

Experimental Rule 8.1. Assignment and Management of Commercial Cases [“Clean version”]

(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 a complex civil litigation program under Rule 8(i).

(f) Case Management. Rules 16(a) through 16(k) apply to cases in the commercial courts, except:

- (1) *Scheduling Conference.*** Scheduling conferences under Rule 16(d) are mandatory.
- (2) *Initial Conference.*** Before filing a Joint Report, the parties must confer, as set forth in the commercial court's ESI checklist, and attempt to reach agreements that may be appropriate in the case concerning the disclosure and production of electronically stored information ("ESI"), including:
 - (A)** Requirements and limitations on disclosure and production of ESI;
 - (B)** The form or formats in which the ESI will be disclosed or produced; and
 - (C)** If appropriate, sharing or shifting of costs incurred by the parties for disclosing and producing ESI.
- (3) *Joint Report.*** The parties' Rule 16(b) Joint Report and Proposed Scheduling Order must address the items specified in Forms 14(a) and 14(b), including the following:

(A) Whether the parties expect ESI to be an issue in the case and, if so, whether they have reached an agreement regarding the discovery of ESI, have filed a stipulated order, and have or anticipate disputes concerning ESI;

(B) Whether the parties have reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence 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 pursuant to Rule 26.1(f); and

(D) Whether the parties believe that a protective order is necessary and, if so, whether they have filed a stipulated protective order.

(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.

(g) **Motions.** With notice to the parties, a commercial court judge may modify the formal requirements of Rule 7.1(a), and may adopt a different practice for the efficient and prompt resolution of motions.