ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 14, 2017	__ Formal Action/Request _X_ Information Only __ Other	Commercial Court Progress Report

FROM:

Hon. Randall Warner

DISCUSSION:

Supreme Court Administrative Order 2015-15 authorized the Superior Court in Maricopa County to establish a pilot commercial court for three years. The Order also directed the submission of progress reports to the Arizona Judicial Council following each year of the pilot program.

The Superior Court inaugurated the Commercial Court Pilot Program on July 1, 2015. Judge Warner, who is the presiding civil judge in Maricopa County, will present the second of three progress reports to the Council.

RECOMMENDED COUNCIL ACTION:

Information only

ARIZONA COMMERCIAL COURT PILOT PROGRAM

Progress Report to the Arizona Judicial Council

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

Mark Meltzer
Court Policy Analyst
Administrative Office of the Courts

December 14, 2017

Table of Contents

THE COMMERICAL COURT PILOT PROGRAM IN MARICOPA COUNTY 1

Summary 1

Changes to the Experimental Rule 8.1 1

Commercial Court Data 2

Judges' Impressions 3

Attorney Survey Responses 5

Program Assessment: Cases Seeking Emergency Relief 6

The Future of Commercial Court 7

Acknowledgements 8

Appendix A 9

Commercial Court End of Quarter Pending Cases 10

Commercial Court Average Filings and Terminations Per Month by Quarter 10

Civil Department Statistical Report 11

Appendix B 16

Attorney Survey Report 16

Appendix C 27

Assessment of Commercial Court Pilot Program: Year 2 27

Appendix D 33

Commercial Court Case Cohort Study Analysis 33

THE COMMERICAL COURT PILOT PROGRAM IN MARICOPA COUNTY

SUMMARY

Supreme Court Administrative Order No. 2015-15 authorized the Superior Court in Maricopa County to establish a pilot commercial court for three years. On July 1, 2015, the Superior Court inaugurated the Commercial Court Pilot Program ("the Program"). The Program is now past the two-year mark, and this is the second of three annual reports required by that Administrative Order.

The Program's goal is to meet the unique needs of business cases by assigning them to judges who have substantial commercial experience and who can provide differentiated and active case management. Commercial cases are assigned to four very experienced judges. The number of pending commercial cases currently hovers around 600. There are now roughly equal numbers of new and terminated cases. Based on our assessment to date, we believe two conclusions can be drawn about the program.

First, those who have cases in the Program overwhelmingly like it. The largest benefit for those who use the Program is having judges with commercial litigation experience and expertise who actively manage these cases.

Second, these commercial cases generally require much higher amounts of a judge's time than other civil cases. Because these cases are labor-intensive for the judges, this aspect of the Program will probably require further resource adjustments.

CHANGES TO EXPERIMENTAL RULE 8.1

Experimental Rule of Civil Procedure 8.1, which was promulgated by Administrative Order No. 2015-15, governs the Commercial Court Pilot Program. On February 8, 2017, the Chief Justice amended that rule by entering Administrative Order No. 2017-17. The amendment was designed to simplify and clarify Rule 8.1, and to address some of the challenges described in our first report last year. Among those challenges were the high volume of new cases, and the transfer of cases into the Program by other civil judges just as those cases were becoming work-intensive.

The amendment made the following changes:

1. Made the Program elective. As originally conceived, the Program was mandatory for any commercial case that qualified. This proved unworkable. Under the amendment, an eligible case is assigned to the Program only if the Plaintiff designates it as commercial upon filing, or any party or a judge moves to transfer it within a limited time thereafter.

2. Simplified the definition of an eligible "commercial case."

3. Made cases that are subject to compulsory arbitration—i.e. those with $50,000 or less at issue—ineligible for the Program.

4. Eliminated a distinction between cases that are eligible regardless of the amount in controversy and cases that are eligible only if the amount in controversy exceeds $50,000. Cases subject to compulsory arbitration are not eligible.

5. Made changes to the parties' required Rule 16 joint report to the court.

6. Added a requirement that the parties must meet and confer and attempt to cure any pleading defects before a party can file a motion to dismiss for failure to state a claim.

As a result of these changes, we have seen a slight decrease in the number of cases assigned or transferred to commercial court each month. We have also seen some levelling out of the judges' workloads, though these remain heavy.

COMMERCIAL COURT DATA

Appendix A to this Report contains Commercial Court statistics for the period ending September 30, 2017. From July 1, 2015 through September 30, 2017 (27 months), 1,330 cases were assigned to the Pilot Program, and 764 of those cases were terminated (including voluntary dismissals, dismissals for lack of service or prosecution, default judgments, stipulated dismissals and judgments, and judgments on the merits.) As of September 30, 2017, there were 588 pending cases, which is an average of 147 commercial cases for each of the four commercial court judges.

An average of 49 new cases were assigned to the Program each month since its inception. Since January 2017, there have been on average 47 new cases each month, and 44 terminated cases. The Program is now at or near equilibrium because the number of new and terminated cases is roughly the same.

Because commercial cases require more judicial resources, commercial court judges have substantially reduced caseloads. General civil judges in Maricopa County have average assignments of 450 cases (plus an average of 300 compulsory arbitration cases.) By comparison, and as of September 30, 2017, Commercial Court judges had average assignments of 235 cases, of which 147 were commercial and 88 were non-commercial. In addition, three of the Commercial Court judges receive assignments of Rule 8(h) complex cases, which require extensive case management. The fourth Commercial Court judge also serves as the court's Presiding Tax Judge.

JUDGES' IMPRESSIONS

The four commercial court judges were interviewed again to obtain their feedback on the Program. Following is a summary of their impressions.

Effect of the Supreme Court's February 2017 Amendments to Rule 8.1: The commercial court judges are not seeing a difference in case types because of these amendments. And they are not seeing attorneys raise a significant number of issues in the recently revised forms concerning electronically stored information (ESI), privileges, or protective orders. The amendments may have slightly reduced the volume of cases transferred to commercial court by the other civil judges.

On the other hand, the commercial judges noted impacts from the recent amendment to Rule 8.1(f)(4). This amendment requires a moving party to submit a Rule 7.1(h) good faith consultation certificate when filing a Rule 12(b)(6) motion to dismiss for failure to state a claim. The majority of Rule 12(b)(6) motions are now submitted without the required certificate. The judges' alternatives in those situations include denying the motion because of noncompliance with the requirement, holding the motion in abeyance pending submission of the required certificate, or considering the motion notwithstanding the omission of a certificate. Judges generally take the latter alternative, especially if they are going to deny the motion, although they usually remind counsel of the need for a certificate in future filings. But judges have occasionally used the other alternatives. Some attorneys may be unaware of the new requirement, and one judge intends to mention it in the judge's online judicial profile.

Case Management: The commercial judges are now more adept at dealing with the increased motion practice and front-end loading of commercial cases. They are better at promptly setting and conducting productive return hearings on preliminary matters, and fashioning agreements at those hearings. The mandatory Rule 16 conference for commercial cases is quite useful. The addition of a fourth commercial court judge has been helpful. One judge had back-to-back jury trials last year (one in a complex case, the other in a non-commercial civil case), which was a strain on scheduling events in the judge's other cases, but this unusual circumstance has not repeated itself. Rule 12(b)(6) motions in commercial cases consume considerable amounts of the judges' time. For three of the four judges, complex cases also require a major time commitment.

Settlement Conferences: The judges try to use other commercial judges for settlement conferences if they are available. After that, they will use other available civil judges or a judge pro tem, especially if the pro tem has commercial experience. A new program created in 2017 by the Association of Corporate Counsel, In-House Counsel Pro Bono Commission uses in-house corporate counsel as mediators. A small number of commercial cases (less than a dozen) have been referred to this program; the

program typically gets lower value cases where there are fewer issues and the parties have limited resources. The in-house program would benefit from increased coordination with court administration.

Trials: Although the commercial judges have had bench trials, there has been only one jury trial. At least one judge encourages bench trials, because they can be set earlier on the court's calendar, they require a fraction of the time needed for a jury trial, and there are considerable cost savings.

Publication of Decisions: Two of the four commercial court judges have published dozens of decisions on Westlaw. The commercial court homepage now has a link to these Westlaw decisions.

Resources: The commercial judges appreciate educational and other support provided by the Arizona Supreme Court and the American College of Business Court Judges. There is one staff attorney dedicated to complex and commercial cases. One judge has a law-trained bailiff, who provides assistance with legal research.

Impact of Recent Civil Justice Reform Amendments: The commercial judges do not anticipate significant impact from the newly adopted civil justice reform rules, which become effective on July 1, 2018. That is because the commercial judges already actively manage their cases, they meet with the litigants early in the process, and they customize discovery according to the needs of the case.

Feedback: Feedback from counsel has been limited but is generally positive. Counsel appreciate having judges with commercial litigation backgrounds, and that may be the program's biggest magnet. Civil Court Administration sends a survey to parties in concluded cases; at least one judge would like input from, and surveys of, counsel in ongoing cases, too. Because a higher percentage of their cases are now commercial, the pending Judicial Performance Reviews may provide general feedback to the commercial judges.

Retain the Program? Yes. The commercial judges effectively manage these cases and stage them for settlement or trial. They work hard to bring their cases to conclusion. They can set motion hearings more quickly. They believe they are comparable with federal judges on substantive knowledge, and with the district court for promptly setting motion hearings.

Recommendations:

(1) Develop and disseminate more information about the In-House Counsel Pro Bono Commission mediation program.

(2) A single Complex/Commercial staff attorney is insufficient to meet the needs of four judges handling complex and commercial cases. The judges would greatly benefit from each having a dedicated law clerk, or having more than a single clerk.

(3) The Complex Court judges generally have five-year assignments. If the Commercial Court Pilot Program continues, assignments to the Commercial Court should be extended to five years. There is a lengthy learning curve in Commercial Court, issues reappear, and judges develop a valuable base of experience over time. Longer assignments would leverage that experience.

(4) Increase the cohesion of the Commercial Court. There are ways it could be improved, such as making it more user-friendly for litigants, posting materials, training staff, and coordinating training. Rather than having each commercial judge deal with these issues individually, they might designate one of their members as a chief Commercial Court judge to oversee policies and address administrative issues.

(5) Expand the number of Commercial Court judges. Adding judges would reduce the number of commercial cases per judge and reduce their front-end case management loads. This also would open more time on the commercial judges' calendars, and permit them to have a more diverse mix of civil cases.

ATTORNEY SURVEY RESPONSES

To obtain attorney feedback, the Court has emailed an electronic survey link to attorneys in Commercial Court cases that were completed after some judicial interaction. The Court emailed 477 survey invitations and received responses from 97 attorneys, for a response rate of 20%. The response rate and sample size are sufficient to permit us to draw meaningful conclusions from the surveys. Appendix B is a report of the survey responses. Two themes predominate in the survey responses.

First, the Program's most important benefit from the lawyers' perspective is the assignment of experienced judges with substantial experience in commercial litigation. For 69% of those who responded, the most important aspect of the Program for their clients was having judges experienced with commercial issues. When asked whether the Program met its goal of providing litigants with access to judges knowledgeable in commercial transactions and business, 85% of those who responded agreed or strongly agreed. The lawyers' comments also emphasized the importance of experienced and knowledgeable judges.

Second, early and active judicial management, while not as important as having an experienced judge, contributes to the resolution of cases. 56% of those who responded said early intervention by the judge promoted case resolution, and 75% said the Commercial Court judge was more involved in their case than if the case was in general civil court. The lawyers' comments also reflected the importance of the judges' active involvement.

A few other items are worth noting. 52.5% of those who responded agreed that Commercial Court made the litigation more cost-effective, compared with 13.5% who disagreed and 35% who neither disagreed nor agreed. 77% of responders reported that their client was satisfied with the Commercial Court process. 88% agreed that the Commercial Court should continue after the three-year pilot program.

PROGRAM ASSESSMENT: CASES SEEKING EMERGENCY RELIEF

Using grant funding, the Superior Court has been working with Paula Hannaford-Agor of the National Center for State Courts to assess the Program, with the goal of learning whether Commercial Court results in speedier and less costly resolution of cases. For this second annual report, we chose to examine a subset of commercial cases: those in which a party sought emergency relief, such as a temporary restraining order or request for appointment of a receiver. We chose that subset because such cases are easily identifiable in the current Commercial Court as well as before the establishment of a Commercial Court, thus allowing a comparison that could elucidate the effect the Commercial Court is having on those cases.

Appendix C is Ms. Hannaford-Agor's report. She employed three different methodologies: (1) comparing case-level data, (2) comparing attorney survey responses in commercial cases involving emergency relief with those that did not, and (3) conducting a focus group. This is the second year we have conducted a focus group as part of the Program assessment, but this year the group focused on cases involving emergency relief.

Key findings from Ms. Hannaford-Agor's analysis are:

- More than six times as many Commercial Court cases involve requests for emergency relief (6.2%) than civil cases generally (0.9%).
- There does not appear to be a material difference in timeliness or case outcomes between Commercial Court cases involving emergency relief and non-Commercial Court cases.
- However, attorneys report that the active involvement of Commercial Court judges promoted resolution and made litigation more cost-effective.

- There remains an impression among attorneys that the Commercial Court judges have too high a workload, which may adversely affect the time it takes to obtain orders from them.

In addition to Ms. Hannaford-Agor's work, Appendix D is an analysis of data maintained by the Court on such cases. Conducted by Peter Kiefer, the Civil Court Administrator in Maricopa County, the analysis compares a cohort of 84 Commercial Court cases with 160 pre-Commercial Court cases, all of which involved a request for emergency relief. Mr. Kiefer's Case Cohort Study is consistent with Ms. Hannaford-Agor's analysis in finding no material difference in the amount of time required for resolution of cases involving emergency relief in Commercial Court, compared to similar cases before Commercial Court. But the sample of Commercial Court cases that have resolved remains small, and further data as the Program matures may shed more light on this issue.

THE FUTURE OF COMMERCIAL COURT

It is now nearly two-and-a-half years since the Commercial Court Pilot Program was launched, and the effects of the Program are clearer now than at the time of our first report.

Business litigators and their clients perceive the Program's benefits of experienced, knowledgeable judges, and early and active case management. However, the high workload of Commercial Court judges remains the Program's most significant challenge. The problem has been somewhat ameliorated during the past year, likely due to the 2017 amendments to Rule 8.1 and the fact that Commercial Court judges are no longer receiving new non-commercial cases, so their non-commercial caseload is waning. But workload remains a challenge and the Commercial Court judges are some of the busiest and most hard-working on the Maricopa County bench.

The Commercial Court Pilot Program ends on June 30, 2018, and Maricopa County's court leadership is considering options for the program's future. Due to the workload issue, leadership is exploring ways to reduce the number of cases in the Program, while still providing the Program's benefits for those cases that most require its judicial expertise and active case management. Another possible alternative is expanding the number of judges who can handle Commercial Court cases, thereby spreading the work among more judicial officers.

We will continue examining the options in the coming months and hope to propose a Maricopa County Local Rule next year that will address the permanency of Commercial Court.

ACKNOWLEDGEMENTS

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 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.

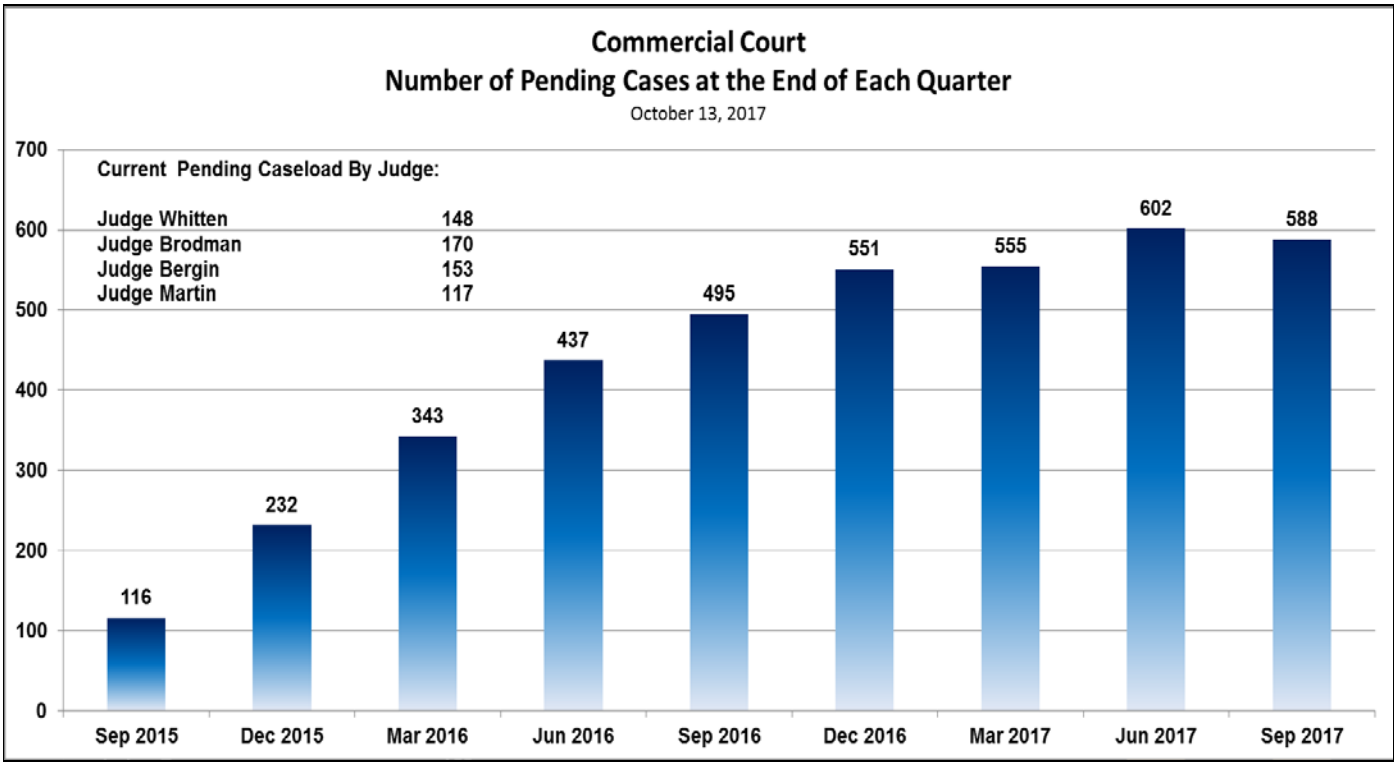
Appendix A

Commercial Court: Number of Pending Cases at the End of Each Quarter

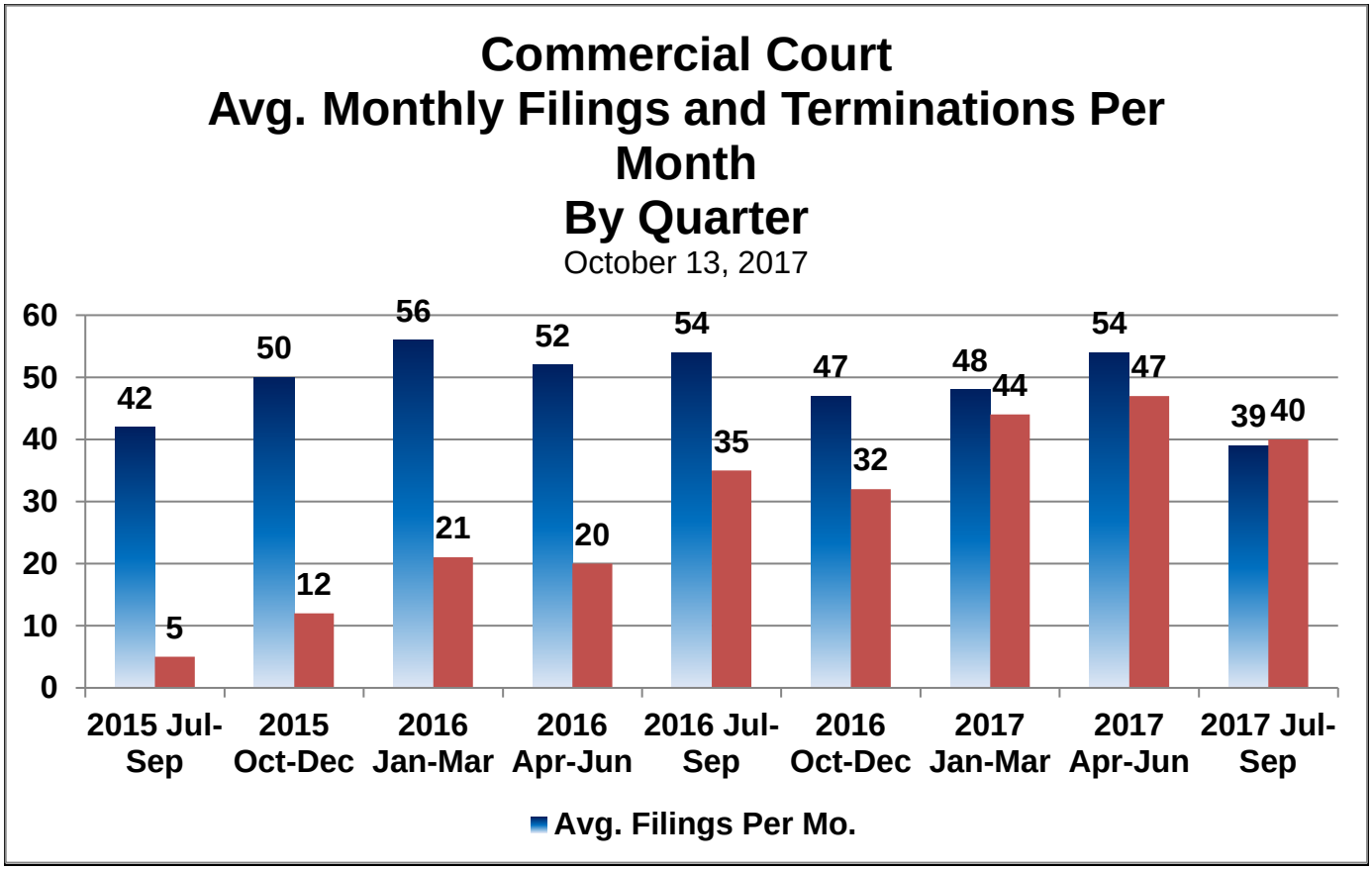
Commercial Court: Average Monthly Filings and Terminations Per Month by Quarter

Civil Department Statistical Report

Commercial Court End of Quarter Pending Cases



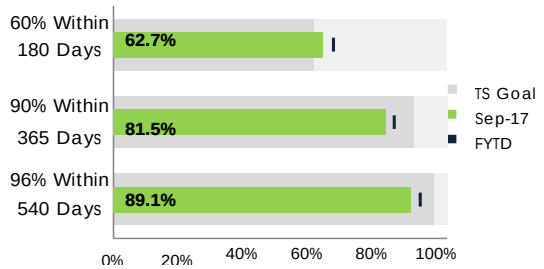
Commercial Court Average Filings and Terminations Per Month by Quarter



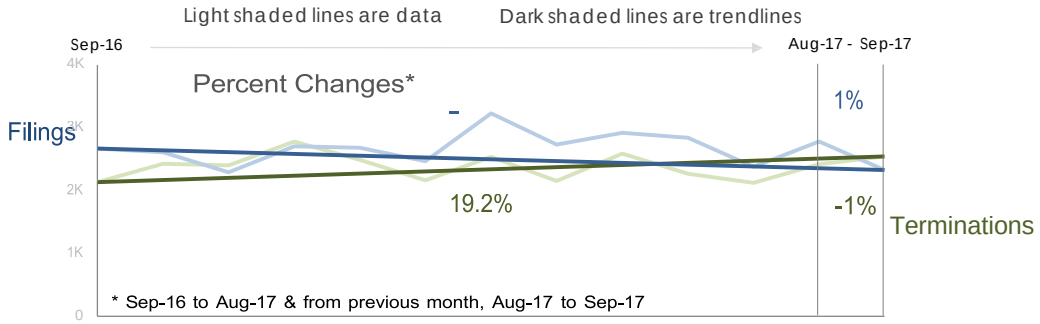
SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY SEPTEMBER 2017

CIVIL DEPARTMENT STATISTICAL REPORT

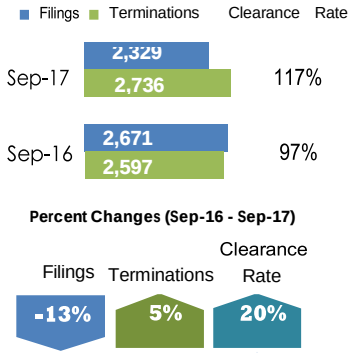
Monthly Caseload Summary	Pending	Caseload Activity	Clearance Rate[1]	Trial Rate[2]	Time Standards
Pre-Judgment					
Beginning Pending	18,183				
New Filings	>>>>>>	+ 2,329			
Pre-Terminated Cases	>>>>>>	− 2,547	117%	0.6%	
Pending+Filings-Terminated	>>>>>>	= 17,965			
Updates[3]	>>>>>>	− 189			
Ending Pending	17,776				Details on page 3
Post-Judgment Filings	>>>>>>	1,102			



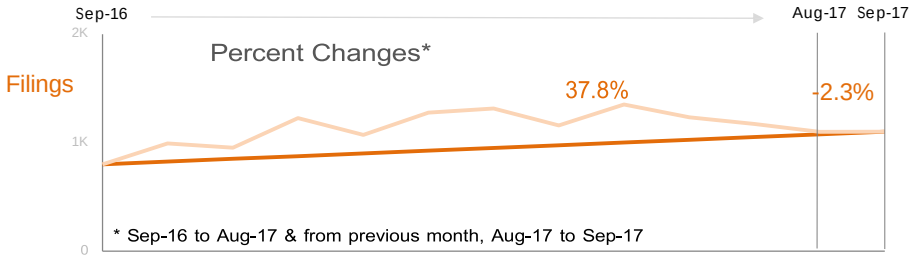
Total Pre-Judgment Civil Cases
September 2016 - September 2017



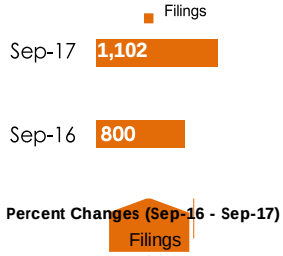
Snapshot (with Updates)



Total Post-Judgment Civil Cases
September 2016 - September 2017



Snapshot



[1]Clearance rate is calculated by dividing cases terminated including the updates by cases filed within the report month.
[2]Trial rate is calculated by dividing trials by CV cases terminated.
[3]Updates are cases updated in iCIS after the report run date, 8/12/17, otherwise known as a statistical correction.

Prepared by Research and Planning Services

SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY SEPTEMBER 2017

New Filings, Terminations & Pending Ending by Case Types

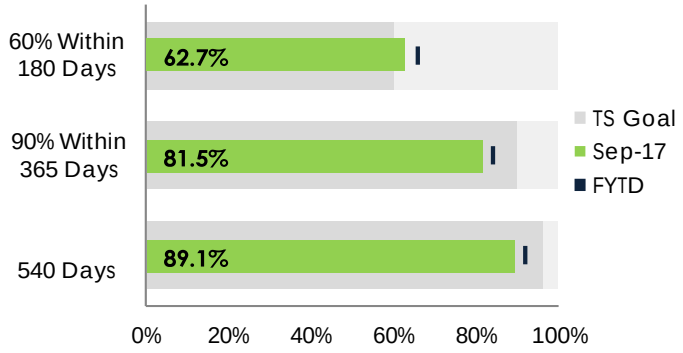
New Filings	Arbitration	Complex	Commercial	All CV Cases*	Median Age
Tort - Motor Vehicle	266	0	0	443	15
Tort - Non Motor Vehicle	37	0	3	148	15
Medical Malpractice	0	0	0	16	15.5
Contracts	464	1	30	772	13.5
Tax	0	0	0	0	0
Eminent Domain	0	0	0	7	15
Non-Classified Civil	9	0	6	943	10
Total	**776**	**1**	**39**	**2,329**	

Terminations	Arbitration	Complex	Commercial	All CV Cases	
Tort - Motor Vehicle	272	0	0	439	238
Tort - Non Motor Vehicle	28	0	0	156	261
Medical Malpractice	2	0	0	24	287
Contracts	505	1	35	904	161
Tax	0	0	0	0	0
Eminent Domain	0	0	0	8	149
Non-Classified Civil	10	0	4	1,016	42
Total	**817**	**1**	**39**	**2,547**	

Pending	Arbitration	Complex	Commercial	All CV Cases	
Tort - Motor Vehicle	2,446	0	4	4,639	176
Tort - Non Motor Vehicle	293	13	45	2,157	256
Medical Malpractice	2	0	3	432	361
Contracts	3,176	10	463	6,695	148
Tax	0	0	0	0	50
Eminent Domain	0	0	0	94	267.5
Non-Classified Civil	141	10	73	3,759	99
Total	**6,058**	**33**	**588**	**17,776**	

NOTE: Includes Arbitration, Complex, Commercial and all other CV cases.

SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY
SEPTEMBER 2017
Civil Department - Pre-Judgment
Time to Disposition



NOTE: Time standards exclude cases with a bankruptcy or a stay at any point in the case.

Age of Active Pending, as of 09/30/17

Calendar	Judicial Officer	0-180 days		0-365 days		0-540 days		over 540 days		Total
		Count	% of Total	Count	% of Total	Count	% of Total	Count	% of Total	
CVJ01	Gass	207	47%	309	71%	372	85%	66	15%	**438**
CVJ02	Whitten	80	34%	125	54%	165	71%	67	29%	**232**
CVJ03	Anderson	233	43%	356	66%	433	80%	108	20%	**541**
CVJ04	Hegyi	203	39%	316	61%	448	86%	74	14%	**522**
CVJ05	Udall	257	53%	337	70%	390	81%	92	19%	**482**
CVJ06	Brnovich	247	46%	379	71%	462	86%	75	14%	**537**
CVJ07	Sanders	192	38%	293	58%	439	86%	69	14%	**508**
CVJ08	Martin	51	25%	95	47%	135	67%	66	33%	**201**
CVJ09	Mahoney	208	44%	316	67%	379	80%	92	20%	**471**
CVJ10	Mullins	233	47%	349	70%	421	84%	78	16%	**499**
CVJ12	Contes	196	39%	314	63%	394	79%	103	21%	**497**
CVJ13	Kiley	221	42%	338	64%	457	86%	74	14%	**531**
CVJ14	Mroz	186	39%	275	58%	401	85%	73	15%	**474**
CVJ16	Hannah	205	46%	303	68%	374	84%	70	16%	**444**
CVJ17	Warner	109	36%	173	57%	249	82%	54	18%	**303**
CVJ18	Stephens	208	45%	320	70%	384	84%	74	16%	**458**
CVJ19	Brodman	63	24%	108	41%	163	62%	98	38%	**261**
CVJ20	LeMaire	174	32%	304	57%	446	83%	91	17%	**537**
CVJ21	Rogers	277	48%	412	71%	483	84%	94	16%	**577**
CVJ22	Talamante	244	45%	354	66%	425	79%	113	21%	**538**
CVJ23	Bergin	64	26%	106	43%	170	69%	75	31%	**245**
ARB-01	Arbitration calendar	4,103	68%	5,638	93%	5,930	98%	128	2%	**6,058**
Total commissioner and other non-civil divisions		1,634	76%	1,849	86%	1,975	92%	176	8%	**2,151**
SUBTOTALS		**9,595**	**55%**	**13,369**	**76%**	**15,495**	**89%**	**2,010**	**11%**	**17,505**
Bankruptcy Cases (39, 53 & 90)		47	17%	130	48%	168	62%	103	38%	**271**
TOTALS		**9,642**	**54%**	**13,499**	**76%**	**15,663**	**88%**	**2,113**	**12%**	**17,776**

SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY
SEPTEMBER 2017

CIVIL MONTHLY CASELOAD STATISTICS

CAL	JUDGE	ACTIVE PENDING (beginning)	New Cases Assigned	Remands in	Remands (out)	Dismissed	Dispositions/ Judgments	Assisted & Misc. Dispositions	Civil Trials Held Jury	Civil Trials Held Bench	Total Terminations	Updates[1]	ACTIVE PENDING (ending)
CVJ-01	Gass	432	39	0	0	26	7	3	0	0	36	**3**	438
CVJ-02	Whitten	235	12	0	1	10	5	2	0	1	18	**3**	232
CVJ-04	Hegyi	519	41	0	1	20	9	0	0	0	30	**-8**	522
CVJ-07	Sanders	517	43	0	1	29	10	7	1	1	47	**-5**	508
CVJ-08	Martin	213	10	0	2	7	11	0	0	0	20	**-2**	201
CVJ-09	Mahoney	477	49	0	0	33	13	1	1	0	47	**-8**	471
CVJ-10	Mullins	501	47	0	4	31	10	1	1	0	46	**-3**	499
CVJ-12	Contes	500	41	0	1	29	8	4	0	0	42	**-2**	497
CVJ-13	Kiley	524	48	0	2	26	10	4	1	1	42	**1**	531
CVJ-14	Mroz	462	41	0	2	24	10	2	0	0	38	**9**	474
CVJ-17	Warner	316	19	0	0	23	7	4	1	0	34	**2**	303
CVJ-18	Stephens	456	39	0	1	22	12	2	2	1	37	**0**	458
CVJ-19	Brodman	266	11	0	1	12	2	2	0	2	17	**1**	261
CVJ-20	LeMaire	549	33	0	3	29	10	3	1	0	45	**0**	537
CVJ-23	Bergin	259	10	0	0	10	6	2	0	0	18	**-6**	245
NEC-02	Holding	164	128	0	0	1	1	154	0	0	156	**-3**	133
PCC-05	Mandell	913	311	0	0	2	4	314	0	0	320	**17**	921
PCC-07	Garbarino	1,005	250	0	0	21	1	325	0	0	347	**-39**	869
SEC-02	Benny	241	109	0	0	12	1	92	0	0	105	**-60**	185
SUBTOTAL		**8,549**	**1281**	**0**	**19**	**367**	**137**	**922**	**8**	**6**	**1445**	**-100**	**8,285**
CVJ-05	Udall	476	49	0	4	31	8	3	1	0	46	**3**	482
CVJ-21	Rogers	579	53	0	1	37	12	1	0	0	51	**-4**	577
CVJ-22	Talamante	542	42	0	4	36	9	5	1	0	54	**8**	538
SUBTOTAL (SE)		**1,597**	**144**	**0**	**9**	**104**	**29**	**9**	**2**	**0**	**151**	**7**	**1,597**
CVJ-03	Anderson	540	41	0	1	22	17	2	1	0	42	**2**	541
CVJ-06	Brnovich	528	43	0	1	23	15	2	2	0	41	**7**	537
CVJ-16	Hannah	452	43	0	4	30	14	1	1	1	49	**-2**	444
SUBTOTAL (NE)		**1,520**	**127**	**0**	**6**	**75**	**46**	**5**	**4**	**1**	**132**	**7**	**1,522**
Misc	other calendars	43	1	0	0	0	1	1	0	0	2	**1**	43
ARB-01	Arbitration calendar	6,197	776	0	3	339	236	239	0	0	817	**-98**	6,058
CVA-01	Civil Administration	0	0	0	0	0	0	0	0	0	0	**0**	0
39,53,90	Bankruptcy Cases	277	0	0	0	0	0	0	0	0	0	**-6**	271
TOTALS		**18,183** [3]	**2,329**	**0**	**37**	**885**	**449**	**1,176**	**14**	**7**	**2,547**	**-189**	**17,776**
(based on 26.50 calendars)		**1,706**	**155**	**0**	**3**	**53**	**20**	**97**	**1**	**1**	**173**	**-11**	**1,672**
Arbitration Averages		**323**	**44**	**0**	**0**	**19**	**13**	**14**	**0**	**0**	**46**	**-6**	**316**

[1]Updates are cases updated in iCIS after the report run date August 12, 2017, otherwise known as a statistical correction.

[2]Change of judge is not included in the recusal columns

[3]Updated total

SUPERIOR COURT OF ARIZONA FOR MARICOPA COUNTY
SEPTEMBER 2017

COMMERCIAL MONTHLY CASELOAD STATISTICS

Calendar	Judge	ACTIVE PENDING (beginning)	New Cases Assigned	Recusals in	Recusals (out)	Dismissed	Dispositions/ Judgments	Assisted & Misc. Dispositions	Civil Trials Held Jury	Civil Trials Held Bench	Total Terminations	Updates[1]	ACTIVE PENDING (ending)
CVJ-02	Whitten	148	10	0	0	5	3	2	0	0	10	**0**	148
CVJ-08	Martin	121	10	0	1	2	8	0	0	0	11	**-3**	117
CVJ-19	Brodman	170	9	0	1	6	2	0	0	0	9	**0**	170
CVJ-23	Bergin	157	10	0	0	4	4	1	0	0	9	**-5**	153
Other/Calendar yet to be assigned													
TOTALS		**596**	**39**	**0**	**2**	**17**	**17**	**3**	**0**	**0**	**39**	**-8**	**588**

[1]Updates are cases updated in iCIS after the report run date 5/12/2017, otherwise known as a statistical correction.

NOTE: Commercial is a subset of Civil data.

Age of Active Pending, as of 09/30/17

Calendar	Judge	0-180 days		0-365 days		0-540 days		over 540 days		Totals
		Count	% of Total	Count	% of Total	Count	% of Total	Count	% of Total	
CVJ-02	Whitten	58	39%	93	63%	118	80%	30	20%	148
CVJ-08	Martin	52	44%	100	85%	115	98%	2	2%	117
CVJ-19	Brodman	61	36%	106	62%	136	80%	34	20%	170
CVJ-23	Bergin	61	40%	104	68%	127	83%	26	17%	153
Calendar yet to be assigned										
TOTALS		**232**	**39%**	**403**	**69%**	**496**	**84%**	**92**	**16%**	**588**

Appendix B

Attorney Survey Report

Arizona Commercial Court Pilot Program

December 1, 2017

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.

With the assistance of the consultant from the National Center for State Courts, a link to an attorney survey has been emailed to every attorney who had a terminated Commercial Court case in which there was an order to show cause, temporary restraining order, preliminary injunction, or scheduling order. A total of 477 invitations were emailed. 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.

The court has so far received 101 responses; four were from attorneys who completed a second survey leaving 97 responses from separate attorneys. Of the responses, 42 (43%) described themselves as either a Partner, Attorney Partner, Partner Shareholder, Shareholder, Equity Member, or Member. Another 46 (47%) described themselves as an Attorney, Attorney Member, Associate, Senior Associate, or Plaintiff's Counsel. Four (4%) said they were either the Managing Attorney or Managing Member. Rounding out the responses included Director, Owner, and President. Two did not respond to the question.

Seventy-four percent (72 respondents) said their legal specialty was commercial litigation, 19 said it was other civil litigation, and 6 said other. Almost half (48) say they have 21 years of experience or more in legal practice; 29 said they had between 11 and 20 years. There were 78 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.

Case Dispositions from the Survey

Case Settled	77	79%
Judgment	7	7%
Neither or None of the Above	9	9%
Did Not Respond	4	4%

Some of the responses received when respondents replied "None of the Above" were:

- Bankruptcy
- Resolved at the Order to Show Cause Hearing
- Summary Judgment
- Voluntarily Dismissed
- Private Arbitration
- Three responses said that the case was not yet resolved.

How Settled

Resolved after a Return Hearing, a Case Management Hearing, or Other Conference before the Judge	50	52%
Resolved after a Temporary Restraining Order, a Preliminary Injunction, or an Evidentiary Hearing before the Judge	16	16%
Resolved before any Hearing Occurred	12	12%
After a Ruling on the Merits	1	1%
Does Not Apply or Did Not Respond	18	19%

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	*13*	*13%*
Agree	*28*	*29%*
Neither Agree Nor Disagree	*21*	*21%*
Disagree	*20*	*20%*
Strongly Disagree	*6*	*6%*
Did Not Respond	*9*	*9%*

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

Strongly Agree	25	26%
Agree	45	46%
Neither Agree Nor Disagree	16	16%
Disagree	1	1%
Strongly Disagree	1	1%
Did Not Respond	9	9%

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

Strongly Agree	26	27%
Agree	47	48%
Neither Agree Nor Disagree	9	9%
Disagree	6	6%
Strongly Disagree	1	1%
Did Not Respond	8	8%

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

Strongly Agree	20	21%
Agree	25	26%
Neither Agree Nor Disagree	24	25%
Disagree	9	9%
Strongly Disagree	3	3%
Did Not Respond	16	16%

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	8	8%
Agree	5	5%
Neither Agree Nor Disagree	4	4%
Disagree	0	0%
Strongly Disagree	0	0%
Did Not Respond	80	82%

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

Strongly Agree	2	2%
Agree	12	12%
Neither Agree Nor Disagree	6	6%
Disagree	0	0%
Strongly Disagree	1	1%
Did Not Respond	76	78%

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

Strongly Agree	10	10%
Agree	32	33%
Neither Agree Nor Disagree	28	29%
Disagree	9	9%
Strongly Disagree	1	1%
Did Not Respond	17	18%

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

Attorney comments submitted since the last report issued.

- [The judge] promptly moved the case along.
- Judges were very proactive to either settle or to move the case along.
- The attention brought to bear by the court early in the case promoted settlement.
- This particular case was unique in that it should have never been filed and it settled immediately after filing. My other experience with the Commercial Court is that early intervention by the judges and immediate rulings from the bench minimize costs. In addition, more contact with the judge provides an unbiased, informative view of the strength of the case (to both counsel and clients who attend hearings).
- The quality of experience for the commercial court judiciary makes it easier to resolve discovery disputes, obtain injunctive relief, and anticipate results when communicating with opposing counsel re: settlement.
- The instructions on limiting discovery to appropriate things and not allowing baseless form objections. Getting in front of a judge sooner to encourage quick dates and turn around was also helpful.
- Case processing ended up being phased because one of the parties filed a motion to dismiss which was ruled on before the case management memo was addressed by counsel. As it happened, this de facto phasing assisted in focusing the lawyers for the parties on pivotal issues that were initially not apparent.
- Early and active judicial involvement by judges who understood the issues. (Six comments with this theme.)
- Simplification of procedures, expediting rulings, limiting briefing.

- We were able to get access to judges more quickly to decide distinct issues which helped push the cases to resolution.

- Keeping deadlines in place and forcing attorneys to focus on the case and the case value. Simply stated, it makes no sense to spend $50,000 to collect $30,000. This should be self-evident early on in the case; not after costly discovery.

- The aptitude of the Judge was extremely helpful in that the judge had a strong commercial background. Our case resolved after the Court ruled on a Motion to Dismiss. The questions the judge asked where probing and went to the heart of our commercial issues and demonstrated the strengths and weaknesses, which prompted a settlement.

- The early intervention of the judge and moving the obvious through, taking the bull by the horns and addressing counsel directly on resolving issues.

- The Judge's speech on proportionality in awarding fees.

- We had an early TRO return hearing with a judge knowledgeable in the area that provided the relief we needed to allow everyone to reevaluate their positions. That led to a settlement.

- The very good Judge.

- Our case settled relatively early, before either party was required to involve the Court. Thus, the parties did not have occasion here to use the cost saving mechanisms typically employed in Commercial Court cases.

- Streamlined the procedure.

- Earlier resolution saved fees and costs.

- Early intervention by sophisticated judge that was able to focus and narrow legal issues in dispute.

- Being able to get an early hearing on the merits.

- Judges are more knowledgeable in the area. Rules lead to efficient processing with shorter time lines.

- The judges on the commercial court seem better equipped to handle commercial cases and devote more time to them.

- I would simply comment that the cases are going to be expensive for the client no matter what. It brings some comfort to the attorney and clients that these judges have subject matter expertise which gives incentive to strongly consider early resolution for both plaintiffs and defendants.

- Knowing that there is more judicial involvement and from judges who are knowledgeable in commercial transactions and business results in lawyers and litigants acting more reasonably. The process also requires parties to address issues earlier in the process.

- Litigants knowing that a judge familiar with commercial disputes would be presiding over any contested matter.

- The case settled after a preliminary injunction hearing, but before the issues were even joined, so I cannot opine on whether the Commercial Court was more cost effective.

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	20	21%
Agree	34	35%
Neither Agree Nor Disagree	23	24%
Disagree	5	5%
Strongly Disagree	2	2%
Did Not Respond	13	13%

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	24	25%
Agree	35	36%
Neither Agree Nor Disagree	13	13%
Disagree	7	7%
Strongly Disagree	0	0%
Did Not Respond	18	19%

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	46	47%
Agree	27	28%
Neither Agree Nor Disagree	11	11%
Disagree	1	1%
Strongly Disagree	1	1%
Did Not Respond	11	11%

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

Strongly Agree	14	14%
Agree	26	27%
Neither Agree Nor Disagree	10	10%
Disagree	0	0%
Strongly Disagree	2	2%
Did Not Respond	45	46%

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

Attorney comments since the last report issued:

- [The judge] demonstrated a knowledge and interest in the issues; made an early effort to understand the industry and facts involved in the case. (Five comments with this general theme.)
- [The judge] talked through the issues in a knowledgeable way. (Three comments with this general theme.)
- Better understanding of commercial issues; more attentive.
- [The judge had a] Stronger background in this area.
- [The judge had] far more involvement and knowledge; more interaction with lawyers about views related to the case. In the case that settled, as well as another which is still pending, the Judge was very active in participation during argument and in making the lawyers think through other issues which were not at issue at that time but important in the overall resolution of the case.

- Because they are experienced, our judges understood the case well and were able to cut to the chase. Ruled effectively on motions with shortened time and briefing. Very knowledgeable in court and this helped the case to settle immediately after the hearing.
- [The judge] set hearings sooner and he was better versed in the legal issues. It appeared to me that he had addressed these same issues numerous times.
- The Judge had a good working knowledge of the case and worked hard to make the parties focus on proportionality before spending large sums of money on discovery.
- The rulings were more topically analytical and therefore provided more guidance to the lawyers regarding the Court's preliminary views on certain aspects of the case. Certain substantive legal issues that might have required a greater time commitment from a generalist judge to resolve were addressed more exactly and in less time.
- [The judge] took time to discuss the specific goals with counsel and litigants.
- [The judge] focused the parties on the legal issues early rather than awaiting outcome of discovery.
- The Commercial Court Judge was more involved in managing discovery, such as the number and schedule of depositions. This can be frustrating for clients who want their attorney to move forward with a more aggressive approach, but it helps to keep the discovery process focused.
- [The judge] explained costs and speed to litigants, told us all that we needed to think about costs as we progressed.
- The commercial court judge facilitated an early case settlement conference.
- [The judge] was available for a quick ruling on discovery issues, instead of engaging in motion practice.
- Mandatory conference with clients and early discussion of scheduling.
- I believe we obtained a hearing on the merits of the plaintiffs' request for a TRO/preliminary injunction sooner with the Commercial Court than in a non-Commercial Court civil division.
- Early intervention and rulings from the bench move things along quickly. (Five comments with this general theme.)

- This case was, by request, removed from a general civil judge to commercial court. The case involved over $1 million which had been tied up by the defendant. The general civil judge took an inordinate amount of time to rule on motions that required expedited response. The commercial court judge ruled on issue the day the case was assigned to him, had a thorough understanding of the issues, held both parties accountable and managed the case appropriately.
- Case in process of resolution through motion practice.
- Promptly scheduled return hearings. (Two comments with this general theme.)
- For this specific case, I don't believe any action was different. It was the time within which the Judge acted and the shortened time necessary for the Judge to grasp the issues.
- Case never made it past the original judge who rules on our TRO and injunction. (Two comments with this general theme.)
- I'm not aware of anything, but we didn't require any particular case management. It was just deciding a summary judgment motion in a plain vanilla loan collection action.
- More initial hoops to jump through. We were ordered to an early hearing in one case and were required to bring our clients in person. The hearing was 10-15 minutes and my clients were angry they took a half day out of their business and no substantive information was shared by judge. If you are going to require clients to appear, make it worth their while. The plaintiffs came from California which I am sure was a cost for travel and time away from their enterprise.

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

Strongly Agree	20	21%
Agree	38	39%
Neither Agree nor Disagree	15	15%
Disagree	1	1%
Strongly Disagree	1	1%
Did Not Respond	22	23%

Question 25. Which aspect of the Commercial Court Pilot is most important to your clients?

Judges Experienced with Commercial Issues	58	60%
Increased Judicial Management	14	14%
Settlement Conference with a Commercial Court Judge	5	5%
Commercial Court Decision Database	0	0%
None	6	6%
Other	1	1%
Did Not Respond	13	13%

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

Two attorneys submitted comments.

- I believe quick access to the Court to obtain a decision on requested provisional remedies was most important to my clients.
- Explanation of fee shifting provisions and liability as well as other specifics of contract related law and litigation.

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

Strongly Agree	55	57%
Agree	22	23%
Neither Agree nor Disagree	7	8%
Disagree	2	2%
Strongly Disagree	1	1%
Did Not Respond	9	9%

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

Attorney comments since the last report issued:

- We probably need a few more judges who are equally as qualified as our existing commercial court judges to handle the commercial case workload.
- For those of us exclusively practice in Commercial Court, we get the same judges for every case. I wonder whether continued experience with the same lawyers' benefits or hurts a case.
- I think Judges should be assigned to Divisions which handle cases in their areas of expertise. For example, Family Court should have judges who have domestic relations law experience, Criminal Court should have Judges with criminal law experience, Probate Court should have Judges with probate experience, Commercial Court should

have Judges with commercial law experience, and there should be a Personal Injury/Wrongful Death/Medical Malpractice Court as well with Judges experienced in those areas. The general civil could have all the other civil cases. Alternatively, before a Judges are assigned to a Calendar in areas of practice about which they have no knowledge or experience, they should be required to take courses in those areas and then pass a test to ensure that they have at least a basic working knowledge of the specific practice areas in which they will be deciding people's fates. The Commercial Court is but a small step in this direction.

- Since there are only two judges, if one of them has a conflict, it is really limiting as to who the judge will be. I would add more judges to the panel.

- I see the judges attempting to strike a balance between applying topical experience and expertise on one hand, and also seeking to refrain from prejudging complex matters that may appear differently on the surface than they are substantively. But, this balance is difficult to strike. Move too far in one direction, and unwelcome prejudging occurs. Fail to act where action may be warranted, and the program loses its appeal. Rules or practices intended to identify bona fide areas of substantive legal dispute will help this Court because that is where experienced judges can best apply their expertise. Rules or practices intended to identify bona fide areas of factual dispute are important and helpful, but to avoid prejudging issues, more restraint is needed with factual disputes than with areas of substantive legal disagreement.

- An east valley court would be more cost effective for clients and attorneys in the Gilbert area.
- Assign more judges to the Commercial Court.

Appendix C

Assessment of Commercial Court Pilot Program: Year 2

Paula Hannaford-Agor, National Center for State Courts

The first progress report to the Arizona Judicial Council discussed the challenge of assessing the Commercial Court Pilot Program due to the amount of time needed to permit a sufficient number of cases to resolve through judicial involvement (excluding default judgments and administrative or voluntary dismissals) to be able to draw meaningful conclusions about the impact of the program.[1] That report also included an impression by the Commercial Court judges that the proportion of cases involving petitions for emergency or preliminary relief was considerably greater than anticipated.[2] The judges noted that cases involving emergency petitions often dispose fairly quickly after the order on the emergency petition had been entered, but the amount of work involved in deciding the emergency petition is substantial. Because the proportion of cases involving emergency petitions was so much higher than anticipated, and that enough such cases have fully resolved, we opted to focus the second progress report on a more in-depth examination of cases involving emergency petitions. We will undertake a more comprehensive review of the impact of the Pilot Program in the final progress report (due December 1, 2018).

We employed three different methodologies to examine the impact of the Pilot Program on cases involving emergency petitions. First was a comparison of 82 cases involving emergency petitions assigned to the Pilot Program and a sample of 70 such cases filed before July 1, 2015 that would have been eligible for the Pilot Program (baseline sample). Second, we compared survey responses of attorneys in cases involving emergency petitions with those of attorneys in cases that did not involvement emergency petitions. Finally, we conducted a focus group with 10 attorneys and one client in Pilot Program cases involving emergency relief.

Commercial Court Cases Involving Petitions for Emergency Relief

A key finding from this examination confirms that the initial impressions of the Commercial Court judges reported in the 2016 progress report are accurate. Proportionately, more than six times as many cases assigned to the Pilot Program involve petitions for emergency relief (6.2%) compared to cases assigned to the Civil Department (0.9%). Attendees at the focus group meeting on September 28, 2018 were asked whether commercial cases were simply more likely to involve issues requiring emergency relief or whether the Pilot Program was becoming known as an attractive venue for resolving cases with emergency petitions. They explained that it was likely a little bit of both.

Emergency petitions involving receiverships or non-compete clauses, which comprised more than half of the emergency petitions in the Pilot Program (see Table 1), are uniquely applicable to commercial litigation. The frequency of emergency petitions is also a function of prevailing

---

[1] ARIZONA COMMERCIAL COURT PILOT PROGRAM: PROGRESS REPORT TO THE ARIZONA JUDICIAL COUNCIL 5 (Dec. 1, 2016).

[2] *Id.* at 7.

economic conditions. During the recent economic recession (2009-2010), for example, one attorney reported filing up to 20 emergency petitions for preservation of property at a time, but now the rate has dropped to four or five emergency petitions. The focus group attendees also admitted that they often request assignment to the Pilot Program when they have cases involving emergency relief. Because only four judges are assigned to the Commercial Court, all of whom are well experienced in both business matters and Rule 65 motions, attorneys have greater certainty about the likely outcomes from emergency hearings and are better able to advise their clients about what to expect. This may explain the greater variation in the types of emergency relief sought in the Commercial Court cases compared to comparable cases in the baseline sample. Receiverships and enforcement of non-compete clauses comprised more than three-quarters of emergency petitions in the baseline sample, but less than 60 percent of the Commercial Court caseload. Compared to the baseline sample, in contrast, the Commercial Court caseload included substantially more emergency petitions to preserve property, for declaratory relief, attaching property liens, and the ubiquitous "other emergency relief."

Table 1: Request for Emergency Relief

	Commercial Court		Baseline Sample	
Receivership	26	32%	39	56%
Non-compete clause	22	27%	15	21%
Preserve property	13	16%	4	6%
Other emergency relief	7	9%	0	0%
Declaratory relief	6	7%	4	6%
Eviction	6	7%	8	11%
Property lien	2	2%	0	0%
Total	82	100%	70	100%

Analysis of case-level data suggests that Commercial Court cases involving petitions for emergency relief were similar in terms of timeliness and outcomes. See Table 2. Although the number of attorneys with cases involving emergency petitions is small (6-7 attorneys), the survey responses suggest that they had significantly more positive responses to several questions than attorneys in cases that did not involve emergency petitions. See Table 3. For example, they were more likely to report that early intervention by the Commercial Court judges promoted resolution and made litigation more effective, that Commercial Court judges were more accessible and more involved in case management, and that the judge conducted or required appropriate use of settlement or mediation to resolve the case. They were also more likely to agree with the statement "there is no need for new or experimental rules to address commercial cases."

Table 2: Timing of Events Concerning Petitions for Emergency Relief

Number of Days from Filing to EM Petition

	Baseline Sample		Arizona Commercial Court	
	N	**%**	**N**	**%**
Less than 15	54	77.1%	61	74.4%
15 to 30	4	5.7%	12	14.6%
31 to 60	3	4.3%	5	6.1%
60 to 90	2	2.9%	3	3.7%
More than 90	7	10.0%	1	1.2%
	70		82	

Number of Days from EM Petition to EM Hearing

	N	**%**	**N**	**%**
Less than 15	22	53.7%	37	56.1%
15 to 30	12	29.3%	13	19.7%
31 to 60	4	9.8%	6	9.1%
60 to 90	1	2.4%	6	9.1%
More than 90	2	4.9%	4	6.1%
	41		66	

Number of Days from EM Hearing to EM Order

	N	**%**	**N**	**%**
Less than 15	35	97.2%	53	80.3%
15 to 30	1	2.8%	3	4.5%
31 to 60	0	0.0%	2	3.0%
60 to 90	0	0.0%	1	1.5%
More than 90	0	0.0%	0	0.0%
	36		59	

Table 3: Attorney Responses to Selected Survey Questions

		Non-Emergency Cases		Emergency Cases	
There is no need for new or experimental rules to address commercial cases. **	Strongly Agree	9	12%	5	71%
	Agree	27	35%	1	14%
	Neither	19	25%	0	0%
	Disagree	15	19%	1	14%
	Strongly Disagree	7	9%	0	0%
Early intervention promoted resolution. ***	Strongly Agree	14	20%	5	71%
	Agree	23	32%	2	29%
	Neither	21	30%	0	0%
	Disagree	10	14%	0	0%
	Strongly Disagree	3	4%	0	0%
CC Pilot Program made litigating this case more effective. *	Strongly Agree	6	8%	4	67%
	Agree	27	38%	2	33%
	Neither	28	39%	0	0%
	Disagree	10	14%	0	0%
	Strongly Disagree	1	1%	0	0%
CC was more accessible. **	Strongly Agree	15	20%	6	86%
	Agree	30	41%	1	14%
	Neither	21	28%	0	0%
	Disagree	6	8%	0	0%
	Strongly Disagree	2	3%	0	0%
CC was more involved. **	Strongly Agree	18	26%	6	86%
	Agree	31	44%	0	0%
	Neither	13	19%	1	14%
	Disagree	8	11%	0	0%
	Strongly Disagree	0	0%	0	0%
CC conducted or required appropriate use of settlement or mediation. **	Strongly Agree	11	23%	4	67%
	Agree	25	53%	2	33%
	Neither	9	19%	0	0%
	Disagree	0	0%	0	0%
	Strongly Disagree	2	4%	0	0%

Legend
* p ≤ .001
** p ≤ .01
*** p ≤ .05

Given the lack of difference in timeliness or case outcomes, the more positive survey responses might be due to qualitative differences in how the Commercial Court judges manage those cases, a possibility that we explored in the focus group. The focus group attendees reported several things that the Commercial Court judges do differently in cases involving emergency petitions compared to other Civil Department judges. First and foremost is simply the judges' expertise both about commercial litigation generally and about Rule 65. The attorneys explained that they

rarely have to provide a basic overview of the law governing the case issues and, in fact, the Commercial Court judges sometimes become annoyed if they try to do so. The judges also spend as much time as necessary during the hearings to fully understand the issues. As a result, the court orders issued from the emergency hearings are often more comprehensive than those entered by non-Commercial Court judges. Because the lawyers have high confidence in the judges' expertise, they are better able to manage their clients' expectations as well.

In addition to the quality of decision-making on the emergency petitions, the lawyers praised the Commercial Court judges for their efforts to control litigation costs, especially while decisions on motions are pending. Several of the attorneys recounted how the judges' verbal explanations about their approaches to case management immediately curtailed litigant demands for unreasonable discovery requests or placed constraints on excessively adversarial behavior. *The significance of these observations should not be overlooked – this is the first time that we have heard explicit reports that the involvement of the Commercial Court judges resulted in reduced litigation costs.*

The judges would also frequently use the hearing on the emergency petition as an opportunity to begin discussions about future case management issues.[3] This is an especially helpful technique when the clients are present for the hearings. The lawyers explained that clients tend to respond better when the judge gives the explanation about how the case will be managed rather than the attorney. Telephonic hearings with the clients are okay, but it works best with the client in the room, particularly in disputes involving two small business clients in which emotions can run particularly high.

Not all the comments about Commercial Court management of emergency petition cases were positive. Several attorneys raised concerns that the judges were not routinely following Rule 65 procedures, in particular by collapsing the emergency return hearing and the full evidentiary hearing into a single procedure. Sometimes the attorneys are not completely prepared to present their evidence at the consolidated hearing, but instead need extra time. Other attorneys complained that some judges are reluctant to appoint receivers at the first hearing, and instead require a second evidentiary hearing on the motion to appoint a receiver, even when it costs the client time and money. In the focus group discussion on this point, the attorneys clarified that it was obvious that the Commercial Court judges have discussed this approach among themselves, so there is great consistency and the lawyers who frequently appear in these cases know what to expect. They expressly said that they prefer predictability, but there was some grumbling about not following established court rules. An additional complaint was the amount of time (two weeks or more) to enter court orders following the emergency hearing. They appreciate the quality of those orders when they are issued, and several noted that judges who were less knowledgeable about commercial litigation might be less willing to order the emergency relief.

---

[3] There was some sense that the judge initially required all clients to attend the emergency petition hearings, but have backed off that practice somewhat over time.

This observation led to a broader discussion about the judicial workload and the amount of time involved in issuing final orders on dispositive motions. Most of the attorneys said that it takes too long, but they were generally impressed with the quality of the opinions when they were finally entered. There was also praise for judges' restrictions on discovery and other litigation activity pending the ruling on the dispositive motion. The attorneys recognize the cost constraints that limit the ability to hire additional staff (e.g., law clerks, staff attorneys, case managers), but several suggested more engagement with local law schools to bring in student interns who might be able to help judges get written decisions out more quickly.

During the focus group discussions, the attorneys raised several topics unrelated to emergency petition cases. They expressed a desire for more informal interaction between the Commercial Court judges, and suggested that CLE programs on topics such as receiverships, non-compete clauses, and other routine issues would be an ideal format. They noted that it would also be a potentially valuable education experience for non-Commercial Court judges that would encourage the dissemination of best practices across the entire bench. Another suggestion was for the court to notify and extend invitations for lawyers to attend meetings of the Commercial Court Practices and Procedures Committee.

Several attorneys suggested that the Commercial Court judges send an email or other communication to lawyers shortly after the complaint or answer is filed in the Commercial Court, including a link to judge's individual rules or preferences, noting that the judges' individual pages are not easily located on the Court's website. Finally, we enquired about the Commercial Court decision repository, but none of the focus group attendees were aware of its existence. Several said that they would welcome such a resource.

Appendix D

Commercial Court Case Cohort Study Analysis

Peter Kiefer, Civil Court Administrator

November 7, 2017

These are the preliminary results of an ongoing analysis of Commercial Court cases comparing a group of 160 civil cases filed between July 2012 and June 2015 ("pre-Commercial Court cohort") with a group of 84 civil cases filed in the Commercial Court between July 2015 and September 2017 ("Commercial Court cohort").

All cases in both cohorts had emergency motions filed. The pre-Commercial Court cohort was randomly selected from case types that had a significant likelihood of qualifying for Commercial Court had the court existed at that time.

Case Type

Pre-Commercial Court Cohort			Commercial Court Cohort	
Breach of Contract	82	51%	50	60%
Promissory Note	35	22%	3	4%
Declaratory Judgment	18	11%	9	11%
Fraud	8	5%	3	4%
Intentional Tort	5	3%	1	1%
Foreclosure	10	6%	0	0%
Slander/Libel/Defamation	1	1%	0	0%
Legal Malpractice	1	1%	0	0%
Other Civil	0	0%	13	15%
Real Property	0	0%	2	2%
Landlord-Tenant Dispute	0	0%	1	1%
Employment Dispute	0	0%	1	1%
Tort Non Motor Vehicle Other	0	0%	1	1%
	160		84	

Type of Emergency Motion

Pre-Commercial Court Cohort			Commercial Court Cohort	
Order to Show Cause	147	92%	50	60%
Temporary Restraining Order	9	6%	19	23%
Preliminary Injunction	4	3%	11	13%
Receiver	0	0%	3	4%
Provisional Remedy	0	0%	1	1%
	160		84	

How Terminated

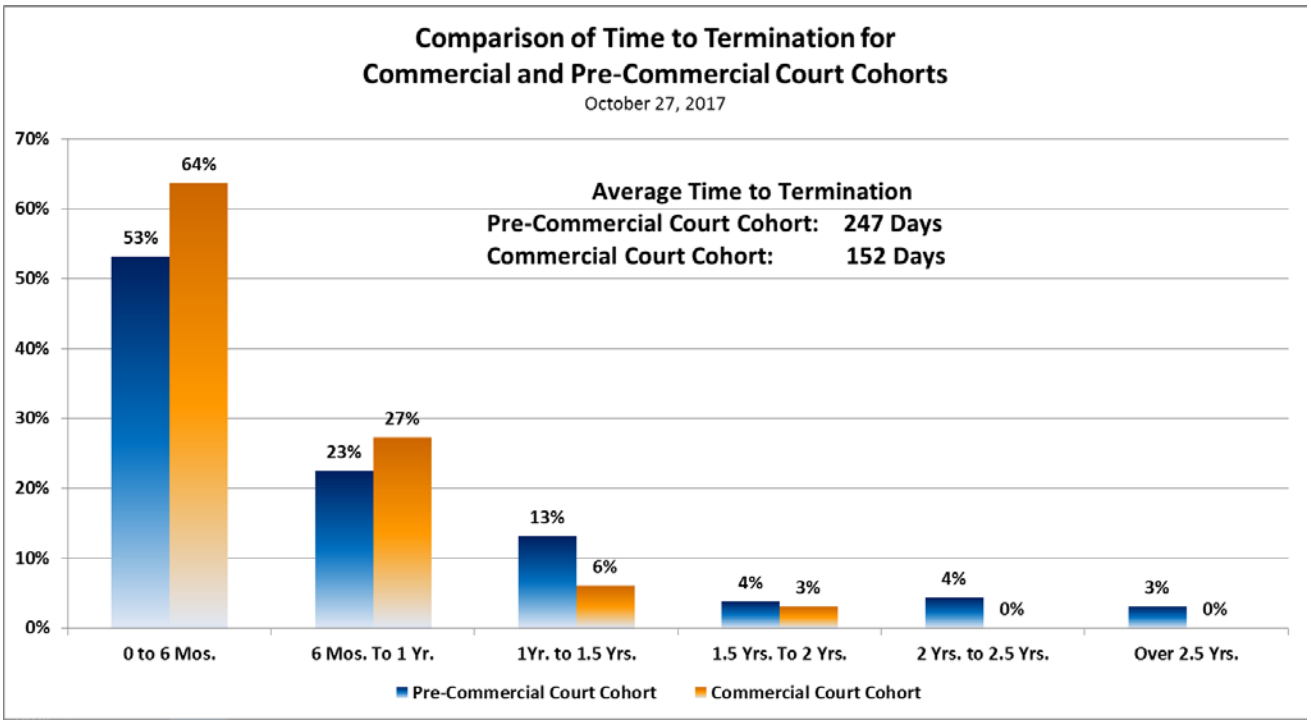
Since a significant number of Commercial Court cases are still pending, the two tables are not compared.

Pre–Commercial Court Cohort		
Case Management Termination	70	44%
Judgment	42	26%
Commissioner Termination	18	11%
Lack of Prosecution	7	4%
Lack of Prosecution - Judge	6	4%
Change of Venue	5	3%
Summary Judgment Granted	4	3%
Court Trial Termination	3	2%
Jury Trial	2	1%
Otherwise Removed	1	1%
Dismissal Lack of Service	1	1%
Consolidated	1	1%
	160	

Commercial Court Cohort	
Commissioner Termination	2
Judgment	4
Dismissal	23
Bankruptcy	2
Consolidated	1
Change of Venue	1
Total Terminated	33
Not Subject to Arbitration	35
Joint Scheduling Order Signed	10
Dismissal Calendar	4
Stayed	2
	51

Time to Termination

Although all of the pre-Commercial Court Cohort cases have terminated and only 33 of the Commercial Court Cohort cases have terminated, a comparative analysis is presented.



Conclusions

- In the Commercial Court cohort, the “Other Civil” case type comprised 15 percent of the sample. This case type is too obscure for detailed analysis. Further research of the “Other Civil” case type will need to occur for the 2018 report.

- The timing of this second report precludes a robust analysis of terminations within the Commercial Court cohort, since only 33 cohort cases terminated. This will not be an issue for the third and final report to the Judicial Council, as a full analysis of case terminations can be expected.

- Even with the small number of Commercial Court cohort dispositions, terminations by type are tending to align. Nearly 70 percent of the disposed Commercial Court cohort cases terminated by dismissal, and 68 percent of the disposed pre-Commercial Court cohort terminated by means other than judgment, consolidation, or change of venue.

- For the 2018 report both the Commercial Court and pre-Commercial Court cohorts will need to expand beyond just cases with emergency motions.