Writs of garnishment shall include under the caption whichever of the following notations is applicable:

- (1)A. Federal Exemption.
- (2)B. Enforce order of support.
- (3)C. Enforce order of Bankruptcy Court
- (4)D. Enforce collection of taxes.
- (5)E. Non-earnings.

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

[new] Rule 8(i) Complex Civil Litigation Program Designation

(1) **Definition.** In those counties in which a complex civil litigation program has been established, a “complex case” is a civil action that requires continuous judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote an effective decision making process by the court, the parties, and counsel.

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

- (A) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- (B) Management of a large number of witnesses or a substantial amount of documentary evidence;
- (C) Management of a large number of separately represented parties;
- (D) Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court;
- (E) Substantial post judgment judicial supervision;
- (F) The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law
- (G) Inherently complex legal issues;
- (H) Factors justifying the expeditious resolution of an otherwise complex dispute;
- (I) Any other factor which in the interests of justice warrants a complex designation or as otherwise required to serve the interests of justice.

(3) Procedure for designating a complex case. At the time of filing the initial complaint, a plaintiff may designate an action as a complex case by filing a motion and separate certification of complex case identifying the case attributes outlined in (2) justifying the designation. The certification shall be in a form approved by the Supreme Court and must be served on the defendant along with the motion at the time of service of the complaint. Plaintiff's certification, and any controverting certificate of a party represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign the party's certification of complexity or controverting certification.

The signature of an attorney or party constitutes a certification by the signer that the signer has considered the applicability of Rule 8(i) of the Arizona Rules of Civil Procedure; that the signer has read the certificate of complexity or controverting certificate; that to the best of the signer's knowledge, information and belief, formed after reasonable inquiry, it is warranted; and that the allegation as to complexity is not set forth for any improper purpose. The provisions of Rule 11(a) of these Rules apply to every certification of complexity filed under this Rule.

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

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

(6) Action by court. The presiding judge of the court or designee shall decide, with or without a hearing, whether the action is a complex case within 30 days after the filing of the response to the designating party's motion. The court may decide on its own motion, or on a noticed motion by any party, that a civil action is a complex case or that an action previously declared to be a complex case is not a complex case. This ruling may be made at any time during the pendency of an action, for good cause shown. If the court finds that an attorney or party has made an allegation as to complexity which was not made in good faith, the court, upon motion or upon its own initiative, shall make such orders with regard to such conduct as are just, including, among others, any action authorized under Rule 11(a) of these Rules.

(7) Not Appealable. Parties shall not have the right to appeal the court's decision regarding the designation of an action as complex or noncomplex.

COMMENT

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

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

Rule 8(i) Program Designation Certification Form

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

_____)) Case No. _____
Plaintiff))
vs.)) 9 Certification of Complexity
_____)) 9 Joint Certification of Complexity
Defendant)) 9 Controvening Certification
_____))
_____))

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

- 9 Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve.
- 9 Management of a large number of witnesses or a substantial amount of documentary evidence.
- 9 Management of a large number of separately represented parties;
- 9 Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court: _____
- 9 Substantial post judgment judicial supervision
- 9 The case would benefit from permanent assignment to a judge who would have acquired a substantial body of knowledge in a specific area of the law.
- 9 Inherently complex legal issues.
- 9 Factors justifying the expeditious resolution of an otherwise complex dispute
- 9 The following other factor(s) warranting designation as a complex case, in the interest of justice:

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

Dated this _____ day of _____, 200_.

(Attorney for) (Plaintiff) (Defendant)

(Attorney for) (Plaintiff) (Defendant)

[This Certification must be accompanied by a motion]

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

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

- (1) Status of parties and pleadings
- (2) Determining whether severance, consolidation, or coordination with other actions is desirable
- (3) Scheduling motions to dismiss or other preliminary motions
- (4) Scheduling class certification motions, if applicable
- (5) Scheduling discovery proceedings, setting limits on discovery and determining whether to appoint a discovery master
- (6) Issuing protective orders
- (7) Appointing liaison counsel and admission of non-resident counsel
- (8) Scheduling settlement conferences
- (9) Notwithstanding Rule 26.1, the establishment and timing of disclosure requirements
- (10) Scheduling expert disclosures and whether sequencing of expert disclosures is warranted
- (11) Scheduling dispositive motions
- (12) Adopting a uniform numbering system for documents and establishing a document depository
- (13) Determining whether electronic service of discovery materials and pleadings is warranted
- (14) Organizing a master list of contact information for counsel
- (15) Determining whether expedited trial proceedings are desired or appropriate

- (16) Scheduling further conferences as necessary
- (17) Use of technology, videoconferencing and/or teleconferencing
- (18) Determination of whether the issues can be resolved by summary judgment, summary trial, trial to the court, jury trial, or some combination thereof
- (19) Such other matters as the court or the parties deem appropriate to manage or expedite the case

(b) Meeting of Parties Before Conference. Before the date set by the court for the initial case management conference, all parties who have appeared in the action, or their attorneys, shall meet and confer concerning the matters to be raised at the conference, shall attempt in good faith to reach agreement on as many case management issues as possible, and shall submit a joint report to the court no later than seven (7) days before the initial case management conference. A party who fails to participate in good faith shall be subject to sanctions.

(c) Purpose of Conference. The purpose of the initial case management conference is to identify the essential issues in the litigation and to avoid unnecessary, burdensome or duplicative discovery and other pretrial procedures in the course of preparing for trial of those issues.

(d) Establishing Time Limits. Time limits should be regularly used to expedite major phases of complex civil cases. Time limits should be established early, tailored to the circumstances of each case, firmly and fairly maintained, and accompanied by other methods of sound judicial management. The date of the final pre-trial conference shall be set by the court as early as possible with a trial date to follow within 60 days of the final pre-trial conference.

(e) Commencement of Discovery. Absent an order of the court, or by stipulation of the parties filed with the court, no party may initiate discovery or disclosure in a complex civil case until the court has issued a Case Management Order following the initial case management conference.

COMMENT

Justification for this rule: Rule 16.3 is intended to supplement the Arizona Rules of Civil Procedure in a manner that will provide judges and litigants with appropriate procedural mechanisms for the fair, efficient and expeditious management of discovery, disclosures, motions, service of documents and pleadings, communications between and among counsel and the court, trial, and other aspects of complex civil litigation. Other than as specifically set forth, cases assigned to the complex litigation program are not exempt from any normally applicable rule of procedure, except to the extent the trial

judge may order otherwise. Proposed Rule 16.3 should be available to any trial judge who wishes to follow it, in whole or in part, in managing a civil dispute, even in cases that are not formally assigned to a complex litigation program.

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

[new] Rule 39.1. Trial of Cases Assigned to the Complex Civil Litigation Program

The court should employ trial procedures as are deemed necessary or appropriate to facilitate a just, speedy and efficient resolution of the case, including, but not limited to, time limits and allocation of trial time, sequencing of evidence and arguments, bifurcation of issues or claims, advance scheduling of witnesses and other evidence, pre-trial admission of exhibits or other evidence, electronic presentation of evidence, jury selection and juror participation issues and other means of managing or expediting the trial of a complex case.

COMMENT

Justification for this rule: See 16.3.

Complex Civil Litigation Court Evaluation Committee

Membership List

Hon. Robert J. Corcoran
Arizona Supreme Court Justice, Retired

Rep. Henry Camarot, Esq.
Arizona House of Representatives

Hon. Margaret H. Downie
Superior Court Judge, Maricopa County

Andrew M. Federhar, Esq.
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Tracy Nuckolls, Esq., Vice President and General Counsel
TMC Healthcare

Marcus Reinkensmeyer, Chief Deputy Court Administrator
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