

# COMPLEX CIVIL LITIGATION COURT EVALUATION COMMITTEE

## MINUTES

May 19, 2008

### Members Present:

William Maledon, Acting Chair  
Hon. Mark Aceto  
Mark Larson

### Members not present:

Marcus Reinkensmeyer  
Andrew Federhar

### Committee Staff:

Theresa Barrett  
Mark Meltzer

### Guests:

Hon. Janet Barton  
Hon. John Buttrick  
Hon. Douglas Rayes  
Hon. Peter Swann  
Mark Jenson  
Mitch Michkowski  
David Jacobs  
Gloria Braskete

## **1. Call to Order; Approval of the Minutes**

The meeting was called to order at 12:15 PM by William Maledon, acting as chair on behalf of Andrew Federhar, who was out-of-state.

The February 21, 2008, meeting minutes were approved without modification.

## **2. Program status report and recommended refinements to the program.**

The chair introduced the topic of the intake and designation of cases as complex.

Judge Aceto had taken the initiative on screening a sample of 75 cases that had not sought complex designation at the time of filing. Judge Aceto found that 70 of those cases were in fact not complex. Three of those cases which were potentially complex were “taken out of the running” shortly after filing (one had gone into an arbitration track; another had been removed to federal court; and the third was interrupted by a notice of bankruptcy filing.) Two of the 75 cases Judge Aceto reviewed, however, he would have considered for complex designation.

The issue was then presented: if the Court believes that a standard track case warrants complex designation, should the Court on its own motion, i.e., sua sponte, designate the case as complex, and admit it into the complex case management program without providing counsel an opportunity to object?

One view was that sua sponte designation should not occur at all. The belief was that plaintiffs’ counsel had already done an analysis of complexity prior to filing; that if plaintiffs’ counsel had not done such an analysis, that defense counsel certainly would have done one; and that the

attorneys' knowledge and insights on their case would be the most accurate gauge of the complexity of the case, and should not be supplanted by the Court's analysis.

Concern was also expressed that sua sponte designation might increase court costs or work a hardship on parties. One of the two cases discussed by Judge Aceto as warranting complex designation involved 50 separate plaintiffs in a homeowners association, and designating that case as complex could impose on them an additional fee of \$25,000 (\$500 times 50). Judge Barton suggested that the Court had discretion in such a case to appropriately modify or reduce the complex case management fee of \$500 per party.

Judge Barton pointed out that the Arizona complex case model, unlike that which exists in several other states, is purely voluntary. The chair also noted that early on in the complex committee work, California Chief Justice George addressed the committee and explained how California opens the gate wider in order to admit a larger volume of cases. The intent in Arizona was not to funnel a high number of cases into the complex litigation courts, but to identify those exceptional cases that merited intensive judicial case management.

The committee discussed how cases that are not designated complex at the time of filing in Maricopa County, but which are potentially complex cases, undergo three phases of screening. First, court administration, utilizing the civil cover sheet as well as manual screening, reviews the cases and identifies those that may be complex cases. Next, the complex litigation law clerk further reviews the cases identified by court administration, and makes recommendations to Judge Aceto. Finally, Judge Aceto reviews the cases and makes a determination of complexity.

Judge Buttrick proposed, and the committee agreed, that in those cases which had not been designated as complex by the parties, but which the three-phase court-screening process nonetheless identified as appropriate for complex case management, that Judge Aceto would issue a minute entry. His minute entry will issue only after all parties had appeared. The minute entry would advise the parties that the case would be identified as complex unless a party objected to the designation within twenty days.

**ACTION: Judge Aceto will draft a form minute entry advising the parties that their case meets the complex criteria of Rule 8i; that the case would benefit from complex case management; and that unless a party objects within 20 days, the case will be so designated. The minute entry will advise the parties of the \$500 complex case fee.**

The committee then considered the current volume of complex case filings in Maricopa County.

The civil court administrator provided the committee with data. In summary, the data showed that each of the past three years has seen a decrease in both the number of new cases entering the program, and a related reduction in revenue. Specifically, from the inception of the program through 2003, 37 cases entered the program. In 2004, 2005, 2006, and 2007, the respective number of cases admitted to the program were 20, 12, 9, and 7. For 2008, to date, no new cases have gone into the complex program. Commensurate with the reduction in admissions, the revenue collected by the program has gone from a high of \$92,046 in 2005, to a low of \$17,566

in 2007. Since this revenue supports the complex litigation law clerk position, the sustainability of that position may be jeopardized.

The discussion turned to possible explanations for the reduction in complex case filings. One suggestion was that due to the stringent application of the criteria, plaintiffs counsel may be dissuaded from seeking complex designation out of concern for being denied admission, and may instead chose to simply file in federal court. A point was made regarding a bias in favor of federal court, in part because of the permanency of a judge assignment and greater assurance that the case would receive complex case management. (Typical time for complex case processing in Maricopa County is 1200 to 1400 days, which could increase the undesired prospect of a judicial reassignment.) Judge shopping was also an expressed concern (i.e., staying out of the Maricopa County program to avoid assignment to one of the panel judges.)

Another explanation offered for the low number of case filings arose from the current civil cover sheet. Court administration noted that the current cover sheet, on which specific complex categories can be identified, is being used in as little as 15% of case filings. Since a new, statewide cover sheet is being mandated for use in early 2009, failure to file the interim cover sheet, with identification of the complex categories, is not resulting in rejection of new case filings by the clerk. And the lack of familiarity of the bar with the existence of the program has been a long-standing concern.

**ACTION: Court administration will provide updated information to the committee at the next meeting concerning the complex litigation log and other case data. Staff will follow up with the AZ Attorney magazine to publicize the program.**

It was decided to schedule the next meeting in September.

### **3. Call to the Public**

No response.

Meeting adjourned at 1:15 PM.