

**FINAL REPORT OF THE
COMMITTEE TO STUDY COMPLEX LITIGATION
SEPTEMBER 2002**

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**FINAL REPORT OF THE
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September 2002**

A. EXECUTIVE SUMMARY

1. ORIGIN OF THE COMMITTEE

In December 2001, the Chief Justice established the Committee to Study Complex Litigation. Members of the committee were drawn from the defense and plaintiff's bars, trial and appellate judges, court administrators, an elected clerk of court, public policy experts, corporate general counsel representing several large corporations in the Phoenix and Tucson areas and a state senator. In the words of the administrative order that created the committee, "in keeping with the Court's strategic goal to promote swift and fair justice, it is deemed advisable to study complex litigation in Arizona, the rules and statutes that govern these cases, and to determine if the establishment of a complex litigation/business court or division would benefit the citizens of this state and the administration of justice in Arizona." The committee was asked specifically to "determine if any of the various models used in other states should be implemented in Arizona."

2. WORK OF THE COMMITTEE

The committee reviewed materials from existing complex and commercial case programs in Delaware, California, Illinois, Connecticut, Maryland, Michigan, New York, North Carolina and Pennsylvania. The highlight of the committee's inaugural meeting was a panel discussion with the Chief Justice of California, the Chief Judge of New York, the Administrative Director of the California Judicial Department, the President of the National Center for State Courts and the chairman of the California Complex Litigation Task Force.

The committee first focused on a discussion of whether to implement changes. After extensive discussion of the pros and cons of such a change, the committee unanimously agreed that changes were needed. Then the committee focused on how to make changes and which changes to recommend. Members described their efforts to avoid bringing civil disputes to state court by filing their claims in federal court or hiring a private judge. A number of factors were identified that contribute to the problem, including some judges' lack of familiarity with complex civil litigation and commercial law. At the same time, judicial rotation prevents even the most skilled judges' ability to oversee more complex cases through to resolution. The committee also reviewed with the Pima and Maricopa County Clerk's office the effect that removing complex controversies from the overall mix would have on all other civil litigants because the civil bench will be able to devote more resources to the large volume of less complex civil cases.

Some of the systems reviewed were limited specifically to commercial cases that the committee determined would not be in the best interests of Arizona's court system. After reviewing the programs in other states, the California model, although still in a pilot phase, was deemed to be a suitable fit for Arizona in many respects. Unlike several other states' programs, the California program targets substantively and procedurally complex cases. An additional advantage to this approach is that it would include more than traditionally commercial cases such as mass tort and toxic tort. California has created a comprehensive deskbook to guide judges and lawyers in their case management tasks and to alert practitioners to what will be expected of them. Whereas California received considerable funding (\$2.8 million) from the state legislature to establish the program in six different counties, Arizona will rely primarily on the reallocation of existing resources in Maricopa and Pima Superior Courts. To the extent extra funds are needed to facilitate the courts' infrastructure to implement this program, they may be generated by the courts themselves through imposition of extra filing fees on complex case litigants and other civil litigants, all of whom stand to reap the benefits of this program.

3. COMMITTEE STRUCTURE

The committee divided into four sub-committees, each addressing one aspect of the new program.

- Rotation/Selection proposed a means of designating a small panel of judges to hear eligible cases. The group also identified how those judges would be selected, and suggested they be taken out of the normal rotation schedule for at least five years.
- Definition/Eligibility proposed a means of identifying and screening complex cases eligible for the program.
- Rules/Procedures drafted an additional subsection for Rule 16 that would require an early case management conference at which the parties and the judge could choose from numerous management tools to fit their particular case. They also drafted a proposed rule 39.1 to guide judicial officers in expediting trials in complex cases where possible.
- Administration/Infrastructure identified a list of enhancements to courthouse facilities, caseflow and records management techniques, technology, staffing, judicial education and funding that would maximize the advantages that the program has to offer.

4. PROGRAM DESIGN

The committee concluded that active hands-on management by the judge is the foundation for successful management of complex litigation. In keeping with this idea, one judge would oversee all aspects of the case, and would stay with the case until resolution. Case management would be aimed at encouraging early resolution of cases or parts of cases. Discovery would be focused to promote cost savings and rapid settlement or dismissal of issues. Parties would be encouraged to use court-annexed mediators and arbitrators. Program judges would be available on short notice to resolve discovery disputes. The program is intended to encourage all participants to maximize their use of electronic communication and storage and transmission of evidence in each case. Appearance at pre-trial hearings by remote electronic means could become routine. Periodic case management conferences would be

the norm. Judges would receive training in case management techniques and substantive law areas common to complex cases. They would be expected to confer with each other to maintain consistency in substantive rulings and case management.

The process envisioned by the proposal would remove approximately 400-1,000 (1-3%) complex cases per year from the regular civil calendars in the Superior Court in Pima and Maricopa Counties. A panel of one full-time and two part-time judges would be devoted to managing these cases in each court. Parties could opt into the program by use of a re-designed civil cover sheet, or a judge could make the designation *sua sponte*. The program judge assigned to the case would have the final say over which cases stay in the program. In the initial phase of the program, complex litigation judicial panels will be established only in Phoenix and Tucson. Once the program has proven itself, case transfer or other forms of accommodation may be designed to reach eligible cases filed in other counties.

Oversight of the program in its initial phase may need to be formally delegated to one or more implementation committees that will review the program and implement any changes necessary. This implementation committee may also sponsor an effectiveness study to measure the costs and benefits of the program in real terms. The implementation committee will also look at indirect benefits of the program.

B. PROPOSED RULES APPLICABLE TO COMPLEX CASES

1. Amendment to Rule 8(h).

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).

2. Proposed 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. The committee is seeking comments from practitioners and the bench pertaining to the proposed process for designating a case as eligible for the complex litigation program.

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.

3. Proposed 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.

4. Proposed 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.

C. JUDICIAL ROTATION AND SELECTION

1. Proposal

The complex case program will initially be handled by a panel of judges in the Maricopa and Pima County Courts. At least one judge will be assigned to complex litigation cases. During initial implementation the presiding judge will regulate the assignment and transfer of cases with the

eventual goal of at least one judge working exclusively on complex litigation cases. At the outset, all civil department judges should be encouraged to identify cases on their calendars that would be eligible for transfer to the complex litigation program.

The judges will serve for a minimum of five years. The presiding judge of the superior court will select the judges and shall consult the chief justice of the supreme court prior to making the selection. It is understood that the presiding judge may from time to time need to adjust the rotation and assignment of judges in order to meet caseload demands or other exigencies.

Judges will be chosen based on their training, experience, and interest in complex litigation and commitment to engage in ongoing judicial education. Judges selected to this bench must be committed to the use of new technologies in resolving cases. Examples of requisite skills would include the ability to use the Internet for research, an understanding of electronic file storage and retrieval, and the ability to follow electronic links in legal reference materials.

2. Justification:

The proposal calls for a multi-judge panel to accommodate the anticipated volume of cases, judicial conflicts of interest, Rule 42(f) change of judge notices, and to promote collaboration between judges.

There are several major advantages of establishing a panel of judges to handle complex litigation:

Case management: Currently, superior court judges rotate among benches within a superior court. While this rotation has numerous benefits, it can have debilitating effects in complex cases. It often results in the parties having to reeducate a new judge on every motion. Different judges hear different stages of the litigation, and the potential for conflicting rulings exists.

One of the key benefits to designation of a case or cases as complex litigation is the assignment of the litigation to one judge who is not in a rotation for handling of all pretrial matters, including motions and discovery. Since the judge who handles pretrial motions will also try the case, possibility of inconsistent decisions on substantive and evidentiary matters is greatly reduced. The most significant improvement in the management of complex cases should occur at the pretrial stage.

Case management by one judge can also result in more certainty in the setting of cases for trial and a shorter wait for a trial date. Since most cases still settle just before trial, shortening the pretrial phase and getting the case on the trial calendar can result in a more efficient and less costly disposition of cases.

Speed and flexibility: In many complex cases, particularly those involving change in ownership or corporate governance issues, preliminary injunctive relief is a critical issue. Often decisions need to be rendered before specific times such as shareholder meetings. Having a judge available to hear such cases on short notice is a significant benefit to the parties. In many cases a business simply

needs an answer to an issue so it can make a decision and move on with the operation of the company. The speed and flexibility provided by the establishment of a complex litigation division helps to meet those needs.

Specialization: Because the complex litigation judges will hear only complex cases, they will develop proficiency in handling both the substantive law and the case management issues that arise in complex cases. The judges will acquire the level of expertise in dealing with complex cases that come from specialization, which in turn will lead to greater efficiency and predictability.

As part of its function, the implementation task force should explore a judicial assignment model that would permit complex civil litigants statewide to take advantage of the program, possibly through a circuit-riding panel of judges or some other means.

COMMENT

During committee debate, some concern was expressed that the assignment of judges to the complex litigation program should be the sole and exclusive responsibility of the local presiding judge. The proposal contemplates that the decision be made only after the presiding judge has consulted the chief justice of the supreme court, so that the presiding judge can benefit from any particular insights that the chief justice may have to share. Currently, the chief justice approves the presiding judge's selection of an associate presiding judge, but not the presiding judge's selection of a presiding judge of the juvenile court or other subdivisions within the superior court (e.g., civil, criminal, probate/mental health and family court).

D. ADMINISTRATION AND INFRASTRUCTURE

1. CASEFLOW MANAGEMENT

a. Issue

Effective caseflow management requires "early and continuous" judicial control of all cases from the time of filing through final disposition, irrespective of the type of disposition. Arizona statutes, rules of civil procedure and local rules provide a general framework for the court's management of complex civil litigation. Current caseflow management policies and procedures must be reviewed and enhanced in light of the new rules for a complex litigation court. For example, in Maricopa County, the inactive calendar process (Rule 3.6 Maricopa County Local Rules) is automated. When this process is changed, information systems and computer-generated notices will need to be reprogrammed, and staff will need to be trained in the new process.

Information systems in the trial courts must be enhanced to randomly assign the complex cases to the designated judges in a manner that promotes integrity in case assignments, balanced calendars and consistency with the court's other case assignment systems. The case assignment system must

also support periodic calendar equalization, case reassignments, case transfers to another county, and special circumstances case assignments as directed by the presiding judge.

b. Implementation

In establishing a complex litigation court, the supreme court is essentially establishing a differentiated case management (DCM) system for civil cases in the superior court. Key components of the DCM model include “triage” to identify complex cases at the time of case filing, prescribed “tracks” with time deadlines for key case events (“intermediate monitorable events”), opportunity for alternative dispute resolution, pretrial case management and case monitoring. For the complex litigation court, a new complex case track must be instituted, while the court also maintains the existing caseflow management system for “non-complex” civil cases. Key areas for review and establishment of new case management procedures include:

- ☞ Management Information and Statistical Reporting: Statistical information and management reports are essential for effective caseflow management. Individual judges and their staff must be provided timely and accurate listings of their active pending cases, information on case status, case aging data, etc. Aggregate case management data is also essential for the court to maintain balanced calendars, for evaluation of caseflow management trends, and for resource allocation. The following essential statistical reports must be developed for the complex litigation court, both on an individual judge and “court-wide” basis:
 - Trends in case filings, termination and pending active case inventory;
 - Case clearance rates, by case category;
 - Listing of individual active pending cases, with case status and next court event (active case inventory);
 - Cases set for trial; and,
 - Age of pending cases as compared to case processing time standards.
- ☞ Case Processing Time Standards: The Arizona Supreme Court’s guidelines for civil case processing are patterned after the American Bar Association time standards are not practical for complex cases. The committee recommends that the Supreme Court establish standards specific to complex cases. Recommendations with regard to these standards should be made by the implementation committee.

Once time standards for complex cases are established, it will be important to educate the bench and bar on the time standards and underlying rationale, and to incorporate the new time goals in management statistics and information systems.

Juror Availability: It is often difficult to find jurors who can serve for complex cases because of the length of the trial. Potential jurors may need to be pre-screened for length of service for trial or other reasons.

2. FACILITIES

a. Issue

Complex civil cases often involve a large number of attorneys, parties and witnesses; numerous exhibits and documents; media attention; and other special logistical considerations. In the long term, new courthouse construction or renovation may provide an opportunity to build large, flexible, state-of-the-art courtrooms specifically designed for complex civil litigation (see section on technology). In the short term, however, it will be necessary to use existing superior court facilities in Pima and Maricopa County for the complex litigation program.

b. Solution

To the extent feasible, the superior courts should consider the following measures to improve facility and logistical support for the complex litigation program:

- ☞ Larger courtrooms in the courthouse or alternate space that can be retrofitted for court hearings. Note: In Maricopa County, 8 new e-courtrooms have recently been established, some of which could be designated for complex litigation calendars.
- ☞ Physical modifications to the courtroom, such as additional space for counsel, parties, files, exhibits, or persons such as experts or consultants whose presence may be needed.
- ☞ Installation of necessary technology for use by the court, counsel, and jurors, e.g., evidence presentation systems, video conferencing systems, etc.
- ☞ Jury accommodations, particularly in a lengthy trial.
- ☞ Witness and attorney conference rooms.
- ☞ Courtroom security and access during non-trial hours.
- ☞ Media accommodations, including a “press room” and special arrangements for cameras in the courtroom.

Advance notice of special space and equipment needs is critical to making the best use of existing court facilities. These special needs should be identified as early as possible, through pretrial management conferences and formal notice to the court. Plans for special equipment (e.g., video conferencing, etc.) should specify which parties are responsible to make special arrangements, as well as the party responsibility for funding. The courts, in turn, can designate a court staff person(s) to coordinate any special arrangements for equipment, storage, etc.

3. RESOURCES AND STAFFING

a. Issue

To the extent feasible, the trial courts will seek to establish the complex litigation courts largely through reallocation of existing judges and staff. Some additional judicial and staff resources may be required, however, based on the nature and scope of judicial and complex litigation court model.

b. Solution

At a minimum, the judges of the complex litigation courts must be provided staff attorneys to review pleadings, conduct legal research, draft rulings, etc. The exact number of staff attorneys required has yet to be determined, but at least one staff attorney per for the program in each county is assumed for planning purposes. Additional staffing needs may also extend to initial case screening, information systems (courtroom technology and computer programming) and caseload manager responsibilities, as outlined below:

- ☞ Staff attorneys: The nature of litigation in the complex litigation court suggests a need for experienced staff attorneys, licensed to practice in Arizona.
- ☞ Information Technology Services and Staffing: Electronic filing, courtroom technology and the computer programming enhancements for the complex litigation court will require services of court technology staff and/or outside consulting/vendor services. Specific staffing requirements can be assessed as plans for the business court and technology projects are more fully defined.

COMMENT

A relevant staffing model is the capital law clerk project for the superior courts. The staff attorneys supporting judges throughout the state work as a team, all available to conduct research for any superior court judge, sharing all research findings and work products.

4. TECHNOLOGY

a. Issue

Because of the nature of complex litigation, i.e., large volume cases with multiple plaintiffs, defendants and lawyers, the filing, presentation of exhibits and distribution of massive amounts of paper work and files becomes unwieldy.

Using the latest technology is the most efficient way of handling these issues. However, most courthouses, courtrooms and clerk's offices are not capable of handling these new technologies.

Clerk's offices on the whole are not ready for e-filing, electronic document distribution, handling of electronic exhibits and processes for use of and retention of electronic records/files.

Courtrooms generally are old and do not have the wiring or equipment to handle electronic cases. There would be a cost to upgrading these courtrooms in a time when funds are limited.

b. Challenges

New technology in old courtrooms. Lack of equipment and technology. Lack of funding. Resistance to change.

c. Solution

Utilize e-filing and digital exhibits on complex cases where appropriate.

Real time court reporting should be routinely provided, including feeds to the lawyers at a reasonable fee.

Courtroom technology should provide broadband width courtroom connectivity of the lawyers to the Web, including VPN or other appropriate connections with their office systems.

E-distribution of documents

Upgrade and utilize an up-to-date courtroom.

Impose user fees by rule/order for financing.

Change rule or legislation for electronic record retention and filing of electronic documents and materials

Use of the Internet

d. Justification

Save space with digital exhibits and records.

Save processing time in filing cases/documents, imaging, distribution.

Immediate access to information for all parties through real time recordation.

Save mailing costs.

Save employee time in moving papers, files and distributing documents.

Allow more efficient handling of complex cases.

COMMENT

The committee is interested in hearing from practitioners whether they believe that attorneys will be discouraged from participating in this program if they are required to use technological innovations such as electronic filing or briefs offering hyperlinks to materials cited.

5. RECORD MANAGEMENT

a. Issue

Because of the nature of complex litigation, i.e., large volume cases with multiple plaintiffs, defendants and lawyers, the filing and presentation of exhibits and distribution of massive

amounts of paper work and files becomes unwieldy. A complex case can contain multiple files – sometimes over a hundred, and requires voluminous paper management in the filing, imaging, record reproduction and distribution of documents.

The hard files have to be pulled for any hearing or to file papers, and then re-filed. There is a tremendous cost in personnel, paper and supplies.

b. Challenges

Cost

Paper to electronic record use.

Resistance to change.

Training for court personnel, public and private sector users.

Change the business process in the courts.

c. Solution

Electronic records – digital and imaged

Systems that are convertible to new technologies

Training for all involved in complex cases

Impose filing fee/surcharge

Utilize e-filing and e-documents in complex cases where appropriate

Change rule and/or legislation for electronic record retention

Use of the Internet

d. Justification

More efficient and effective system and process.

Save space.

Save time (court, lawyers, parties).

Save money (runners, mailing, instant access)

Save paper, equipment and supplies.

No increase in employees for increased volume in court cases.

6. EDUCATION

a. Issue

Establishing a court, division or calendar for the purpose of handling complex litigation will require new skills and specialized knowledge for judges, judicial support staff, administrators and clerks, and for those attorneys who handle these cases.

Many excellent ideas are being considered regarding how best to re-engineer the court system and its processes to more effectively and efficiently handle complex litigation. All of these ideas, however, introduce “change” into the court system and change must be “institutionalized” for it to be sustained over time as court personnel turn over. Court employees, judges and lawyers

who handle cases that will be classified as “complex” need to know the rules to be followed and their responsibility in making the system work.

b. Solution

The Judicial College of Arizona (JCA) and the Council on Judicial Education and Training (COJET) oversee statewide educational programming for the judicial branch. The JCA creates the educational programming for judges, and COJET, through its numerous committees, does the planning for judicial staff. The main educational event for judges is the Annual Judicial Conference. This 2.5-day conference, which is usually held each June, is attended by judges from all court levels and addresses a variety of topics. Additionally, from time to time and as the need dictates and resources permit, special programs are offered which are usually of limited scope and participant interest.

Judges assigned to this program should be committed to participating in educational programs. Program judges should conduct continuing legal education seminars for practitioners and other judges at least annually.

Judicial staff education is offered through regional conferences covering a variety of topics. Single-topic programs also are offered as necessary and as time and money permit.

Educational programs on handling complex litigation can be incorporated into these annual education events.

Training programs for attorneys also will need to be offered. These programs may be appropriate for the State Bar’s Continuing Legal Education Program to sponsor. Judges could also hold training conferences with the state and county bar members to educate them about procedures and to elicit feedback for areas of improvement. These training sessions would be held on an annual basis.

7. FUNDING

The costs associated with this program have been identified as personnel and technology. The committee felt that a skilled staff attorney who would be able to carry out legal research as well as assisting with case management would be important. Such a position would be necessary to support each panel of complex litigation judges.

Additionally, continued improvement to technology in and around the courtroom will be imperative to efficient communication and case processing in complex cases.

The committee felt that an additional filing fee for entering the complex case program in the amount of \$500 for each litigant would be appropriate. The majority of participants in this program are likely to be large companies and firms who would not see the additional fee as a barrier to justice. The fee waiver and deferral process already in use would be extended to

cover those who have complex cases but are unable to afford this fee. The designating party shall pay the fee at the time of filing. Fees due from other litigants shall be paid pursuant to the presiding judge's order of transfer. The County Board of Supervisors should approve these fees in each county. Any and all funds from special fees or charges for complex litigation shall be used only for the complex litigation program including courtroom facilities, staffing and other expenses incurred by the clerk's office or court administration in connection with implementing and operating the complex litigation program in that county. The fees collected should be handled in a manner similar to the local judicial collection enhancement fund, which requires the approval of both the superior court clerk and the presiding judge in making expenditures from the fund.

Assuming that between 400 and 1,000 cases are filed in the program annually, the revenue stream this proposal would generate would be between \$400,000 and \$1,000,000 on a yearly basis.

**APPENDIX B: ADMINISTRATIVE ORDER ESTABLISHING
COMMITTEE**