

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

December 7, 2006

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

Joint Report of the
Complex Civil Litigation
Court Evaluation
Committee and the
Superior Court in
Maricopa County

FROM:

Andy Federhar, Chair, Complex Civil Litigation Court Evaluation Committee
Jennifer Greene, Committee Staff

DISCUSSION:

On October 17, 2002, the Arizona Judicial Council unanimously approved the report and recommendations of the Committee to Study Complex Litigation calling for the establishment of a complex civil litigation pilot program in Maricopa County and a monitoring committee. The program and monitoring committee were formally established by Supreme Court Administrative Order No. 2002-17. The order reads in part:

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 Supreme Court directed the Evaluation Committee and the Presiding Judge of the Superior Court in Maricopa County to submit a joint report (copy attached) in December 2006, describing the program, its impact on civil case processing, and any recommendations for modifications to the program's rules and funding parameters and for implementing the program in other counties and/or on a statewide basis, as deemed appropriate.

RECOMMENDED COUNCIL ACTION:

N/A.

COMPLEX CIVIL LITIGATION PILOT PROGRAM
IN MARICOPA COUNTY

JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY
AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

DECEMBER 2006



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**JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE**

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**JOINT REPORT TO THE ARIZONA SUPREME COURT
SUBMITTED BY THE
SUPERIOR COURT IN MARICOPA COUNTY AND THE
COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE
DECEMBER 2006**

A. INTRODUCTION

The Supreme Court established the Complex Civil Litigation Pilot Program at the Superior Court in Maricopa County in January 2003 on an experimental basis pursuant to Supreme Court Administrative Order No. 2002-107.¹ The Order also appointed members to the Complex Civil Litigation Court Evaluation Committee to monitor the program and directed the committee to file a joint report with the Presiding Judge in Maricopa County at the conclusion of the program. This report responds to that directive.

The Complex Civil Litigation Court in Maricopa County is one of many similar programs around the country. Within the last five years, the number of business or complex civil specialty courts has grown from six states to no less than sixteen states. Interest in implementing these types of courts continues to grow.² In keeping with this trend, the American Bar Association's Conference of State Trial Judges initiated a Business and Commercial Court Judges Committee in 2003. Last year several business and complex civil court judges established the American College of Business Court Judges with some initial funding provided by the Brookings Institute. These organizations facilitate the exchange of ideas and best practices for trying complex cases touching on commercial and corporate governance issues.

Although business and complex civil court programs vary from state-to-state in many respects, they generally fall into either one of three distinct categories: pure business courts, where the parties must be commercial entities but the dispute need not be complex; complex business courts, where parties must be commercial entities and the case must be complex; or complex civil courts, like the California and Maricopa Superior Court programs, where the parties need not be businesses, but the case must be complex.

¹ The program was extended by two years in Administrative Order No. 2004-27 (April 28, 2004).

² The list of states includes Delaware, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Nevada, North Carolina, New Jersey, New York, Pennsylvania, and Rhode Island. Other states known to be considering such a program include Michigan, Ohio, and Oklahoma. Colorado considered establishing a commercial division in Denver and decided against it for the time being. Wisconsin offered a business court in Milwaukee for a few years, but the program has been shelved for lack of interest. See, Business and Technology Courts, A Survey of Existing State Business and Technology Courts (March 2005), Univ. Maryland School of Law; Civil Action (Winter 2004) National Center for State Courts, Williamsburg, VA; M. Bach & L. Applebaum, A History of the Creation and Jurisdiction of Business Courts in the Last Decade, *The Business Lawyer* (November 2004); and information provided by Lee Applebaum, Vice-Chair, Subcommittee on Business Courts, ABA Business Law Section.

B. PROGRAM COMPONENTS

1. Rules

The Complex Civil Litigation Pilot Program consists of several new rules of civil procedure for use by the parties in designating complex cases and designed to emphasize active pre-trial management by the judge. The rules applicable to the program cases appear in Appendix A.

2. Three-judge panel

The Superior Court in Maricopa County designated three judges assigned to the civil bench to preside over program cases, Hons. Kenneth Fields, Pendleton Gaines and Rebecca Albrecht. Judge Albrecht retired in 2005 and was replaced by Judge Janet Barton. In-coming program cases have been assigned to one of the three judges on a rotating basis. In addition to handling complex cases, each of these judges also presided over a full complement of non-complex civil matters. The program judges have attended a variety of specialized trainings out-of-state that focused on complex case management. They have also had opportunities to learn from other complex and commercial case judges from jurisdictions outside Arizona. They have shared what they learned with other judges on the civil bench in Phoenix.

The Presiding Civil Department Judge acted as the program's gatekeeper, ruling on all motions for complex designation filed by parties seeking to have their cases formally assigned to the Complex Litigation panel.

3. Electronic filing/e-courtrooms

After the first year of the program, the superior court initiated its first electronic filing program through LexisNexis. This program was implemented exclusively for cases in the pilot program. Once it was available, all participating parties were required to file their pleadings electronically. Program participants have electronically filed 144,600 pages of documents with the court.³ LexisNexis has electronically served a staggering 3,262,159 pages of documents on program participants in just three years.⁴ The user survey revealed that being able to e-file was either very important or somewhat important to 83 percent of responding attorneys. The court is in the process of implementing e-filing in all divisions court-wide, so the complex litigation program will soon lose this advantage over the regular civil divisions.

In addition to learning how to work with e-filing, each program judge presided over an e-courtroom equipped with the most up-to-date electronic technology for evidence

³ Data provided by LexisNexis as of October 19, 2006.

⁴ According to LexisNexis, if these pages were stacked up, the stack would roughly equal the height of a 103-story building.

presentation, electronic recording and computer-enhanced judicial management of the courtroom.

4. Staff attorney position

The court created a special position for an experienced staff attorney to assist program judges with research and drafting. The attorney also serves as a liaison between the judges to ensure consistent rulings on similar issues, an important goal of the program. Generally speaking, judges at Maricopa Superior Court do not have access to a law clerk or must rely on law-trained bailiffs for assistance with research and drafting.

5. Case management system enhancements

The IT staff at Maricopa Superior Court customized a new module for the court-wide case management system (iCIS) to assist in tracking pilot program cases. Judicial assistants for each of the program judges input pre-defined data in this application, including type of complaint, whether the case was a class action, whether a master was appointed, number of trial days, number of motions filed, date and type of disposition, if any, and a brief explanation of the gatekeeper's decision to admit or deny admission for each case.

6. Filing fee

Six months into the program, the Maricopa County Board of Supervisors approved a special \$500 filing fee, which parties were required to pay upon admission to the program. The user survey disclosed that nearly 80 percent of responding lawyers agreed the \$500 fee was not a disincentive to participation in the program. The fee was waived or reduced in some cases. Revenue generated by this fee totaled \$258,600 over three years, or approximately \$86,000 a year. This is less revenue than originally anticipated.

To date, expenditures, totaling \$43,128,⁵ have been focused on the staff attorney position, which was only recently filled (\$36,200), equipment and supplies (\$4,400) and limited funding of education and training (\$2,500) for the panel judges. This is less than the level of additional training for the judges anticipated when formation of the Complex Court was first recommended. The superior court and clerk of court's office have picked up all other costs associated with the program. Projections indicate that absent additional funding sources or increased utilization of the program, the program will not bring in enough revenue to support the staff attorney position beyond 2009.

⁵ Data current as of October 19, 2006, provided by Maricopa County Superior Court Administration.

C. PROGRAM CASES

Complex case designation was sought in 301 cases, several of which were consolidated matters. The court admitted 91 cases, a number that actually represents approximately 242 separate actions. The court denied motions for designation in 59 cases. In four cases, the parties either resolved their disputes or moved to another jurisdiction while the motion to designate was pending. Common characteristics of cases denied admission to the program have been lack of complexity and because they were too old to benefit from early and active judicial management.

A total of 5,246 individual plaintiffs and 1,352 defendants were represented in the program cases. More than 560 attorneys entered appearances in these actions. Litigants filed nearly 17,000 motions, of which 2,622 were substantive in nature. The program judges presided over ten trials. Approximately 70 percent of the cases in the program were newly-filed cases. Approximately 30 percent of the cases were resolved within the four-year pilot phase. Fifteen cases were dismissed; judgment was entered in six other cases.

All but one case involved businesses on one or both sides of the dispute. The one non-business case was a divorce action requiring division of a multi-million dollar estate with interests in California and Arizona. As reported by the court, approximately 39 percent of the complex cases were classified as “tort non-motor vehicle.” Contract disputes comprised another 30 percent of the caseload. The other 30 percent fell into an “other civil” category. The attorneys who responded to the committee’s user survey provided more specific information about case types. Their descriptions indicate a majority of the claims were based on construction defect or contract. Additional case types reported were product liability, anti-trust, insurance coverage, securities, shareholder derivative suits, toxic tort, securities, and medical and legal malpractice.

D. USER SURVEY RESULTS

The committee did not undertake a comparative analysis of case processing efficiencies between cases in the program and those not in the program, since no two complex cases are sufficiently alike to permit meaningful data. Additionally, with fewer than 100 cases in the program so far, most of which have not yet been completed, the sample size is too small to render valid empirical data. Consequently, the committee surveyed participating attorneys for an indication of whether the program is meeting its stated goals.

In September 2006, the AOC conducted an online survey of the 560+ lawyers who had entered appearances in program cases. Responses were received from 83 attorneys. The survey results are summarized in Appendix B.

By a large majority, attorneys who responded to the survey were veteran lawyers with experience in handling complex cases. Three out of four responders reported they have been in practice for ten years or more. Seventy percent described themselves as defense lawyers. More than half work in firms of more than 20 lawyers and have handled five or more complex cases in the past ten years.

Ninety-six percent of those responding favored continuation of the program. Fifty-five percent favored expanding the volume of cases in the program by admitting more case types, but 80 percent favored keeping the program without making any changes. Program judges were uniformly perceived to be well-equipped to handle complex civil matters and were somewhat more able to devote attention to these cases compared with other non-program judges. The program judges also received high marks in consistency of rulings, predictability, communication with counsel, familiarity with complex case law, experience, active case management, and client and attorney satisfaction.

| |
|--|
| E. RECOMMENDATIONS REGARDING PROGRAM MODIFICATIONS |
|--|

Administrative Order No. 2002-107 directs the committee to provide the court with recommendations for modifications “to procedural rules, staffing, and funding parameters as needed” and “for implementing the program in other counties and/or on a statewide basis as the committee deems appropriate.”

Recommendation No. 1. Continue the program

The Complex Civil Litigation Pilot Program should be converted to a permanent component of the Civil Department of the Superior Court in Maricopa County. The program has evolved more slowly than originally anticipated, and its strengths have yet to be fully appreciated. Nevertheless, the program has already achieved unqualified success in eliminating problems related to judicial rotation and in providing the community with a cadre of specially-trained experienced judges able to competently and efficiently manage complex disputes working with a full complement of modern litigation support tools in an environment designed to provide consistency and predictability.

Recommendation No. 2. Explore funding options

Absent a substantial influx in cases, additional funding for this program will be needed within the next few years to support the program’s staffing and training needs. The \$500 filing fee needs to be supplemented through legislative appropriation or some other source.

Recommendation No.3. Find ways to increase case volume preferably without changing the rules for admission

A large majority of program participants have expressed a desire to see the program continued without modifying the rules. However, funding constraints threaten the program's continued viability and efficacy unless more cases are designated complex. At the same time, voluntary participation is a desirable feature of the Arizona program that distinguishes it from most other similar programs around the country. Therefore, the committee prefers to approach the problem of case volume in a way that would maintain the voluntary nature of participation but assist the court in identifying the most deserving cases, not only to increase funding for the program, but also to remove them from the regular civil calendar. Internal case processing in the clerk's office should be modified to bring newly-filed presumptively complex cases to the attention of the program gatekeeper automatically. The civil cover sheet may be used for this purpose. The gatekeeper could then notify presumptively-eligible petitioners to consider moving for complex case designation under A.R.Civ.P. 8(i). With experience, the court can identify the appropriate categories of cases to be handled in this fashion. For example, experience to date has demonstrated that construction-defect claims involving more than 20 homes typically require extensive judicial involvement in coordinating discovery and therefore should be considered presumptively complex and automatically screened by the program gatekeeper as recommended here.

Recommendation No. 4. Extend the term of the evaluation committee

In the view of everyone involved, the committee's periodic meetings with program judges and court administrators have been essential to steering the program through the pilot phase. Committee members have actively assisted in promoting the program, including arranging and conducting a February 2005 continuing legal education session that attracted more than 70 participants. On-going collaboration between practitioners and the superior court will play a critical role in ensuring accountability, refining the program's parameters, and possibly even identifying new funding options.

Recommendation No. 5. Defer statewide expansion

The original committee envisioned a complex division in both Maricopa and Pima County Superior Court locations. Pima County declined to participate. Given the volume of program cases to date and the limited funding options, the establishment of complex civil divisions in other counties does not appear practical or necessary at this point in time. The presiding civil department judge entertained one motion for complex case designation filed by a party in an out-of-county case from Coconino County. Current law permits a change of venue to another county in civil cases by either the consent of the parties or by court order based on a determination of good and sufficient cause. A.R.S. §12-401 et. seq.

F. CONCLUSION

Over the past four years, the committee has had the pleasure of watching this program grow from a concept into a reality of recognizable value to the legal community. Many people deserve acknowledgement for this accomplishment, not least of which are the judges, clerks, administrators, and judicial staff at the Superior Court in Maricopa County. They have laid a solid foundation on which to continue to build. The committee urges the court to continue the program with the eventual goal of making it a permanent part of the judicial landscape in Arizona.

Appendix A

Rules of Civil Procedure Applicable to Cases in the Complex Civil Litigation Pilot Project in the Superior Court in Maricopa County

[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 postjudgment 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.

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

[New] Rule 8(i) Program Designation Certification Form
IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

| | | |
|-----------|---|--|
| |) | |
| Plaintiff |) | Case No. _____ |
| |) | |
| vs. |) | <input type="checkbox"/> Certification of Complexity |
| |) | <input type="checkbox"/> Joint Certification of Complexity |
| |) | <input type="checkbox"/> Contravening Certification |
| |) | |
| Defendant |) | |
| |) | |

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

- Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve
- Management of a large number of witnesses or a substantial amount of documentary evidence
- Management of a large number of separately represented parties
- Coordination with the following related actions pending in one or more courts in other counties, states or countries, or in a federal court:

- Substantial postjudgment judicial supervision
- 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
- Inherently complex legal issues
- Factors justifying the expeditious resolution of an otherwise complex dispute
- 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.

Appendix B
Complex Civil Litigation User Survey
Results Summary
October 2006

A. Rate your experience in the Complex Civil Litigation pilot program

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| Based upon my experience in the CCL program, overall, I am more satisfied with the case management process vs. the way cases are managed by conventional civil judges. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 37 | 28 | 14 | 1 | 3 |
| Response Percent | 45% | 34% | 17% | 1% | 4% |

| | | | | | |
|---|----------------|----------------|---------|-------------------|-------------------|
| The level of judicial management and involvement in my CCL program cases(s) was greater than in non-pilot civil cases in the Superior Court in Maricopa County. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 30 | 30 | 19 | 2 | 2 |
| Response Percent | 36% | 36% | 23% | 2% | 2% |

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| The assigned judge of my CCL cases(s) was more accessible compared to my cases that were not in the pilot program. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 24 | 26 | 28 | 2 | 3 |
| Response Percent | 29% | 31% | 34% | 2% | 4% |

| | | | | | |
|---|----------------|----------------|---------|-------------------|-------------------|
| The judge(s) in my CCL case (s) were more experienced in dealing with complex issues than judges who are not assigned to the CCL pilot program. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 39 | 29 | 8 | 3 | 3 |
| Response Percent | 48% | 35% | 10% | 4% | 4% |

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| CCL judges, overall, have more familiarity with complex case law to decide such cases fairly and accurately than judges who are not in the CCL pilot program | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 28 | 37 | 9 | 5 | 3 |
| Response Percent | 34% | 45% | 11% | 6% | 4% |

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| Taken as a whole, CCL judges communicate more with trial counsel than judges who are not in the pilot program. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 37 | 28 | 14 | 1 | 3 |
| Response Percent | 45% | 34% | 17% | 1% | 4% |

Given that CCL judges have long-term judicial assignments (not rotated), trial counsel and their clients are more able to accurately predict the course of the case in cases assigned to the CCL program than in cases not assigned to the CCL program.

| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
|------------------|----------------|----------------|---------|-------------------|-------------------|
| Total Responses | 45 | 24 | 8 | 5 | 1 |
| Response Percent | 54% | 29% | 10% | 6% | 1% |

Clients generally are happy with the operation of the CCL program.

| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
|------------------|----------------|----------------|---------|-------------------|-------------------|
| Total Responses | 26 | 26 | 25 | 3 | 3 |
| Response Percent | 31% | 31% | 30% | 4% | 4% |

A. Rate your experience with non-CCL cases.

I am satisfied with having more than one judge become involved in pretrial management.

| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
|------------------|----------------|----------------|---------|-------------------|-------------------|
| Total Responses | 1 | 9 | 21 | 30 | 20 |
| Response Percent | 1% | 11% | 26% | 37% | 25% |

| Rulings are just as consistent. | | | | | |
|---------------------------------|----------------|----------------|---------|-------------------|-------------------|
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 2 | 14 | 23 | 35 | 6 |
| Response Percent | 2% | 18% | 29% | 44% | 8% |

| Non-complex judges devote the proper amount of time and resources to adequately manage a case. | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 3 | 29 | 30 | 13 | 5 |
| Response Percent | 4% | 36% | 38% | 16% | 6% |

| Most non-complex judges have sufficient knowledge about complex commercial law to decide such cases fairly and accurately. | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 4 | 18 | 28 | 28 | 2 |
| Response Percent | 5% | 22% | 35% | 35% | 2% |

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| Most non-complex judges have sufficient experience in complex litigation to manage their caseloads in an efficient and effective manner. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 4 | 14 | 28 | 31 | 4 |
| Response Percent | 5% | 17% | 35% | 38% | 5% |

| | | | | | |
|--|----------------|----------------|---------|-------------------|-------------------|
| Direct communication between trial counsel and the non-complex judges is adequate. | | | | | |
| | Strongly Agree | Somewhat Agree | Neutral | Somewhat Disagree | Strongly Disagree |
| Total Responses | 2 | 27 | 32 | 15 | 3 |
| Response Percent | 3% | 34% | 41% | 19% | 4% |

B. Evaluate the Complex Civil Litigation program's future

| | | |
|---|-------|-------|
| Keep the program as is/make no changes to the existing pilot program. | | |
| | Yes | No |
| Total Responses | 65 | 17 |
| Response Percent | 79.3% | 20.7% |

| Reform the existing program but do not eliminate it completely. | | |
|---|-------|-------|
| | Yes | No |
| Total Responses | 22 | 43 |
| Response Percent | 33.3% | 65.2% |

| Eliminate the program completely. | | |
|-----------------------------------|------|-------|
| | Yes | No |
| Total Responses | 3 | 73 |
| Response Percent | 3.9% | 96.1% |

| Expand the volume of case types that are admitted to the program. | | |
|---|-----|-----|
| | Yes | No |
| Total Responses | 44 | 36 |
| Response Percent | 55% | 45% |

| | | |
|--|-------|-------|
| Support legislation that would provide for a statewide Complex Civil Litigation program. | | |
| | Yes | No |
| Total Responses | 67 | 15 |
| Response Percent | 81.7% | 18.3% |

| | | |
|--|-------|------|
| The criteria for designating whether a case is “complex” (and thereby allowing or disallowing entry into the CCL pilot program per A.R.C.iv.P.8 (i)) are reasonable. | | |
| | Yes | No |
| Total Responses | 74 | 6 |
| Response Percent | 92.5% | 7.5% |

C. A few questions about your civil litigation background and preferences

| | | | |
|--|----------------|--------------------|---------------|
| How important is it to you to e-file your pilot program case(s)? | | | |
| | Very important | Somewhat important | Not important |
| Total Responses | 41 | 27 | 14 |
| Response Percent | 50% | 33% | 17% |

Please indicate the types of case(s) that you have handled in the Complex Litigation pilot.

| | Response Total | Response Percent |
|--------------------------------|----------------|------------------|
| Construction Defect | 39 | 48% |
| Contracts | 30 | 37% |
| Malpractice (legal or medical) | 3 | 4% |
| Product liability | 14 | 17% |
| Tort non-motor vehicle | 16 | 20% |
| Toxic tort | 7 | 9% |
| Antitrust | 11 | 14% |
| Insurance | 3 | 4% |
| Class action | 3 | 4% |
| Business Tort | 2 | 2% |
| Commercial Fraud | 2 | 2% |
| Securities litigation | 4 | 5% |

Do you consider the \$500 filing fee to be a disincentive to participating in the Complex Civil Litigation pilot program?

| | Yes | No |
|------------------|-----|-----|
| Total Responses | 18 | 64 |
| Response Percent | 22% | 78% |

| How many complex civil cases (pilot and non-pilot) have you handled in the Superior Court in Maricopa County or elsewhere in the past 10 years? | | | | |
|---|--------|---------|----------|------|
| | 1 to 4 | 5 to 10 | 11 to 20 | 21 + |
| Total Responses | 36 | 24 | 15 | 6 |
| Response Percent | 44% | 30% | 19% | 7% |

| How many lawyers are in your firm? | | | | |
|------------------------------------|---------|----------|----------|------|
| | 1 to 10 | 11 to 20 | 21 to 50 | 51 + |
| Total Responses | 20 | 12 | 19 | 29 |
| Response Percent | 25% | 15% | 24% | 36% |

| Do you consider yourself to be primarily a defendant's or a plaintiff's attorney? | | |
|---|----------------------|----------------------|
| | Defendant's Attorney | Plaintiff's Attorney |
| Total Responses | 54 | 23 |
| Response Percent | 70.1% | 29.9% |

| How many years have you been an attorney? | | | |
|---|---------|----------|-----|
| | 1 to 10 | 11 to 20 | 21+ |
| Total Responses | 22 | 23 | 36 |
| Response Percent | 27% | 28% | 44% |