ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 15, 2016	_X_ Formal Action/Request __ Information Only __ Other	Progress Report Concerning the Arizona Commercial Court Pilot Program

FROM:

Hon. Randall H. Warner
Civil Presiding Judge
Superior Court of Arizona in Maricopa County

DISCUSSION:

The Arizona Supreme Court entered Administrative Order 2015-15 on February 18, 2015. That Order, and a companion administrative order entered by the Superior Court of Arizona in Maricopa County, established a three-year commercial court pilot program. A.O. 2015-15 requires the Superior Court and the Administrative Office of the Courts to monitor the pilot program, and to submit annual progress reports to the Arizona Judicial Council. Judge Warner will present the first of these three annual reports.

A.O. 2015-15 authorized Experimental Rule 8.1 of the Rules of Civil Procedure and Rule 84, Form 14(a), a "Joint Report" form, for use in the pilot commercial court. The December 1, 2016 progress report, which is included in the meeting materials, recommends several changes to these Rules, which the report explains at pages 14-15 and shows in Appendices B and C.

RECOMMENDED COUNCIL ACTION:

Move to approve the December 1, 2016 progress report and its recommendations.

Arizona Commercial Court Pilot Program

PROGRESS REPORT TO THE ARIZONA JUDICIAL COUNCIL

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Civil Presiding Judge
Superior Court of Arizona in Maricopa County

Mark Meltzer
Court Services Division
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December 1, 2016

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INTRODUCTION

On July 1, 2015, the Superior Court of Arizona in Maricopa County inaugurated the Commercial Court Pilot Program ("the Program"). The Program's goal is to meet the unique needs of business cases by assigning to those cases judges who have substantial commercial experience and who can provide differentiated and active case management. This is the first of three annual reports required by Supreme Court Administrative Order No. 2015-15, which authorized the Program.

Attorneys and litigants generally have a positive perception of the Program, and the Commercial Court judges have worked hard to realize its objectives. A year after the Program's inception, there are now answers to some of the unknowns, such as how many cases would be in the Program, the characteristics of those cases, and how much work those cases would be for the Commercial Court judges. But it is too soon to assess whether Commercial Court results in speedier or less costly resolution of business disputes.

This Report discusses the challenges facing the Program, one of which is ensuring that Judges have the time and resources to promptly hear matters and devote individualized attention to commercial cases. To address that challenge, we recommend the eligibility criteria for the Program be narrowed so there are fewer cases in the Program. We also propose changes to Arizona Rule of Civil Procedure 8.1 and Form 14(a) to make them more workable.

We wish to acknowledge those who provided invaluable work and insight for this report, including Commercial Court Judges Dawn Bergin, Roger Brodman, Daniel Martin and Christopher Whitten; Peter Kiefer and Phil Knox from Maricopa County Court Administration; Paula Hannaford-Agor from the National Center for State Courts; Judge Janet Barton, Presiding Judge of the Superior Court in Maricopa County; the members of the Commercial Court Practices and Procedures Committee; and the lawyers and clients who provided valuable feedback regarding the Program.

THE COMMERCIAL COURT PILOT PROGRAM IN MARICOPA COUNTY

Background.

The Supreme Court established a Business Court Advisory Committee in May 2014 by Administrative Order No. 2014-48 ("the Committee"). Committee members included Superior Court judges, court administrators, in-house counsel, the president of the Arizona Chamber of Commerce and Industry, and several attorneys in private practice at large and small firms. The Administrative Order directed the Committee to examine, and make recommendations concerning, the process for resolving business cases in Arizona.

The Committee met regularly over several months. It considered materials from about twenty jurisdictions with established commercial courts or special methods of commercial case management. The Committee identified reasons why Arizona should have a Commercial Court, why it should begin as a pilot program, and why Maricopa County was the most suitable venue for the Program. The Committee gave considerable thought to the selection and management of commercial cases, which resulted in proposed Rule 8.1.

The Committee presented its report and recommendations to the Arizona Judicial Council in December 2014. The Report recommended creation of a business court to handle commercial cases efficiently, help reduce the cost of commercial litigation and provide businesses with access to judges who are knowledgeable about commercial transactions and business issues.

The Arizona Judicial Council approved these recommendations, and on February 18, 2015, the Chief Justice entered Administrative Order No. 2015-15. This Order authorized the Superior Court in Maricopa County to establish a pilot commercial court for three years, beginning on July 1, 2015. The Administrative Order also adopted Rule 8.1 as an "experimental" rule for cases in the Program. A short time later, Maricopa County Presiding Judge Norman Davis entered Administrative Order No. 2015-055, which formally established the Program and made the initial judge assignments.

An effort during the first half of 2015 informed stakeholders of the Program. The Committee Chair, other Committee members, and the three initially assigned

judges introduced the Commercial Court at presentations during the annual Judicial Conference and the State Bar Convention. They also made a number of presentations to State Bar sections, at Maricopa County Bar Association programs, and to the Paralegal Association, law firms, Inns of Court, and in other settings. An article in the *Arizona Attorney* magazine also publicized the Commercial Court.

The Judges.

The heart of the Program is judges who understand commercial litigation and the unique substantive and procedural issues that arise in commercial cases. While no judge is an expert in all areas of law that arise in commercial litigation – which can include such diverse disciplines as real estate, corporate governance, securities and insurance – the assigned judges all had extensive experience in commercial litigation while in private practice, and have substantial experience as judges.

The three judges initially assigned to the Program are Judges Dawn Bergin, Roger Brodman, and Christopher Whitten. Civil Presiding Judge Randall Warner oversees administrative aspects of the Program in conjunction with Civil Court Administration.

Establishment and Administration.

The Superior Court developed processes to implement the Program before it began on July 1, 2015, including the following:

- The Court established an administrative process for assigning cases to the Program consistent with Rule 8.1. When a case is filed and either the "Commercial Court" box on the civil cover sheet is checked, or the complaint says "eligible for Commercial Court," the Clerk of the Court transmits the case to Civil Court Administration, which assigns a Commercial Court judge.

- The Court developed a "Notice of Assignment to Commercial Court" that Civil Court Administration issues in every commercial case. This notifies the parties of the Commercial Court assignment and directs them to file a Joint Report and Proposed Scheduling Order within 60 days after the filing of an answer or 180 days after commencement of the action, whichever is first.

- The Court developed form minute entries for transferring cases to, or out of, the Commercial Court, and for reassigning Commercial Court cases.

- The Court developed a web page on the Superior Court site containing critical information about Commercial Court and links to Commercial Court forms and other information.

The Superior Court determined that only cases filed on or after July 1, 2015 would be eligible for the Program because, for a fair assessment, the assessed cases should be in the Program from their inception. Adding existing cases would also substantially increase the judges' workload.

The Superior Court also established the Commercial Court Practices and Procedures Committee, which is composed of commercial litigators, in-house counsel, representatives of the business community, Commercial Court judges, court administrators, and representatives from the Clerk of the Court and the Administrative Office of the Courts. This committee acts in an advisory capacity and meets periodically to provide feedback on the Program.

The Business Court Advisory Committee recommended the creation of a repository of decisions by Commercial Court judges. The court determined that the best solution for this repository was a Westlaw database, which does not require the Court to maintain and manage the database. This database also allows users to search the judges' decisions. The Westlaw Arizona Commercial Court Decisions database came online in August 2015.

Eligible Commercial Court Cases.

The Program was designed to be mandatory for cases that qualify under Rule 8.1. In practice, the cases in the Program are largely self-selected because a case typically goes to Commercial Court if a lawyer designates it as commercial on the cover sheet and in the caption. However, the rule permits a subsequent transfer to Commercial Court on a party's motion or on a judge's initiative.

Rule 8.1(e)(1) requires the plaintiff to designate the case for the Program if it meets the criteria set forth in the Rule. Under Rule 8.1(a)(1), a "commercial case" is defined as one in which at least one plaintiff and one defendant are "business organizations," the primary issues concern a "business organization," or the primary

issues concern a "business contract or transaction." The Rule also requires that a case meet one of the criteria in Rule 8.1(b) or (c). Rule 8.1(b) lists types of commercial cases that are assigned to the Program irrespective of the amount in controversy, while Rule 8.1(c) lists types that are assigned to the Program only if the amount in controversy exceeds $50,000. Rule 8.1(d) lists types of cases that are not eligible for Commercial Court. Rule 8.1 is in Appendix A to this report.

Management of Commercial Cases.

Active and differentiated case management by the Commercial Court judges is a key component of the Program, and the Superior Court's Administrative Order No. 2015-055 lists several tools the judges may use to tailor case management to the needs of particular cases. For commercial cases, a scheduling conference under Rule 16(d) of the Arizona Rules of Civil Procedure is mandatory. This provides an opportunity for early interaction between the court and counsel, in contrast with most other civil cases, in which the court typically enters a scheduling order without a conference.

At the initial conference, the Commercial Court judge may establish discovery limits, sequence motion practice or accelerate trial. In many cases, a party or party representative is ordered to appear at the conference. Topics discussed include anticipated attorneys' fees, whether a bench trial would be more economical than a jury trial, and potential alternative dispute resolution. The judges have found success ordering an early settlement conference in a number of cases.

Adjustments to the Program.

At its inception in July 2015, we did not know how many cases would be in the Program. There was no historical data because "Commercial Court" as a category did not exist before July 2015. Nor did we know what percentage of eligible cases would be designated as commercial by the parties. Although we expected the time judges would spend on commercial cases to ramp up as more cases came into the Program, and as those cases matured, we did not fully appreciate the impact the Program would have on the workload of these judges.

We noticed one impact almost immediately: a sharp increase in emergency matters handled by Commercial Court judges. Most requests for temporary restraining orders, preliminary injunctions, and receivers are in commercial cases.

Thus, emergency matters that had been spread among 21 civil judges became funneled to the three Commercial Court judges.

Once the Program was underway for several months, a second impact occurred: the Commercial Court judges began noticing a substantial increase in the number of motions they needed to hear and decide. These included motions to dismiss and motions for summary judgment, which are more common in commercial cases than in personal injury and other non-commercial cases. And, as might be expected in commercial cases, these motions were often factually and legally complex. The high volume of motion practice in commercial cases has made it challenging for the judges to promptly hear and resolve motions.

An additional factor compounded this challenge. Under Rule 8.1(e)(4), any civil judge who encounters a case that should be designated commercial can transfer that case to Commercial Court. Judges typically become aware that a case could be in the Program when they receive a substantive motion. Consequently, several cases were transferred to Commercial Court at the very stage at which they required prompt judicial attention.

The Superior Court has done several things to address these challenges. First, adjustments were made to the Commercial Court judges' non-commercial caseload. Second, effective August 1, 2016, the Court assigned Judge Daniel Martin as a fourth Commercial Court judge. Like the other three judges, Judge Martin is an experienced judge who had commercial litigation experience in private practice. Over time, the division of commercial cases among four judges rather than three should reduce each judge's caseload. Third, in August 2016, the court placed a moratorium on the transfer of already-active cases to Commercial Court. Although these measures have mitigated the problem, the judges still have a heavier than normal motion practice.

One additional change was made that impacts Commercial Court. A Complex Civil Litigation Program has existed in Maricopa County for more than a decade, and three judges serve on the complex case assignment. Rule 8(i) of Arizona Rules of Civil Procedure governs the complex program and about half the cases that qualify as complex would also qualify as commercial. The complex assignment is typically a longer rotation in Maricopa County. With the addition of a fourth Commercial Court judge, the Court decided that the same experienced judges should handle both commercial cases and complex cases.

Currently, three of the Commercial Court Judges – Judge Bergin, Judge Brodman and Judge Martin – have both Commercial Court and Complex Civil assignments. There are 35 complex cases in Maricopa County, and these are divided among those three judges and a fourth Complex Civil judge, Judge Warner. The remaining Commercial Court Judge, Judge Whitten, does not handle complex cases because he is the Presiding Tax Judge.

ASSESSMENT OF THE PILOT PROGRAM

Overview.

Supreme Court Administrative Order No. 2015-15 requires this Report to address data that analyzes cases assigned to the Program, levels of litigant satisfaction with the Program and views of judges and attorneys about the Program's effectiveness and benefits. To accomplish these tasks:

- Through a grant from the National Center for State Courts, Paula Hannaford-Agor is consulting with the Court regarding its assessment of the Program.
- Surveys have been sent to the attorneys of record in concluded Commercial Court matters.
- Ms. Hannaford-Agor, along with representatives of Civil Court Administration, conducted a focus group of attorneys and clients who have participated in Commercial Court.
- Data regarding Commercial Court cases has been tracked since the inception of the Program.

Assessing the Program has proven challenging. The Program is relatively new and the quantity of cases that have resolved following court intervention (which does not include defaults, administrative dismissals or voluntary dismissals) is low. For this reason, we believe it is too soon to generate meaningful data regarding outcomes.

Commercial Court Data.

Appendix D to this Report is the Commercial Court Statistical Report for the period ending September 30, 2016. From July 1, 2015 through September 30, 2016, 764 cases were assigned to the Commercial Court Pilot Program, and 269 of those cases were terminated (which includes voluntary dismissals, dismissals for lack of service or prosecution, default judgments, stipulated dismissals and judgments, and judgments on the merits). To date, no Commercial Court case has gone to a final trial on the merits, although several preliminary injunction hearings have been held.

As of September 30, 2016, 495 cases were pending in the Program. The three judges who have been in the Program since its inception average around 150 commercial cases each, and the caseload of the fourth judge is ramping up.

From October 1, 2015 to September 30, 2016, the average number of new cases assigned to the Program (including transfers) in each month was 53, with a range between 42 and 65. The number of case terminations per month has continued to increase as cases in the Program mature, but have not yet reached equilibrium with new filings.

Judges' Impressions.

Following are impressions of the four Commercial Court judges on a number of topics.

- ***Advantages of Commercial Court for litigants.*** These include a judge who is more involved with case management; an opportunity for counsel and their clients to appear before a judge at an early stage of the litigation; and having a judge who sees issues repetitively, becomes familiar with those issues, and is able to make quicker and more consistent rulings.

- ***Workload.*** Commercial judges now get the majority of civil requests for emergency or preliminary relief, substantially more requests for the appointment of a receiver, and a much higher volume of Rule 12 motions to dismiss (possibly 4-5 times greater than a typical civil docket), all of which the court must address at an early stage of a case. There are also more Rule 56 motions for summary judgment in Commercial Court. It

is more difficult for a judge who is in trial to timely manage commercial cases and schedule hearings on requests for emergency relief.

- ***Case management.*** The judges' time commitment increases at the "front-end" of a case. A return hearing on an application for emergency or preliminary relief, if set for sufficient time, can effectively cover a number of Rule 16 topics well in advance of a formal Rule 16 conference. Agreements reached at the return hearing can even obviate the need for a subsequent evidentiary hearing. Counsels' early engagement with the judges allows them to become familiar with the judges' high expectations.

- ***Settlement conferences.*** Judges do not have sufficient time to conduct settlement conferences. Pro tem judges may not have adequate commercial litigation experience to be effective at settlement conferences.

- ***Length of assignment.*** It could take three years for a judge with a commercial law background to become optimal on a commercial assignment. An extended assignment allows judges to get a "good handle" on substantive commercial law and be "at the top of their game." Attorneys would like to keep the same judge for the life of the case.

- ***Publication of decisions.*** Two judges submitted several decisions and will probably submit others. Two judges have not yet submitted decisions. Published decisions allow attorneys to know how the court approaches recurring issues, especially in areas such as attorneys' fees. (For example, does the judge allow fees for multiple attorneys who attend oral argument on a motion?) One judge gained insight from reading another judge's published decisions.

- ***Staff training.*** Staff had training on Commercial Court procedures, processing new minute entries, setting in-person Rule 16 conferences, and flagging cases that need early attention.

- ***Resources.*** Three of the judges are members of the American College of Business Court Judges ("ACBCJ"). Two judges attended specialized

educational programs through the ACBCJ or elsewhere. Examples of topics at these programs include derivative actions, financial statements, and financial expert reports. One judge obtained a copy of the Uniform Commercial Real Estate Receivership Act, which was helpful. Other training and publications, for example, concerning bankruptcy, could be beneficial.

- ***Benefit to the business community.*** All four judges agree that the Commercial Court program benefits the business community. The local business community appreciates the court's interest in establishing this program, and the program promotes the court's national image as innovative.

- ***Retain the program?*** Yes, all four judges agree on this. Comments from litigants are generally positive. Litigants reportedly are now as comfortable having a commercial case with a Superior Court judge as they would be with a Federal District Court judge.

- ***Suggestions***. (1) Judges might benefit from additional specialized training. Funding for conferences, courses, and publications might be available through the ACBCJ or the National Judicial College. (2) Parties need a readily available, inexpensive, and effective settlement forum. The Court should consider developing a small cadre of pro tem judges with commercial litigation experience to conduct settlement conferences. It is counterproductive when a specialized Commercial Court uses pro tem settlement judges who lack commercial experience. (3) It would be better to have more judges with fewer commercial cases than fewer judges with more commercial cases. The former would spread the workload and reduce situations when judges have too many emergency hearings and pending motions. (4) Adding a dedicated law clerk would be helpful. (5) Consider ways to synergize the commercial and complex specialty courts.

Attorney Surveys.

To obtain attorney feedback, the Court emailed an electronic survey link to attorneys in Commercial Court cases that had been completed following some kind of

judicial interaction. The court sent (and re-sent) the survey to 82 attorneys, and 15 completed the survey, for a response rate of 18%, which is lower than hoped but consistent with attorney response rates for similar program evaluation efforts in recent years.[1]

Appendix E is a report of the survey responses. Some highlights are:

- 93% agreed that filing a Commercial Court case and the judicial case assignment process were easy to follow and understand.
- 70% agreed that early intervention by the Commercial Court judge promoted case resolution.
- 87% agreed that Commercial Court provided access to judges who are knowledgeable in commercial transactions and business.
- Only 1 of 15 respondents answered the question: "If e-discovery was used, it was effectively managed through Rule 8.1."

Attorney/Client Focus Group.

Surveys of represented litigants suffer from notoriously poor response rates due to the logistical challenge of obtaining accurate contact information from the litigants' attorneys, many of whom are reluctant to permit direct communication with their clients. Moreover, most litigants have little familiarity with court procedures and little comparative experience on which to provide informed judgments about changes in court procedures. For these reasons, instead of a litigant survey, the court chose to conduct a focus group to obtain litigant input.

On October 13, 2016, the Superior Court hosted a focus group for attorneys and their clients who had recently participated in the Program. The focus group was facilitated by Paula Hannaford-Agor. Attorneys of record in cases in the Program

[1] *See, e.g.,* Paula Hannaford-Agor & Scott Graves, Texas: Impact of the Expedited Actions Rules on the County Courts at Law (Sept. 2016) (13% attorney response rate); Paula Hannaford-Agor & Cynthia G. Lee, Utah: Impact of the Revisions to Rule 26 on Discovery Practice in the Utah District Courts (April 2015) (19% attorney response rate); Thomas Ross, Jamie Walter & Paula Hannaford-Agor, Analysis of ADR in Circuit Court, General Civil Cases (June 2, 2016) (15% attorney response rate).

that had terminated after judicial involvement were invited to attend the focus group with their clients. A total of 12 attorneys participated as well as five clients (involved in three unique cases in the Program). Because this was a self-selected group, there is a greater risk that their willingness and interest in participating in the focus group may be due to concerns or dissatisfaction. It appeared from comments expressed by the clients that many of their cases were still active in the Program.

Because the Program is still relatively new, the questions posed to the focus group were designed to elicit information about the attendees' initial expectations and the basis for those expectations, and to a lesser extent, whether those expectations had been realized.

The attorneys reported that they learned about the Program from a variety of sources including CLE programs and internal law firm education, articles appearing in bar periodicals, and email correspondence from the Superior Court to area law firms. Based on this information, the attorneys viewed the primary benefits of the Program as threefold: the assignment of judges with expertise and practical experience in commercial law, a longer assignment rotation, and a caseload that permits judges to become more actively involved in case management than judges assigned to the regular civil division.

Clients that attended the focus group echoed the attorney expectations. They were particularly interested in participating in the Program based on their understanding that the judges assigned to the Program were well-versed in commercial law. One client also explained his interest in the Program as an alternative to arbitration, which he viewed as ineffective because arbitrators do not have authority to sanction litigants for abusive litigation tactics. It was understood by all of the focus group participants that these factors would result in more informed and timely decisions on pretrial motions and faster resolution of Program cases.

Perceptions of how well these expectations had been met were mixed among this group of attorneys and clients. Several of the attorneys recounted positive experiences, especially in the early months of the Program, but their more recent experiences had been disappointing. Instead of expediting litigation, many of the focus group attendees reported that it was taking much longer to get motions set for a hearing than comparable cases in regular civil divisions. They understood that the delays were due primarily to the workload for the Program judges.

Several attorneys explained that Rule 8.1 was too broad, resulting in the assignment of cases to the Program that do not require intensive case management. Rather than assigning all eligible commercial cases to the Program, they thought the Program should be optional. Attorneys reported that the Rule 16 case management conferences tended to work well to get the cases on track, but they also admitted that repeated Rule 12(b)(6) motions to dismiss often delayed those conferences and suggested that judges offer to intervene earlier, rather than waiting for the case to be fully joined.

The client participants tended to rely on their attorneys' reports about the timeliness of decisions on motions, but did offer their own assessments about the expertise of the judges. Some expressed concern that the judges did not appear to have extensive knowledge about the legal issues in their respective cases. To provide additional assurances that the purpose of the focus group was to explore perceptions about court procedures, the questions posed to attorneys and clients did not directly elicit information about their respective cases. Based on their comments, however, it appears that those cases may involve more arcane areas of commercial law. They also expressed surprise that judges in the Program do not have substantially increased professional staff supporting case management.

In spite of concerns raised about Program operations, several participants explained that overall they believe the Program is worthwhile and should be allowed to continue while it develops effective responses to these concerns.

Future Assessment.

The above information provides insight into the Program at this early stage. By the time of the second report, a year from now, we expect the data to be more meaningful because more cases will have gone through a full lifecycle in Commercial Court.

We have also consulted with Ms. Hannaford-Agor regarding the viability of a study to assess whether the Commercial Court produces more timely and economical resolution of business cases. Constructing an appropriate study would be challenging because there is no comparable set of pre-Commercial Court cases with which to compare the cases in Commercial Court. Rather, a control group would have to be constructed that mirrors not just the cases eligible for the Program, but those that have self-selected into it. Assessing cost is difficult for the additional reason that the relevant cost information is typically in the hands of attorneys. Should the Supreme

Court favor such a study, it should use sound research methodology, and be overseen by someone outside the court system for reasons of both objectivity and expertise.

RECOMMENDATIONS

Amend Rule 8.1 and Form 14(a).

Administrative Order No. 2015-15 directs this Report to include recommended modifications to Rule 8.1 and related forms. Appendix B to this Report contains proposed amendments to Rule 8.1. Appendix C contains proposed amendments to Form 14(a), the joint report for commercial cases. The proposed amendments would make the following changes.

First, the standard for deciding whether a case qualifies for Commercial Court is simplified. Current Rule 8.1(a) defines "commercial case," but a "commercial case" qualifies for "Commercial Court" only if it also satisfies the criteria of either Rule 8.1(b) or Rule 8.1(c). This causes confusion and is unnecessary because the vast majority of cases that satisfy section (a) also satisfy either section (b) or section (c).

The proposed amendment eliminates this two-part test. If a case satisfies section (a) – that is, if the primary issues concern either a business organization or business contract or transaction, or if at least one plaintiff and one defendant are business organizations – it is a "commercial case" eligible for "commercial court." The proposed amendment retains the case-types listed in sections (b) and (c) with some minor modifications, but only as examples that generally satisfy subsection (a). It combines all of them under section (b).

Consequently, the proposed amendments eliminate the distinction between section (b) cases that are eligible for Commercial Court irrespective of amount in controversy, and section (c) cases that are eligible only if the amount in controversy exceeds $50,000. Current section (d), which lists ineligible case types, is renumbered as section (c) with some minor changes.

Second, the proposed amendments add a new section (d) stating that cases subject to compulsory arbitration are not eligible for Commercial Court. This clarifies a question that has arisen since the Program's inception. Cases in which a party seeks non-monetary relief (such as appointment of a receiver) are not subject to compulsory arbitration, so these cases would be eligible for Commercial Court.

Third, Rule 8.1(e)(1) is amended to no longer require the plaintiff to designate the case as commercial when it is eligible for Commercial Court. If a case is eligible, the plaintiff has the choice of whether to seek assignment to Commercial Court. If the plaintiff chooses not to designate the case as commercial, another party may move to transfer it to Commercial Court under Rule 8.1(e)(4).

Fourth, proposed amendments to Rule 8.1(e)(3) and (e)(4) time-limit the transfer of cases to Commercial Court to prevent the transfer of active cases. A party must move to transfer within 20 days of their first appearance, and a judge may only transfer a case on the judge's own initiative within 20 days of the first responsive pleading or Rule 12 motion.

Fifth, the proposed amendments add a new section (f)(4), which requires the parties to meet and confer regarding any pleading defects before a motion to dismiss is filed. This is designed to prevent the delay which occurs due to groundless motions to dismiss or pleading defects that are easily curable. The requirement is similar to what many federal judges require.

We also propose changes to Form 14(a), which is the Joint Report for commercial cases. The proposed form would require attorneys to state the amount in controversy and the anticipated areas of expert testimony. This information will help Commercial Court judges manage cases. We also propose modifying the form with respect to Electronically Stored Information (ESI). The judges have found that ESI is an issue in fewer cases than anticipated. With the proposed amendment, parties can simply advise the court that ESI is not an issue, or if it is, they can describe ESI issues the court needs to address. The proposed amendments also add details regarding the need for a protective order and the inadvertent production of privileged materials, two issues that do arise frequently in commercial cases.

Address Judges' Caseloads.

As discussed above, it has been challenging to find the right caseload balance for the Program's success. Judges need the time to actively manage cases, efficiently conduct emergency hearings, and promptly rule on substantive motions. If Commercial Court caseloads are too heavy, judges cannot give cases the individual attention needed to achieve the Program's goals.

At the Program's inception, some stakeholders desired active case management and the most experienced civil judges for the more complicated

commercial cases. Other stakeholders sought to minimize cost and maximize efficiency for small-dollar commercial cases. Whether the Program can do both remains to be seen.

The changes made to the Program in the past six months, in addition to the proposed changes to Rule 8.1, should alleviate the problem. But further discussion among stakeholders is warranted to find other ways to ensure Judges have appropriate time and resources to realize the Program's objectives.

CONCLUSION

The Commercial Court Pilot Program has already achieved benefits for businesses by assignment of experienced judges and their utilization of active case management. The Commercial Court judges are working hard to make the Program a success. But it is too soon to know whether the Commercial Court process will result in speedier or less costly resolution of commercial cases. This question will be substantially affected by whether the judges have adequate time to devote to each case.

Thank you for the opportunity to provide this Report. We look forward to continuing to work to make the Program a success.

APPENDIX A – Experimental Rule 8.1, current version

Experimental Rule 8.1. Assignment and Management of Commercial Cases

(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 Rule 8.1(a)(1), which also meet the criteria of either Rule 8.1(b) or Rule 8.1(c).

(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. The term "business contract or transaction" excludes a "consumer contract or transaction."

(4) A "consumer contract or transaction" is one that is primarily for personal, family, or household purposes.

(b) Cases with No Amount in Controversy Requirement. Regardless of the amount in controversy, the commercial court will hear a commercial case that:

(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.

(c) Cases Subject to an Amount in Controversy Requirement. If the amount in controversy is at least $50,000, the commercial court will hear a commercial case that:

(1) Arises from a contract or transaction governed by the Uniform Commercial Code;

(2) Involves the sale of services by, or to, a business organization;

(3) Is a malpractice claim against a professional, other than a medical professional, that arises from services the professional provided to a business organization;

(4) Arises out of tortious or statutorily prohibited business activity, such as unfair competition, tortious interference, misrepresentation or fraud; or

(5) 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.

(d) Ineligible Case Types. Subject to Rule 8.1(e)(4), the following case types generally are not eligible for assignment to the commercial court, unless other criteria specified in Rule 8.1(b) and (c) predominate the case:

(1) Evictions;

(2) Eminent domain or condemnation;

(3) Civil rights;

(4) Motor vehicle torts and other torts involving physical 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.

(e) Assignment of Cases to Commercial Courts.

(1) ***Plaintiff's Duties.*** If a case meets the definition of a "commercial case" as set forth above, and also meets the criteria of either Rule 8.1(b) or Rule 8.1(c), the plaintiff must include in the initial complaint' caption the words "eligible for commercial court." At the time of filing the initial complaint, the plaintiff must also 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 Reconsider Assignment to Commercial Court.*** After assignment of a case to the commercial court, a commercial court judge, upon motion of a party or on the judge' own initiative, may reconsider whether assignment of that case to the commercial court is appropriate under Rules 8.1(a) through 8.1(d). Any party filing a motion under this Rule must do so no later than 20 days after the defendant files an answer or a motion under Rule 12, or within 20 days after that party's appearance in the case. If a commercial court judge concludes that a case is not appropriate for assignment to the commercial court, that judge may reassign the case to a general civil court.

(4) ***Motion to Transfer to Commercial Court.*** On the court's own initiative, on motion of a party filed within 20 days after a defendant files an answer or a motion under Rule 12, or on motion of a party filed within 20 days of that party's appearance, a judge of a general civil court may order the transfer of a case to the commercial court if that judge determines that the matter meets the criteria of Rules 8.1(a) through 8.1(d).

(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 have reached any agreements with regard to ESI, what those agreements are, those areas on which they were unable to agree, and whether the parties request the court to enter an order concerning ESI;

(B) Whether the parties reached agreements under Rule 502 of the Rules of Evidence;

(C) Whether any party is requesting the court to enter a protective order under Rule 26(c), and if so, a brief statement concerning the need for a protective order; and

(D) Whether there are any issues concerning claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f).

(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.

APPENDIX B – Experimental Rule 8.1, as proposed, clean version

Experimental Rule 8.1. Assignment and Management of Commercial Cases

(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) 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.

APPENDIX B – Experimental Rule 8.1, as proposed, redline version

Experimental Rule 8.1. Assignment and Management of Commercial Cases

(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) 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.

APPENDIX C – Form 14(a), as proposed, clean version

Form 14(a) – Joint Report: Commercial Case

In the Superior Court of Arizona
_____ County

	)	
Plaintiffs	)	Case number _____
	)	
v	)	**Joint Report**
	)	*(Commercial case)*
Defendants	)	
	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(d), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. ***Brief description of the case:*** _____
_____
_____
   - If a claimant is seeking other than monetary damages, specify the relief sought _____
   _____.
   - This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply):_____.

2. ***Current case status:*** Every defendant has been served or dismissed. [] yes [] no
   - Every party who has not been defaulted has filed a responsive pleading. [] yes [] no
   - Explanation of a "no" response to either of the above statements: _____
   _____.

3. ***Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case: [] yes [] no

4. ***Special case management:*** Special case management procedures are appropriate: [] yes [] no
If "yes," the following case management procedures are appropriate because: _____
_____.

5. ***Commercial case management [Rule 8.1(f)]:***

   a. **Approximate Amount in Controversy $_____**

   b. **Anticipated Areas of Expert Testimony (not binding):**

   _____
   _____
   _____

   c. **Electronically Stored Information**
   [] The parties do not expect Electronically Stored Information ("ESI") to be at issue in the case.

   [] The parties do expect ESI to be at issue in the case.

   Have the parties reached an agreement regarding the discovery of ESI? [] yes [] no

   If yes, have the parties filed a stipulated order? [] yes [] no

   Do the parties currently have disputes or anticipate particular disputes over ESI?
   [] yes [] no

   If yes, please describe the dispute(s):

   d. **Privilege Issues and Protective Order**

   Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence? [] yes [] no

   If so, have the parties filed a stipulated order? [] yes [] no

   Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f)? [] yes [] no

   If so, please describe the issue(s):

   Do the parties believe that a protective order is necessary? [] yes [] no

   If so, have the parties filed a stipulated protective order? [] yes [] no

6. ***Settlement:*** The parties agree to engage in settlement discussions with [] a settlement judge assigned by the court, or [] a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

7. ***Readiness:*** This case will be ready for trial by _____.

8. ***Jury:*** A trial by jury is demanded. [] yes [] no

9. ***Length of trial:*** The estimated length of trial is ____ days.

10. ***Summary jury:*** The parties agree to a summary jury trial. [] yes [] no

11. ***Preference:*** This case is entitled to a preference for trial pursuant to the following statute or rule: _____.

12. ***Special requirements:*** [] At a pretrial conference or [] at trial, a party will require
[] disability accommodations (specify) _____
[] an interpreter (specify language) _____

13. ***Other matters:*** Other matters that the parties wish to bring to the court's attention that may affect management of this case: _____
_____.

14. ***Items upon which the parties do not agree:*** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:
_____
_____.

Dated this ____ day of _____, 20____.

_____ _____
For Plaintiff For Defendant

APPENDIX C – Form 14(a), as proposed, redline version

Form 14(a) – Joint Report: Commercial Case

In the Superior Court of Arizona
_____ County

	)	
Plaintiffs	)	Case number _____
	)	
v	)	**Joint Report**
	)	*(Commercial case)*
Defendants	)	
	)	Assigned to:

The parties signing below certify that they have conferred about the matters set forth in Rules 8.1(f) and 16(d), and that this case is not subject to the mandatory arbitration provisions of Rule 72. With regard to matters upon which the parties could not agree, they have set forth their positions separately in item 14 below. The parties are submitting a Proposed Scheduling Order with this Joint Report. Each date in the Joint Report and in the Proposed Scheduling Order includes a calendar month, day, and year.

1. ***Brief description of the case:*** _____
_____
_____
   - If a claimant is seeking other than monetary damages, specify the relief sought _____
   _____.
   - This is a commercial case under Rule 8.1 because (refer to the specific provisions of Rule 8.1 that apply):_____.

2. ***Current case status:*** Every defendant has been served or dismissed. [] yes [] no
   - Every party who has not been defaulted has filed a responsive pleading. [] yes [] no
   - Explanation of a "no" response to either of the above statements: _____
   _____.

3. ***Amendments:*** A party anticipates filing an amendment to a pleading that will add a new party to the case: [] yes [] no

4. ***Special case management:*** Special case management procedures are appropriate: [] yes [] no
If "yes," the following case management procedures are appropriate because: _____
_____.

5. ***Commercial case management [Rule 8.1(f)]:***

   a. **Approximate Amount in Controversy $_____**

   b. **Anticipated Areas of Expert Testimony (not binding):**

   _____
   _____
   _____

   c. **Electronically Stored Information**
   [] The parties do not expect Electronically Stored Information ("ESI") to be at issue in the case.

   [] The parties do expect ESI to be at issue in the case.

   Have the parties reached an agreement regarding the discovery of ESI? [] yes [] no

   If yes, have the parties filed a stipulated order? [] yes [] no

   Do the parties currently have disputes or anticipate particular disputes over ESI?
   [] yes [] no

   If yes, please describe the dispute(s):

   d. **Privilege Issues and Protective Order**

   Have the parties reached an agreement regarding the inadvertent production of privileged material pursuant to Rule 502 of the Rules of Evidence? [] yes [] no

   If so, have the parties filed a stipulated order? [] yes [] no

   Have any issues arisen or do you expect any issues to arise regarding claims of privilege or protection of trial preparation materials pursuant to Rule 26.1(f)? [] yes [] no

   If so, please describe the issue(s):

   Do the parties believe that a protective order is necessary? [] yes [] no

   If so, have the parties filed a stipulated protective order? [] yes [] no

6. ***Settlement:*** The parties agree to engage in settlement discussions with [] a settlement judge assigned by the court, or [] a private mediator.

The parties will be ready for a settlement conference or a private mediation by _____.

If the parties will not engage in a settlement conference or a private mediation, state the reason(s): _____.

7. ***Readiness:*** This case will be ready for trial by _____.

8. ***Jury:*** A trial by jury is demanded. [] yes [] no

9. ***Length of trial:*** The estimated length of trial is ____ days.

10. ***Summary jury:*** The parties agree to a summary jury trial. [] yes [] no

11. ***Preference:*** This case is entitled to a preference for trial pursuant to the following statute or rule: _____.

12. ***Special requirements:*** [] At a pretrial conference or [] at trial, a party will require
[] disability accommodations (specify) _____
[] an interpreter (specify language) _____

13. ***Other matters:*** Other matters that the parties wish to bring to the court's attention that may affect management of this case: _____
_____.

14. ***Items upon which the parties do not agree:*** The parties were unable in good faith to agree upon the following items, and the position of each party as to each item is as follows:
_____
_____.

Dated this ____ day of _____, 20____.

_____ _____
For Plaintiff For Defendant

APPENDIX D – Statistical Report

MEMORANDUM

TO: Honorable Judge Warner, Civil Court
FROM: Peter Kiefer, Civil Court Administrator
DATE: October 13, 2016

Attached are the Commercial Court reports and graphics for September 2016. Questions and comments can be directed to me at (602) 506-1447.

COMMERCIAL COURT STATISTICAL REPORT, SEPTEMBER 2016

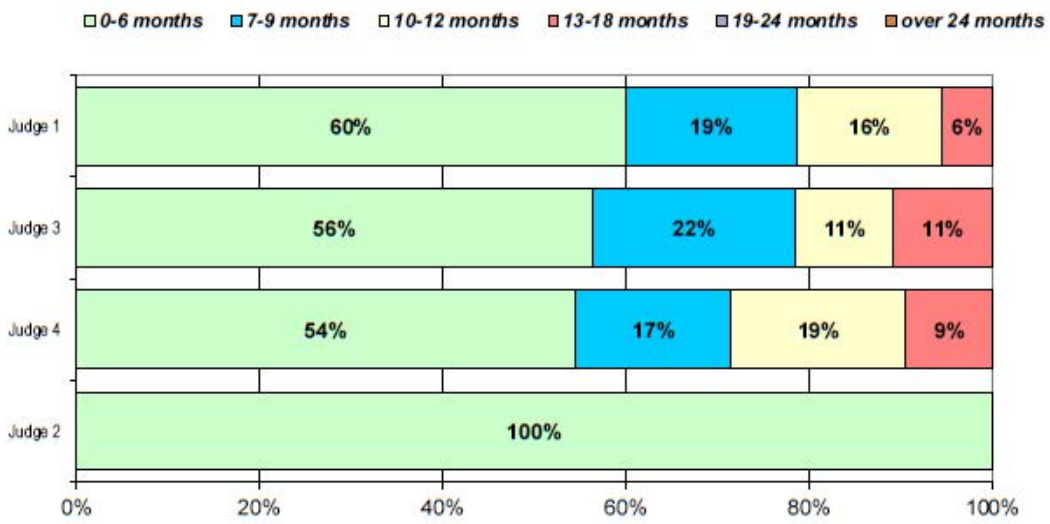
Monthly Caseload Summary	*September 2016*	*August 2016*	*Percent Change (Sep-Aug)*	*September 2015*	*Percent Change (2016-2015)*
New Case Filings and Transfers	**60**	**59**	*2%*	**44**	*36.4%*
Total Cases Terminated	**42**	**39**	*8%*	**9**	**N/A**
Pending Cases (end of the month)	**495**	**477**	*4%*	**116**	**N/A**

FISCAL YEAR-TO-DATE COMPARISONS	***FY 2017***	***FY 2016***	*Percent Change (FY17-FY16)*	***FY 2015***
New Case Filings and Transfers	**163**	**122**	*33.6%*	**N/A**
Total Case Terminated	**105**	**10**	**N/A**	**N/A**

NOTE: Commercial Court report data is a subset of the monthly Civil Court report data.

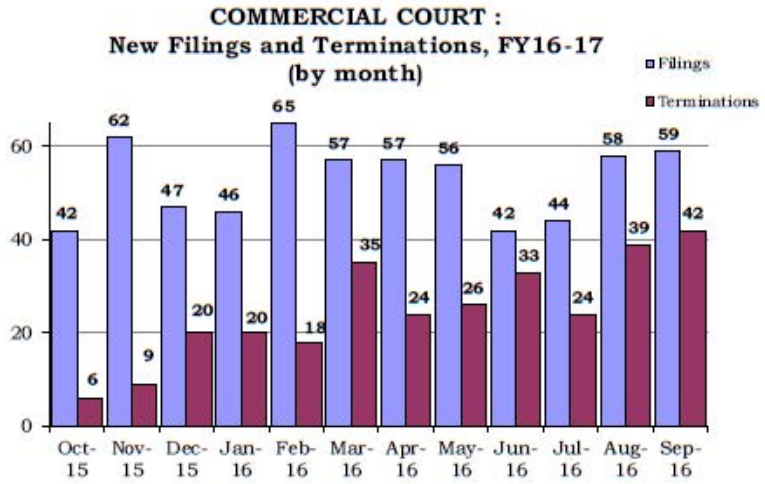
Superior Court of Arizona in Maricopa County
Number of Age (in months) of Total Pending Commercial Court Cases, as of October 1, 2016

calendar	division	up to 6 months	7 to 9 months	10 to 12 months	13 to 18 months	19 to 24 months	over 24 months	Totals
	Judge 1	87	27	23	8	0	0	145
	Judge 2	34	0	0	0	0	0	34
	Judge 3	89	35	17	17	0	0	158
	Judge 4	86	27	30	15	0	0	158
Calendar yet to be assigned								
GRAND TOTAL		**296**	**89**	**70**	**40**	**0**	**0**	**495**
percent to total		*59.8%*	*18.0%*	*14.1%*	*8.1%*	*0.0%*	*0%*	
cumulative percentage		*59.8%*	*77.8%*	*91.9%*	*100.0%*	*100.0%*	*100.0%*	



SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY
COMMERCIAL COURT MONTHLY STATISTICAL REPORT, SEPTEMBER 2016

PENDING CASE INVENTORY					MONTHLY CASE and WORKLOAD STATISTICS								
						Recusals and Transfers					Trial		
Calendar	Judge	Cases Pending (beginning)	Cases Pending (ending)	change (+/-)	New Cases Assigned	in	(out)	Cases Dismissed	Dispositions/ Judgments	Assisted & Misc. Dispositions	Bench	Jury	Total Cases Terminated
	Judge 1	147	145	-2	13	0	0	8	5	0	0	0	13
	Judge 2	18	34	16	16	0	1	1	0	0	0	0	0
	Judge 3	155	158	3	15	0	1	9	2	1	0	0	13
	Judge 4	157	158	1	15	1	3	4	2	0	0	0	9
Calendar yet to be assigned													
Statistical Correction													7
TOTALS		477	495	18	59	1	5	22	9	1	0	0	42



APPENDIX E – Attorney Survey

Attorney Survey Report
Arizona Commercial Court Pilot Program
December 1, 2016

Arizona Supreme Court Administrative Order 2015-15 (February 18, 2015) provides authority for the establishment of a Commercial Court Pilot Program. The Order requires progress reports that address a number of measures to assess the Program. These include litigant satisfaction with the Program, and views of attorneys concerning the effectiveness and benefits of the Program.

In order to evaluate attorney satisfaction, the court developed a survey. The consultant from the National Center for State Courts reviewed the attorney survey and made recommendations that improved the design prior to release.

The attorney survey was prepared for dissemination and an invitation to the survey link was emailed to every attorney who had a terminated Commercial Court case that included a temporary restraining order, an order to show cause, a preliminary injunction, or a scheduling order. A total of 137 invitations were emailed out. Attorneys who did not respond to the initial invitation were sent a second invitation from the Civil Presiding Judge. Those who did not respond to the second invitation were sent a third invitation with an MSWord version of the survey attached. Attorneys were invited to fill out the MSWord version and email it back to civil court administration.

At the time of this Report, the court has received 15 responses. Eight respondents describe themselves as Partners, four as Attorneys, one as an Associate, one as a Shareholder, and one did not respond to that question. Sixty percent (nine of the 15 respondents) say their legal specialty is commercial litigation, five said it was other civil litigation. Almost three quarters (11) say they have 21 years of experience or more in legal practice, three said they had between 11 and 20 years. There are 11 attorneys who said they had two or more Commercial Court cases.

Following are the survey results. Because the survey was to assess the Program and not individual judges, comments identifying a judge have been redacted.

Cases Dispositions from the Survey

Cases Settled	11
Still Pending	2*
No Answer	1

*One attorney responded that his Commercial Court case had not yet resolved although the court received a stipulated dismissal with prejudice. Another attorney took the case to private arbitration, which the court designated as a termination. One attorney (not listed in the above table) said he had 6 Commercial Court cases: 2 resolved on the merits; 2 settled; 2 are still pending.

How Settled

Resolved after a Temporary Restraining Order, a Preliminary Injunction, or an Evidentiary Hearing before the Judge	3
Resolved after a Return Hearing, a Case Management Hearing, or Other Conference before the Judge	9
Resolved before any Hearing Occurred	1
Did Not Respond	2

Question 11. Existing rules and procedures in place prior to the Commercial Court Pilot Program were appropriate to handle commercial cases. No need for any new or experimental rules to address commercial cases.

Strongly Agree	2	13%
Agree	8	53%
Neither Agree Nor Disagree	4	27%
Disagree	1	7%
Strongly Disagree	0	

Question 12. Experimental Rule 8.1 and the Commercial Court Pilot Program procedures are appropriate to address the needs of commercial litigants.

Strongly Agree	3	20%
Agree	7	47%
Neither Agree Nor Disagree	5	33%
Disagree	0	
Strongly Disagree	0	

Question 13. Filing a Commercial Court case and the judicial case assignment process was easy to follow and understand?

Strongly Agree	4	27%
Agree	10	67%
Neither Agree Nor Disagree	0	0%
Disagree	1	7%
Strongly Disagree	0	

Question 14. Early intervention by the Commercial Court Judge promoted case resolution?

Strongly Agree	3	20%
Agree	6	40%
Neither Agree Nor Disagree	3	20%
Disagree	1	7%
Strongly Disagree	0	0%
Did Not Respond	2	13%

Question 15. If you participated in a settlement conference before a Commercial Court Judge, the settlement conference promoted earlier resolution of the case?

Strongly Agree	2	13%
Agree	1	7%
Neither Agree Nor Disagree	0	0%
Disagree	0	0%
Strongly Disagree	0	0%
Did Not Respond	12	80%

Question 16. If e-discovery was used, it was effectively managed through Rule 8.1.

Strongly Agree	0	0%
Agree	0	0%
Neither Agree Nor Disagree	1	7%
Disagree	0	0%
Strongly Disagree	0	0%
Did Not Respond	14	93%

Question 17. Commercial Court made litigating this specific case more cost effective?

Strongly Agree	3	20%
Agree	3	20%
Neither Agree Nor Disagree	3	20%
Disagree	3	20%
Strongly Disagree	0	0%
Did Not Respond	3	20%

Question 18. If you thought Commercial Court was more cost effective, to what do you attribute this?

Three attorneys wrote basically that early and active judicial involvement was important.

"[The Judge] was very efficient and promptly ruled on the pending motions. [The Judge] was extremely prepared during oral argument and it was apparent that [the Judge] was very familiar with the issues from other similar cases."

One attorney wrote: "Client Involvement"

Question 19. Commercial Court resulted in the court being more accessible in this case, than if the case had been managed in general civil court?

Strongly Agree	3	20%
Agree	7	47%
Neither Agree Nor Disagree	2	13%
Disagree	2	13%
Strongly Disagree	1	7%

Question 20. Commercial Court resulted in the court being more involved in the proceedings for this case, than it would have been if case had been managed in general civil court?

Strongly Agree	4	27%
Agree	5	33%
Neither Agree Nor Disagree	3	20%
Disagree	2	13%
Did Not Respond	1	7%

Question 21. One of the goals of Commercial Court is to provide litigants with access to judges who are knowledgeable in commercial transactions and business. Based on your experience, that goal was met in this specific case.

Strongly Agree	8	53%
Agree	5	33%
Neither Agree Nor Disagree	2	13%
Disagree	0	0%
Strongly Disagree	0	0%

Question 22. The Court conducted or required settlement efforts or mediation in a manner appropriate for this specific case.

Strongly Agree	3	21%
Agree	4	29%
Neither Agree Nor Disagree	2	14%
Disagree	0	0%
Strongly Disagree	0	0%
Did Not Respond	5	36%

Question 23. What, if anything, did the Commercial Court Judge do differently from a general civil judge?

Nine attorneys wrote comments:

- Two wrote "Early and active judicial involvement."
- "The judge in our case was accessible and active. I couldn't tell, however, whether that was due to the manner in which [the Judge] would run [the Judge's] courtroom in all events or was due to the Commercial Court procedures/program."
- "Nothing. When we filed the complaint, we also filed an application for an order to show cause. It took over 6 weeks to get a 15-minute return hearing, which is longer than any case I've ever experienced. I believe our judge may have had some cases from a recently retired judge, so our situation may have been unusual."
- "Had a quicker and better grasp of the area of law involved"
- "[The Judge] set hearings sooner and [the Judge] was better versed in the legal issues. It appeared to me that [the Judge] had addressed these same issues numerous times."
- The court held two in-person conferences with counsel and required the parties to be present. [The Judge] asked specific questions regarding the amount of damages claimed and proof of same. The court also made it clear that any award of attorneys' fees on the breach of contract claim could be viewed in relation to the amount of recovery, thereby reducing the potential that attorneys' fees became the driving force of the claim.
- "[The Judge] became involved early with respect to management of the case."
- [The Judge] held a status conference even before entering a scheduling order, which allowed us to proceed first to a settlement conference.

Question 24. My client in this case was satisfied with the Commercial Court process.

Strongly Agree	2	13%
Agree	10	67%
Neither Agree Nor Disagree	3	20%
Disagree	0	0%
Strongly Disagree	0	0%

Question 25. Which aspect of Commercial Court is most important to your clients?
Eight attorneys wrote it was because the judge was experienced with commercial issues. Four attorneys wrote it was because of a settlement conference before a Commercial Court judge. Two attorneys wrote it was because of increased judicial involvement.

Question 26. If you responded "Other" to Question 25, Please describe the aspect that is most important to your client.

No one responded to this question.

Question 27. I believe Commercial Court should continue after the three-year pilot project.

Strongly Agree	8	53%
Agree	3	20%
Neither Agree Nor Disagree	1	7%
Disagree	2	13%
Strongly Disagree	0	0%
Did Not Respond	1	7%

Question 28. Do you have any suggestions for improving the Commercial Court Pilot Program?

Two attorneys wrote comments:

- "Although I have not yet had many cases in the Commercial Court pilot program (primarily because most of my existing cases were filed before the program began), it seems to me that a large number of cases fall within the definition of a commercial case and that the judges may wind up with heavy caseloads. That may be my perception only, but my only suggestion at this point would be to narrow the definition of cases that must be included, or make participation voluntary."

- "While I appreciate the program and the high quality of the judges currently assigned to it, the process feels too much like judge shopping to me."