

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
IN THE MATTER OF EXTENDING THE)	Administrative Order
PILOT COMMERCIAL COURT AND)	No. 2018 - <u>64</u>
EXPERIMENTAL RULE 8.1,)	(Affecting Administrative Orders
ARIZONA RULES OF CIVIL)	Nos. 2015-15 and 2017-17)
PROCEDURE)	
)	

On February 18, 2015, this Court entered Administrative Order No. 2015-15, authorizing a three-year commercial court pilot program in the Superior Court in Maricopa County ending June 30, 2018. This Order adopted a new, experimental Arizona Rule of Civil Procedure Rule 8.1, and Rule 84, Forms 14(a) and 14(b), for application to cases in the pilot commercial court. This Court further ordered that by December 1 of each calendar year beginning in 2016, the Superior Court in Maricopa County and the Administrative Office of the Courts submit a progress report to the Arizona Judicial Council.

By entry of Administrative Order No. 2017-17 on February 8, 2017, this Court adopted amendments to experimental Rule 8.1 and Forms 14(a) and 14(b). By entry of a rules order No. R-17-0010, this Court adopted amendments to Rule 8.1(e) through (g) and Rule 84, Forms 14(a) and 14(b), that had been proposed by the Court's Committee on Civil Justice Reform.

On March 7, 2018, after the pilot program had been in operation for more than two-and-a-half years, this Court entered Administrative Order No. 2018-17, which established the Commercial Court Review Committee ("the Committee"). This Order directed that Committee to make recommendations on whether the experimental rules of procedure should be made permanent and, if so, any recommendations it believed would improve the rules or commercial court program in Maricopa County or statewide. That Committee submitted its recommendations to this Court and the Arizona Judicial Council in a report dated June 18, 2018. The Court having considered that report, and following discussion by the Arizona Judicial Council,

IT IS ORDERED as follows:

1. Experimental Rule 8.1 as shown in Attachment A and the pilot commercial court in the Superior Court in Maricopa County continue to be effective on and after July 1, 2018, pending the Court's consideration of the Committee's rule petition at the December 2018 rules agenda.
2. The Committee's June 18, 2018 report to this Court satisfies the requirement in Administrative Order No. 2015-15 for a 2018 progress report.

Dated this 26th day of June, 2018.

SCOTT BALES
Chief Justice

Attachment A

Arizona Rules of Civil Procedure

Experimental Rule 8.1. Assignment and Management of Commercial Cases

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

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

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

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

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

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

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

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

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

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

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

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

(5) Is a shareholder or member derivative action;

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

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

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

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

(e) Assignment of Cases to Commercial Courts.

- (1) *Plaintiff's Duties.*** A plaintiff seeking assignment of an eligible case to the commercial court must (A) include in the initial complaint's caption the words "eligible for commercial court," and (B) complete a civil cover sheet that indicates the action is an eligible commercial case.
- (2) *Assignment to Commercial Court.*** The court administrator will review a complaint and civil cover sheet filed in accordance with Rule 8.1(e)(1) and will assign an eligible case to a commercial court judge.
- (3) *Motion to Transfer out of Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge's own initiative, may transfer the case out of commercial court if the judge determines the matter is not a "commercial case" as defined in this Rule. Any party filing a motion under this Rule must do so no later than 20 days after that party's appearance in the case.
- (4) *Motion to Transfer to Commercial Court.*** On motion of a party filed within 20 days after that party's appearance in the case, or the court's own initiative within 20 days after the filing of the first responsive pleading or Rule 12 motion, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines the matter is a "commercial case" as defined in this Rule.
- (5) *Complex Cases.*** Assignment of a case to the commercial court does not impair the right of a party to request reassignment of the case to the Maricopa County complex civil litigation program under Maricopa County Local Rule 3.12.
- (f) *Case Management.*** Notwithstanding any contrary language in Rule 26.2(d)(1), from the filing of the complaint unless and until the commercial court assigns the case to a different tier after the Rule 16(d) scheduling conference, cases in the commercial court are deemed to be assigned to Tier 3. Rules 16(a) through (j) apply to cases in the commercial court, except:

 - (1) *Scheduling Conference.*** Scheduling conferences under Rule 16(d) are mandatory.
 - (2) *Early Meeting.*** Before filing a Rule 16(c) Joint Report, and in addition to conferring about the subjects in Rule 16(b)(1), the parties must confer, as set forth in the commercial court's checklist governing the production of electronically stored information, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of such information, including:

 - (A)** requirements and limits on disclosure and production of electronically stored information;
 - (B)** the form or formats in which the electronically stored information will be disclosed or produced; and
 - (C)** if appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing electronically stored information.
 - (3) *Joint Report and Proposed Scheduling Order.*** The parties' Rule 16(c) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and (b), including:

- (A) whether the parties expect electronically stored information to be an issue in the case and, if so, whether they have reached an agreement regarding the discovery of electronically stored information, have filed a stipulated order, and have or anticipate disputes concerning electronically stored information;
 - (B) whether the parties have reached an agreement regarding the inadvertent production of privileged material pursuant to Arizona Rule of Evidence 502, and, if so, whether they have filed a stipulated order;
 - (C) whether any issues have arisen or are expected to arise regarding claims of privilege or protection of trial-preparation materials under Rules 26(b)(6) and 26.1(h);
 - (D) whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order; and
 - (E) whether the commercial court should assign the case to a tier other than Tier 3 after the Rule 16(d) scheduling conference and, if so, why.-
- (4) ***Motions to Dismiss.*** Any motion to dismiss pursuant to Rule 12(b)(6) must attach a good faith consultation certificate complying with Rule 7.1(h) certifying that the parties have been unable to agree that the pleading is curable by a permissible amendment.