

**Commercial Court Review Committee**

**State Courts Building, Phoenix**

**Meeting Minutes: March 12, 2018**

**Members attending:** David Rosenbaum (Chair), Ray Billotte, Andrew Federhar, William Klain, Lisa Loo, Paige Martin, Patricia Refo, Hon. Randall Warner

**Absent:** Hon. Pamela Gates, Glenn Hamer, Mark Rogers

**Guests:** None

**Administrative Office of the Courts Staff:** Mark Meltzer, Angela Pennington

**1. Call to Order; review of A.O.; roadmap.** The Chair called the first meeting of the Commercial Court Review Committee (“the Committee”) to order at 1:33 p.m. and welcomed the members.

The Chair reviewed with the members Administrative Order No. 2018-17, which established the Committee. The Order requires the Committee to review the 2016 and 2017 progress reports to the Arizona Judicial Council (“AJC”) concerning the pilot commercial court in the Superior Court of Maricopa County, and to solicit input from stakeholders. The Chair particularly noted the desirability of requesting input from Judge Janet Barton, the presiding judge of Maricopa County, as well as the commercial court judges. Although the Committee will focus on Maricopa County, the Order directed members to consider whether a commercial court should be available in other counties. They also should consider whether to include the commercial court rules in the statewide rules of procedure, or in Maricopa’s local rules. The Order requires the Committee to submit its recommendations to the AJC by June 1, 2018, and the Chair anticipated two more Committee meetings to meet that deadline. He envisioned having a draft set of recommendations for the Committee’s second meeting, and a final draft report for the third meeting. He also noted that the Committee’s term extends to December 31, 2018, which would allow the Committee to file a rule petition, if directed to do so, for the Court’s consideration during the 2019 rules cycle.

The Chair advised that today’s meeting would include an open discussion of the 2016 and 2017 progress reports. He welcomed members’ comments that address the challenging workload of commercial court judges. The Chair also asked members to consider whether the objectives of a commercial court, as stated in the Business Court Advisory Committee’s 2014 report to the AJC, had changed over the past several years, and especially whether the commercial court should be available for litigants in any commercial dispute, regardless of the amount in controversy.

2. **Judge Warner's summary.** The Chair invited Judge Warner, who has served as the presiding civil judge in Maricopa County during the term of the pilot commercial court, to offer his observations. Judge Warner stated that he enjoys a multi-faceted view of the program, first, having a perspective of the program's long-term history; second, having experienced the program on a granular, day-to-day level; and third, as part of the administrative leadership of the superior court. He summarized two highlights of the 2017 report to the AJC, which he co-authored. First, attorneys and members of the business community like and support the commercial court. They believe the court handles commercial cases in a more timely and less costly manner. They like the mandatory Rule 16 conferences. Most of all, they prefer having judges with commercial litigation backgrounds, who they perceive as providing fairer adjudications. Second, Judge Warner has found that commercial cases on average consume more judicial resources than other civil cases. Although there has been some improvement, the commercial court judges continue to have heavy workloads. Judge Warner advised that the court has considered distributing commercial cases among more judges, thereby reducing the number of commercial cases per judge.

Complex judges, like commercial judges, have longer assignments, and accordingly, three of the four commercial judges also serve as complex judges. The presiding judge would need to make about twice as many extended judicial assignments to these programs, which would be almost impossible to accomplish, if both complex and commercial cases were not assigned to these three judges. Over the past few years, the complex civil litigation court has had between 30 and 36 pending cases. (Staff referenced a 2010 complex case report that indicated that even though there are a limited number of complex cases, in aggregate they involve hundreds or even thousands of parties.) Maricopa's superior court has had discussions about more closely harmonizing the commercial and complex programs. However, it is noteworthy that only a slight majority of the complex cases would qualify as commercial cases. Intricate consumer fraud cases, class actions, mass torts, medical device cases, and construction defect litigation are complex, but none are inherently commercial. Moreover, the processes in these two courts are not identical. Judge Warner would prefer the commercial and complex rules to be in one set of rules so litigants would not need to refer to two rule sets to understand that these are distinct programs with different procedures.

3. **Members' initial comments.** Following Judge Warner's remarks, the Chair asked other members for their comments.

(A) The first member to speak observed that although the historical reports indicate that the commercial court program is elective, the rule does not make this clear.

The member recommended, and other members concurred, that the rule should expressly clarify that the program is optional. The member also reported that when one party requests assignment to the commercial court and another party objects, resolution of the issue typically requires full briefing and a commensurate delay in resolving the merits of the case. Members agreed that this should be rectified. One member suggested using Civil Rule 26(d), which becomes effective on July 1, 2018, as a model for a new Rule 8.1 provision about expediently resolving parties' disputes concerning eligibility for the program.

**(B)** The next member discussed new rules for tiering civil cases, which also become effective on July 1. Tier 1 cases in Maricopa County are subject to arbitration, and under current Rule 8.1, arbitrable cases are not eligible for the commercial court. Although the new tiering rule will classify all cases in commercial court as Tier 3, including Tier 2 cases with a value of \$50,000-\$300,000, this member suggested that only Tier 3 cases, i.e., cases with an amount in controversy of at least \$300,000, belong in the commercial court. However, cases seeking non-monetary relief that otherwise would be Tier 2 under the tier classification system also should be eligible for the commercial court under appropriate circumstances. Although data was unavailable concerning the number of cases in the \$50,000-\$300,00 range that are currently in the pilot program, the member believed that this proposed modification would reduce commercial judges' workloads, and that other civil judges would be able to speedily and effectively resolve Tier 2 cases.

The member also suggested that a case relating to "trade secrets or misappropriation of intellectual property, or [that] arises from an agreement not to solicit, compete, or disclose," which is now eligible for commercial court under Rule 8.1(b)(4), be excluded in a revised rule. These cases consume a lot of judicial resources at the front-end (i.e., with requests for temporary restraining orders or preliminary injunctions), and excluding this subset of cases would help to reduce the workloads of commercial judges.

Finally, the member would like the commercial judges to conduct more settlement conferences on commercial cases, which they might be able to do with reduced caseloads. Alternatively, the member would like to see the court establish a cadre of high-quality private commercial litigators to serve as commercial court mediators.

**(C)** Another member made the general observation that because there are too many cases in commercial court given the available resources, the issue becomes how to allocate those resources. Allocation involves making difficult choices. Market factors

should drive those choices. The designated process should admit cases that are most significant to the business community.

(D) The next member countered that all parties should have equal access to justice, including access to the commercial court, regardless of their cases' dollar values. The member added that cases under current Rule 8.1(b)(4) should not be excluded merely because they require considerable judicial resources.

The member also observed that cases will become more complex over time, in part because of a "new economy" and greater information technology, and everyone should have access to judges who understand these issues. The judges with the best skills and understanding of these issues should handle the most complex commercial cases.

(E) The business community perceives the commercial court as a positive, and any modern court system should have specialty courts. However, this member expressed concern with merging the complex and commercial courts if doing so would eliminate complex but non-commercial cases from the specialty court. A dollar amount in controversy is a surrogate for complexity, regardless of whether the case is commercial. But even if a case does not meet a dollar threshold, parties should have the opportunity to provide the court with a basis for admitting the case to a specialty docket. The member also agreed with Judge Warner's observation that having commercial and complex rule provisions in different sets of rules could present a trap for the unwary.

(F) The last member to speak noted that the superior court in Maricopa County has an established culture of judicial rotation. Whatever changes this Committee proposes, the presiding judge will still be required to rotate assignments and equalize judicial workloads, and may assign more or fewer judges to the commercial court, or assign them a mixture of civil cases, depending on the effect of those changes.

**4. Additional comments.** Members proceeded to discuss the initial round of comments, and made these additional comments.

(A) Judges in smaller counties occasionally like to utilize the complex rules in appropriate cases, which is a reason to keep the complex provisions in the statewide rules.

(B) Complex cases necessarily require some level of judicial review before they are admitted to a complex litigation program. Commercial cases do not require a similar review.

(C) Members should forego drafting a rule that anticipates uncommon scenarios, and they should be mindful that notwithstanding modifications to the rule, litigants will continue to try and game the system.

(D) The fact that we have a commercial court keeps cases in state court that might otherwise go to federal court.

(E) The commercial court would benefit from a law clerk or staff attorney. If there was a fee of \$500 per side on a commercial case, the admission of 40 cases per month (which is slightly less than the current level) would generate \$40,000 monthly (40 cases x 2 sides/case x \$500/side). But would the admission fee create another issue for litigants to dispute?

(F) The complex program's current \$500 admission fee does not fully cover the cost of the program's sole staff attorney. But a proposed commercial court fee should be per side, rather than per party. Alternatively, the fee could be based on attorney appearances, with one fee assessed on all parties the attorney represents.

(G) Although the commercial judges frequently prepare lengthy minute entry rulings (some of which are posted on Westlaw) that require considerable amounts of their time, the Committee should not encourage their brevity at the expense of their thoroughness. But a staff attorney could assist in reducing the judges' workloads in the areas of research and drafting.

(H) The Committee should consider a process where emergency hearings could be heard by a judicial officer other than the assigned commercial court judge. But after discussion, members did not favor this concept.

(I) Although there is no available data on the number of cases in the \$50,000-\$250,000 range, eliminating those cases should reduce the judges' workloads but should not dry up the volume of eligible cases.

5. **Remarks by the Chief Justice.** The Chief Justice entered the meeting room and the Chair invited him to address the Committee. The Chief Justice began by thanking the members for their interest in the commercial court and their service on this Committee. He has spoken with Judge Barton and they have discussed the upcoming

June 30 expiration date of the pilot commercial court, and the July 1 abrogation of rules concerning the complex civil litigation program. The Court will accommodate these transitional issues by administrative orders as necessary and appropriate. The Chair thanked the Chief Justice for his remarks.

6. **Areas of preliminary agreement and direction.** Following the additional comments above, and after further discussion of each item, members agreed that their initial drafts should include the following.

- (A) The report should communicate support for the program and a recommendation that it be made permanent.
- (B) The commercial court rule should remain within the statewide Rules of Civil Procedure.
- (C) The rule should clarify that this specialty court is optional for commercial cases, at the option of either the plaintiff or the defendant.
- (D) To the greatest extent possible, the parties should self-select the commercial court. But the rule also should allow parties an opportunity to provide the court with reasons to admit an otherwise ineligible case.
- (E) The civil cover sheet should include a single box by which a plaintiff could opt-in to the commercial court.
- (F) Because the plaintiff can request commercial designation by a simple checkbox, the defendant should have an equivalent, simple way, possibly a one-line notice but not a motion to transfer as the current rule provides, to request commercial designation if the plaintiff does not.
- (G) If opposing parties dispute whether a case belongs in the commercial court, the rule should provide a streamlined and expedient process, modeled on new Civil Rule 26(d), for resolving the dispute. For consistency and efficiency, the rule should require the presiding civil judge, rather than the assigned judge, to decide the issue.
- (H) The commercial court should be reserved for Tier 3 cases, and for comparably complex commercial cases that do not request monetary relief.

- (I) For comparably complex commercial cases that do not request monetary relief, the draft should include alternatives for the Committee's consideration: either (1) a list of specific case types, similar to current Rule 8.1(b), such as the internal affairs of a business organization or a corporate dissolution; or (2) a generic list of case characteristics, such as those proposed in restyled Family Law Rule 50 (i.e., issues that will be time-consuming to resolve, management of a large number of witnesses or a substantial amount of documentary evidence, the need for significant expert testimony, or any other factor required to serve the interests of justice.)
- (J) For the time being, Rule 8.1(b)(4) should remain in the draft.
- (K) The report, and possibly the rule, should include the fee proposal, and the fee should be expressly allocated to the cost of a staff attorney or law clerk.
- (L) The report should recommend a minimum five-year assignment of judges to the commercial court, which would leverage their knowledge and experience with a commercial calendar.
- (M) Members should consider recommending that more than four judges serve on the commercial bench.

7. **Future meeting dates.** After discussion with the members, the Chair set the second Committee meeting for Thursday, April 26. The Chair will invite superior court judges to this meeting, and staff will prepare drafts for items noted in these minutes. The Chair set a third Committee meeting for Friday, May 25.

8. **Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 4:10 p.m.

**Commercial Court Review Committee**

**State Courts Building, Phoenix**

**Meeting Minutes: April 26, 2018**

**Members attending:** David Rosenbaum (Chair), Andrew Federhar, Hon. Pamela Gates, William Klain, Lisa Loo, Paige Martin, Patricia Refo, Mark Rogers (by telephone), Hon. Randall Warner

**Absent:** Ray Billotte, Glenn Hamer

**Guests:** Hon. Janet Barton, Hon. Dawn Bergin, Hon. Roger Brodman, Paula Hannaford (by telephone)

**Administrative Office of the Courts Staff:** Mark Meltzer, Angela Pennington, Theresa Barrett

**1. Call to Order; approval of meeting minutes.** The Chair called the second meeting of the Commercial Court Review Committee (“the Committee”) to order at 11:07 a.m. and thanked the members and guests for attending. The Chair identified materials in the meeting packet for discussion today, including a draft report and proposed revisions to Rule 8.1. He then asked members to review draft minutes of the March 12, 2018 meeting.

**Motion:** A member moved to approve the draft March 12 meeting minutes, the motion received a second, and it carried unanimously. **CCRC: 001**

**2. Comments from stakeholders.** The Chair then invited comments from the guests. Judge Dawn Bergin, one of the commercial court judges, began by responding to the draft report’s recommendation that the commercial judges have staff attorneys. Judge Bergin advised that she receives helpful assistance from her law-trained bailiff and suggested increasing salaries of commercial court bailiffs to attract other law-trained individuals.

Judge Bergin then proposed that the commercial court reconsider the types of cases it is designed to attract. She said that amendments to Rule 8.1 could enumerate the desired case types, such as cases concerning restrictive covenants, fraudulent transfers, civil racketeering, securities fraud, receiverships, cases regarding membership or ownership of a business entity, derivative actions, actions seeking injunctive relief, alter ego cases, and real estate transactions. She believed these categories would identify commercial cases with the greatest complexity and that are most in need of judges with commercial litigation backgrounds. This would allow the non-commercial civil judges to handle breach of contract cases, which most civil judges can capably resolve. Judge Bergin also urged the courts to better publicize the changes to Rule 8.1 and companion

Rule 84 forms; she noted that many attorneys are not using the current version of the commercial court joint report. She recommended five-year judicial assignments to the commercial court to enhance the assigned judges' familiarity with their pending cases. Finally, she asked the court to consider gender and other diversity factors when assigning judges to a calendar.

Judge Roger Brodman, another commercial court judge, acknowledged Judge Bergin's comments, but opined that breach of contract claims fundamentally belong in the commercial court. There are intricacies pertaining to contract law, such as parole evidence and principles for interpreting contracts, which require sophisticated understanding, and attorneys appreciate having a judge with knowledge of these subjects. Judge Brodman added that at the mandatory Rule 16 conference, he emphasizes that parties can avoid considerable costs by agreeing to a bench trial rather than using a jury. A judge who sits as a trier of fact might hear in three days the same evidence that would require three weeks to present to a jury. Also, counsel are generally familiar with the commercial judges, so there is greater predictability with a bench trial. Overall, Judge Brodman believes the commercial court is working well.

In response to comments from Judges Bergin and Brodman, the Chair noted that neither this Committee, nor the 2016 or 2017 reports to the Arizona Judicial Council, previously suggested any changes to the case types currently enumerated in Rule 8.1. He advised that these case types were the product of considerable discussion by the Business Court Advisory Committee in 2014, and he believed they were comprehensive and appropriate. The Chair also observed that while encouraging bench trials is a useful case management tool, the original Business Court Advisory Committee rejected a proposal to require a jury waiver as a prerequisite to assignment of a case to the commercial court. A member asked Judge Brodman whether he would like to have a calendar of solely commercial cases. Judge Brodman responded that he appreciates having a mixed docket of commercial and non-commercial cases, he enjoys conducting a jury trial on non-commercial civil cases, and he probably would not want a calendar of exclusively commercial cases. He proposed expanding the commercial bench from four judges to a half-dozen or more, each with a mix of commercial and non-commercial cases.

Judge Janet Barton is the presiding judge of the Superior Court in Maricopa County. She began her remarks by noting her support for the pilot but emphasized that it should be referred to as the commercial program rather than the commercial court because we have one court, albeit with specialized departments. She gave an analogy of judges with specialized knowledge who conduct death penalty proceedings, but this is

done within the criminal department, not as a capital case court. She then distinguished the interests of the bar, i.e., how attorneys can best serve their clients, from the interests of the court, that is, how to best sustain the commercial court program with the court's finite resources. She is concerned with optimizing those resources, and if the current commercial court isn't optimal, she would modify it so it is. She is agreeable with keeping the current program in place until the pilot is fully analyzed, but now, she believes the program's benefits are disproportional to its consumption of resources. She would also like to assure that cases that are most in need of a judge with a strong commercial litigation background are the ones that are accepted into the program.

Judge Barton believed the commercial court was established to allow the business community to have its cases heard by judges with commercial litigation backgrounds, which would promote quicker and less expensive dispute resolution. She has anecdotal confirmation that the business community favors the program. However, she has no empirical data to show that commercial cases are being resolved more quickly or for less cost. Nor does she have information that the existence of the commercial court was a factor for any business to move to Arizona. She also observed that attorneys share the responsibility of reducing the cost of litigation and moving cases to conclusion, and that this is not solely within the court's purview.

Judge Barton then summarized her data. In fiscal year 2016 (July 1, 2015 to June 30, 2016), the commercial court admitted 597 cases. In FY 2017, the court admitted 610 cases. In the first 9 months of FY 2018 (July 1, 2017 to March 31, 2018), the court admitted 397 cases, which would be 505 cases prorated over 12 months. [Staff note: 397 cases in 9 months prorated over 12 months would be 529 cases.] The Chair suggested that an interim change to Rule 8.1, which made the commercial designation optional, could have contributed to the decline in case volume. Judge Barton said that since the program's inception, the commercial judges have conducted one jury trial and five bench trials. They have also conducted 663 hearings, but judges may differ in what is reportable as a hearing. There have been 1,586 cases admitted to the program since its inception, and 1,026 cases, or 65% of the total, have been terminated. Of the pending cases, 75 are older than 24 months, and 29 are older than 30 months, which exceeds the Supreme Court's time management standards. Judge Barton acknowledged that some of those commercial cases are complex, but she observed that other civil judges have assignments of complex matters, such as medical malpractice cases, yet they meet the time standards.

Judge Barton can readily justify assigning complex commercial cases to judges with commercial litigation backgrounds. However, she could not justify assigning only

commercial cases to the program's judges. She said that doing so skews the judges' caseloads and results in the non-commercial judges having substantially more cases. Doing so also precludes the assignment of non-commercial civil cases to the commercial judges, which is necessary to balance the judges' assignments.

Although the four current commercial judges sit downtown, Judge Barton believes the presiding judge should have flexibility to assign eligible commercial cases to judges with commercial litigation backgrounds who do not sit in downtown Phoenix. She noted that of the 21 judges who currently have civil calendars, 14 have commercial litigation experience. She would like the ability to more broadly spread the commercial cases among those experienced judges. Judge Barton is opposed to five-year assignments to the commercial court because these longer assignments interfere with her ability to make assignments based on the court's overall needs. On the other hand, she will not reassign a judge who completes a three-year assignment merely for the sake of rotation. She believed that a single commercial judge will preside during the lifespan of most commercial cases if 90% of those cases are resolved within 18 months. She did not believe that law-trained bailiffs will provide adequate support for the commercial judges because those bailiffs would be new law school graduates with limited legal experience and would probably leave after one year on the job. She supports the utilization of bench trials for commercial cases.

In summary, Judge Barton would like to retain the commercial program and see the program thrive in a manner that's sustainable for the Superior Court.

**3. Discussion of the judges' comments.** The Chair acknowledged the absence of data showing that businesses relocated to Arizona because of the existence of a commercial court. But the Chair reminded members that the intent of the 2014 Business Court Advisory Committee was more about garnering the local business community's confidence in the court system than attracting businesses to Arizona. Another member noted that the previous committee was concerned that without confidence in Arizona courts, Arizona businesses would turn to federal courts or private arbitrators for dispute resolution, and it was important to show the business community that the Superior Court had adequate resources and experienced jurists for resolving commercial disputes. One member emphasized that the community relies on the availability of experienced judges in every area of the law, but civil litigators especially expect that the court will have a mechanism to resolve complex cases, and judges with commensurate experience. Another member commented that the business community currently supports the commercial court program, describing it as "part of a mosaic" that helps create a positive and stable business environment, and that this

environment would be undermined if the program did not continue. The member contended that the path forward is making the program permanent, with modifications to Rule 8.1.

A member suggested that having a smaller group of judges assigned to commercial cases enhanced predictability and permitted litigators to more accurately address their clients' expectations. The Chair also noted that two of the program's current features—five-year judge assignments and the publication of the judges' decisions—was to enhance predictability, and that a program that distributed commercial cases to a broader spectrum of judges might be contrary to that objective. Judge Barton responded that judges frequently discuss legal issues and their sharing of knowledge increases the likelihood that one judge's decision will not starkly diverge from another's. She also noted that predictability is difficult with only a handful of commercial court trials, but if more judges had commercial cases, each judge would have more time to write reasoned decisions for publication, which would enhance predictability.

Another member commented on the value of extended assignments for the commercial judges, but also noted that the superior court's general needs surpass the specific needs of the commercial court. Moreover, circumstances such as fluctuating case volumes for certain case types will affect those assignments. Judge Barton agreed with this comment and added that while she opposed a five-year assignment, a four-year assignment might be workable, although it should be presumptive rather than mandated. Members concurred in the benefit of having the same judge for the life of a case and concluded that four-year assignments might fulfill this objective.

A member noted that innovations in the commercial court, such as a checklist for electronically stored information, presaged their adoption in other civil case types. Another member noted that the new civil rules on tiering become effective on July 1 and suggested that this Committee consider the effects of those rules on commercial cases.

**4. Discussion of the draft report and proposed rule amendments.** The Chair then invited members' comments on the draft report and rule amendments, and their comments included the following.

(a) In the Part II recommendations, recommendation 7 should be addressed to the Supreme Court and to the Superior Court "in Maricopa County" to clarify that it is not addressed to the Superior Court statewide.

(b) The report's discussion of recommendation 1 included a phrase to the effect that litigators prefer experienced judges "who they perceive as providing fairer adjudications." The word "fairer" was inappropriate and after discussing alternative adjectives, members agreed simply to remove this phrase.

(c) The report's discussion of recommendation 4 mentioned the workload of commercial judges. In this discussion, the report should add that heavy workloads result in delay, and that delay is a barrier to access to justice.

(d) Recommendation 6 should recite that the commercial judges should have "commercial litigation backgrounds" rather than business backgrounds.

(e) Amendments to Rule 8.1(b) ("eligibility based on tier"), subpart (B), should replace the phrase "implicating rights or interests valued at more than \$300,000" with the phrase "predominated by business issues."

(f) For symmetry with Rule 8.1(b), Rule 8.1(c) ("eligible case types") should include the words shown with underline: "A case that meets one of the following descriptions and qualifies under Rule 8.1(b) is generally an eligible commercial case..."

(g) Correct a punctuation error in subpart (c)(9) by changing a period to a semicolon.

(h) At the beginning of Rule 8.1(e)(2), add the word "commercial" so it says, "A plaintiff seeking the assignment of an eligible commercial case..."

On a matter related to Rule 8.1(e), a member inquired why parties were no longer exercising the option of stipulating to a judge under Civil Rule 42.1(f)(3). One of the judges explained that the stipulations became too frequent and disruptive, and because the rule requires a judge who was willing to accept the assignment, judges stopped accepting them.

In response to a question from Judge Barton, staff noted the inclusion of a new Rule 8.1(h) that permits a judge who is not assigned to the commercial court to utilize the case management procedures in Rule 8.1(f). Judge Barton supported that amendment.

In response to comments from Judge Barton about assigning commercial cases to more than four judges, a member asked Judge Barton about the number of judges she envisioned. Judge Barton would like the flexibility to expand the number of commercial court judges without referring to a specific number. Members also discussed a proposal whereby the number of commercial judges would expand from four to eight, with each judge having a four-year assignment and with two judges

rotating off the assignment and two judges being added each year. The concept would allow assignment of commercial cases to these judges only during the first two years of their rotation. This would allow judges in the final two years of their assignments to resolve their existing commercial caseloads, thereby retaining each action for the life of the case while also gradually increasing their non-commercial cases during those last two years. Because only four of the eight judges would receive new cases, it would also enhance predictability. Members took no action on this concept. Most members would prefer to limit the number of judges receiving commercial case assignments as much as possible, and consistent with the needs of the court. Judge Barton is seeking a compromise that provides attorneys what they want and allows the court to operate efficiently. The Chair suggested that the Committee's report discuss sustainability, but that the report omit a recommendation on the number of judges because that number may change over time.

**5. Comments from Ms. Hannaford.** Ms. Hannaford, an attorney with the National Center for State Courts, has been involved in the pilot commercial court since its inception, and has assisted with attorney surveys, focus groups regarding the pilot, and other program evaluations. She noted that she prefers longer data accumulation periods to draw definitive conclusions, and that it's challenging to do so after just thirty months. Generally, however, she believes the subjective information she's gathered to-date reflects a better quality of decision-making in commercial cases.

Ms. Hannaford attempted to compile pre-pilot data on comparable cases. Although her apples-to-apples comparisons have some uncertainty, she believes that cases in the pilot commercial court are taking longer to resolve (what she termed a "survival rate") than cases from 2012 to 2014. The numbers are approximately 90% resolved within two years in the pre-pilot period, versus 70% resolved in two years during the pilot program. She recognized that the pre-pilot cases included more foreclosure actions than the pilot, and that some of the pilot program data might have been affected by implementation issues, by amendments to Rule 8.1 during the pilot, and by a greater front-end workload of cases in the pilot program. She acknowledged that time-to-disposition might not be the most effective measure of the program's benefits, and that there may be beneficial case processing features in the pilot program, which include staging cases, which add to the time-to-disposition. Some of these subjects will take time to study and more fully analyze. Generally, there is insufficient information at present to accurately conclude that commercial cases are taking longer to resolve, but it's unlikely they are taking less time than the earlier cohort of cases. Members agreed to omit a discussion of time-to-disposition in their report because the current data is incomplete.

Ms. Hannaford observed that a business' decision to relocate to Arizona is multi-factorial, and the existence of a commercial court probably would have a marginal effect on any such decision. She also observed that nationally, case filings are down about 20%, not just in commercial cases but overall, and this might require a more robust analysis and thoughtful evaluation of the court system's changing landscape.

6. **Roadmap.** Members will meet next on Friday, May 25, 2018, at 9:30 a.m. to finalize their report. Staff will submit the report by the June 1 deadline, and the Chair will present the report to the Arizona Judicial Council at its June 18, 2018 meeting. He will request the Council's authority to file a petition seeking the recommended amendments to Rule 8.1. Judge Barton, the Chair, and the members concurred that the existing experimental rule should be extended by a Supreme Court administrative order until the Court's decision on the rule petition, and Judge Barton is agreeable to amending Maricopa's Administrative Order No. 2015-055 as necessary and appropriate to keep the commercial program running. They agreed that the Judicial Conference in June would be an opportune time to discuss other administrative issues concerning the commercial court.

7. **Call to the public; adjourn.** There was no response to a call to the public. The meeting adjourned at 2:13 p.m.