



**SUPERIOR COURT OF ARIZONA  
IN  
MARICOPA COUNTY**

***Commercial Court Evaluation***

**Final Report**

**December 2018**

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## **Introduction**

On July 1, 2015, the Superior Court of Arizona in Maricopa County (“Superior Court”) implemented a specialized commercial court (“Commercial Court”) as a pilot project. The goal of the Commercial Court was to meet the unique needs of business cases by assigning them to judges with substantial commercial and civil case management experience. Specialized rules governing the assignment and management of Commercial Court cases were developed by the Superior Court and implemented as Experimental Rule 8.1 of the Arizona Rules of Civil Procedure. Three judges were initially assigned to the Commercial Court. The Commercial Court was authorized to conduct a three-year pilot project to ensure that a sufficient number of cases was assigned and managed through the program to make an informed judgment about the effectiveness of the Commercial Court in meeting its goals.

Administrative Order 2015-15 issued by the Supreme Court of Arizona on February 18, 2015, which authorized the establishment of the Commercial Court, required the Commercial Court to submit three annual progress reports to the Arizona Judicial Council beginning December 1, 2016. To assist in assessing the performance of the Commercial Court, the Superior Court contracted with the National Center for State Courts (“NCSC”) to advise on the identification of appropriate performance measures and to assist in the analyses of those measures. This assistance was provided by Paula Hannaford-Agor, an experienced member of the NCSC Research Division and current director of the NCSC Civil Justice Initiative.

### ***Previous Progress Reports***

The first progress report described the implementation and operations of the Commercial Court, including initial attorney and litigant perceptions of the pilot program. A key finding during the first year was the unexpectedly high volume of cases, including a significantly larger proportion of cases involving requests for emergency relief (order to show cause, preliminary injunction, or temporary restraining order). Although such cases often resolve shortly after a decision is entered on the emergency motion, they typically require substantial judicial attention in anticipation of the return hearing on the motion. In October 2016, the Superior Court hosted a focus group of attorneys and litigants from cases assigned to the Commercial Court to hear participants’ perceptions of the program. Overall, the focus group participants were enthusiastic about the program goals, but also voiced concerns that the higher than anticipated workload was causing delays in setting cases for hearings and rendering decisions than comparable cases assigned to regular civil divisions. The judges themselves voiced similar concerns that the workload was unmanageable. As a result, a fourth judge was assigned to the Commercial Court in August 2016, and several amendments to Experimental Rule 8.1 narrowing the eligibility criteria for assignment to the Commercial Court were enacted in February 2017.

A challenge of assessing the impact of the Commercial Court is the amount of time needed to permit a sufficient number of cases to resolve through judicial involvement (excluding default judgment and administrative or voluntary dismissals) to be able to draw meaningful conclusions.

Because cases involving emergency petitions tend to resolve fairly quickly, the second progress report focused on the impact of the Commercial Court on those cases.<sup>1</sup> An analysis of case-level data extracted from iCIS confirmed that cases assigned to the Commercial Court were more than six times more likely to involve petitions for emergency relief than cases assigned to the regular Civil Department. Despite the increased caseload, the timing of key case events concerning petitions for emergency relief was comparable to cases assigned to the regular Civil Department. Overall, attorneys and litigants were quite positive about how emergency cases were managed in the Commercial Court. In survey responses, for example, attorneys in cases involving emergency relief reported that the Commercial Court judges were more accessible and involved in the case than regular civil court, and that early intervention by the Commercial Court judges promoted case resolution and made litigating the case more effective. Moreover, attorneys in cases involving emergency relief reported significantly more positive responses than attorneys in cases that did not involve emergency relief. In a focus group of attorneys and litigants held in September 2017, participants noted that the Commercial Court had become known as an attractive venue for resolving cases with emergency petitions, which helped to explain the higher than anticipated number of such cases.

In March 2018, the Supreme Court of Arizona established a Commercial Court Review Committee (“Review Committee”) to review the data and issues discussed in the two progress reports; to solicit input from Superior Court leadership and other key stakeholders; and to make recommendations about whether to make the Commercial Court rules and procedures permanent. In its report to the Arizona Judicial Council, the Review Committee cited overwhelming support from attorneys with cases assigned to the Commercial Court in its recommendation to make Experimental Rule 8.1 permanent. However, it also recommended adjustments to address concerns about the workload associated with commercial cases. Specifically, it recommended excluding cases with monetary claims less than \$300,000<sup>2</sup>; establishing a filing fee for commercial court cases to generate revenue for one or more staff attorneys to support the Commercial Court judges; and extending judicial assignments to the Commercial Court beyond the two- to three-year rotation generally employed in Maricopa County.

### ***Focus of NCSC Report***

The Review Committee also recommended that its report and recommendations be accepted as satisfying the requirement for a third progress report in December 2018. Because that report did not include a formal analysis of the impact of the Commercial Court on cases not involving emergency relief, the Superior Court requested that the NCSC provide a separate report focusing on those cases as well as offering conclusions and recommendations for Superior Court leadership on managing Commercial Court caseloads and judicial assignments. Case-level data for this report is based on data elements for Commercial Court cases extracted from iCIS on September 21, 2018

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<sup>1</sup> It was anticipated that a third progress report would include analyses of cases that did not involve petitions for emergency relief.

<sup>2</sup> This recommendation conforms the eligibility criteria for the Commercial Court to Tier 3 (complex cases) in the amendments to the Arizona Rules of Civil Procedure that became effective on July 1, 2018.

as well as comparable data elements for 75 Commercial Court-eligible cases filed before July 1, 2015, which were selected to serve as a baseline sample.<sup>3</sup> Like the Review Committee report, this report incorporates findings from the previous progress reports, including insights from the attorney survey responses and the attorney/litigant focus group comments.

## **Findings**

### ***Caseload Volume and Composition***

The volume and composition of the Commercial Court caseload has changed over the past three years due to changes in both the court’s eligibility criteria and the addition of a fourth Commercial Court judge in mid-2017. As of September 21, 2018, a total of 2,444 cases had been filed and assigned to the Commercial Court. The vast majority (78 percent) involved commercial contract disputes, more than half of which (53 percent) were uncontested and thus would not benefit from the specialized procedures implemented to manage commercial cases. Thirteen percent of the commercial cases were coded as “Other Civil” in iCIS, which encompassed a variety of subtypes, not all of which appeared to be eligible for Commercial Court.<sup>4</sup> Seven percent involved petitions for emergency relief, most of which were “Other Civil” cases.<sup>5</sup>

<b>Casetype</b>	<b>N</b>	<b>%</b>	<b>% Contested</b>	<b>% Emergency Relief</b>
<b>Tort</b>	<b>217</b>	<b>9%</b>	<b>60%</b>	<b>4%</b>
<i>Motor Vehicle Tort</i>	19	1%		
<i>Non MV Tort</i>	192	8%		
<i>Medical Malpractice</i>	6	0%		
<b>Contract</b>	<b>1,904</b>	<b>78%</b>	<b>45%</b>	<b>6%</b>
<i>Breach of contract</i>	1,578	65%		
<i>Promissory Note</i>	103	4%		
<i>Account Open</i>	100	4%		
<i>Fraud</i>	88	4%		
<i>Other Contract</i>	35	1%		
<b>Appeal/Review</b>	<b>2</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Other Civil</b>	<b>320</b>	<b>13%</b>	<b>47%</b>	<b>17%</b>

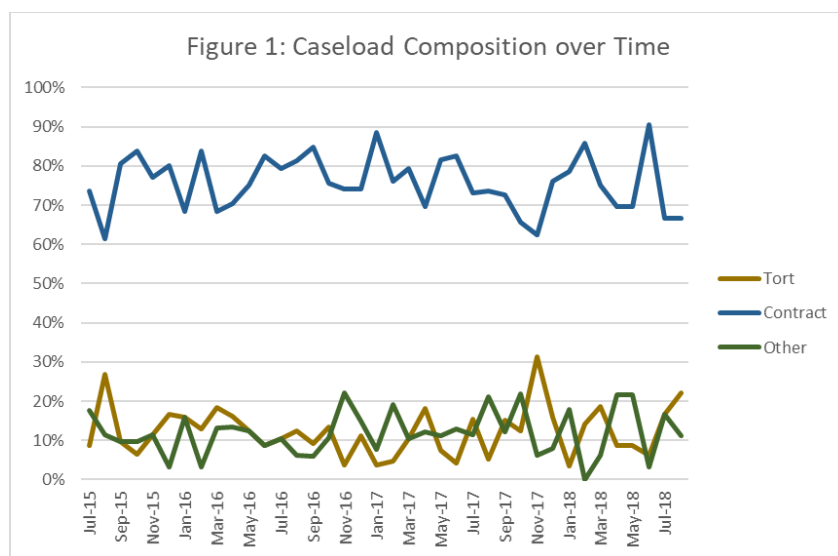
<sup>3</sup> Analyses of cases involving emergency relief that were included in the second progress report were based on data elements extracted from iCIS and from a manual casefile review. The Superior Court determined that a casefile review to extract data elements that are not routinely available in iCIS would be too labor-intensive and costly given the anticipated benefit. Consequently, the findings reported in this report do not provide insight about more nuanced impacts of Commercial Court practices.

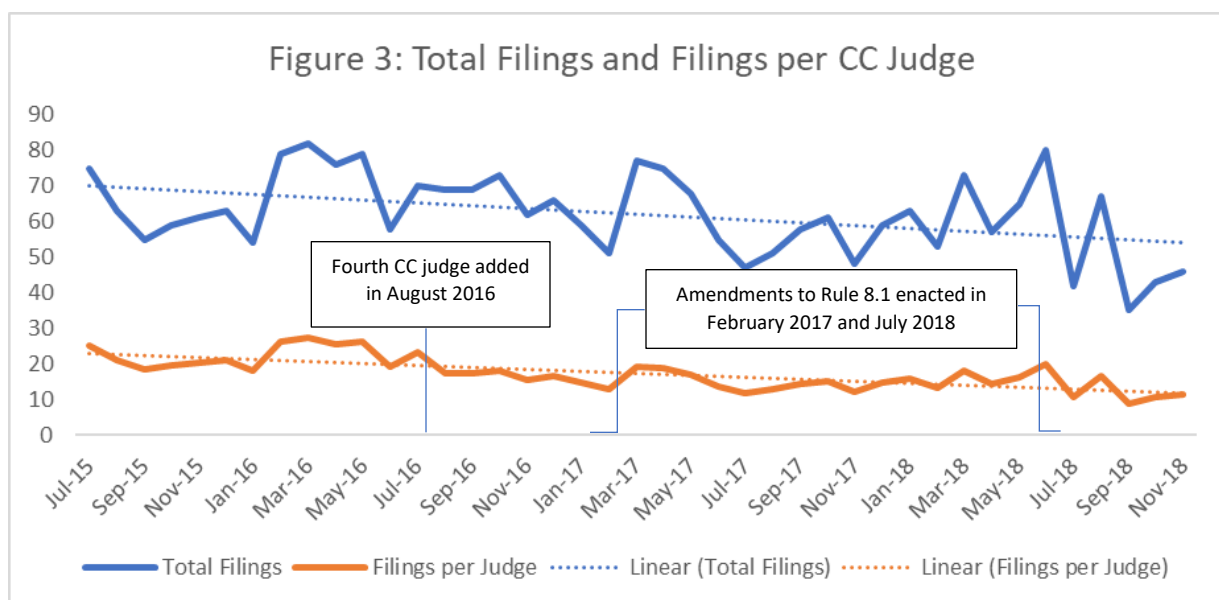
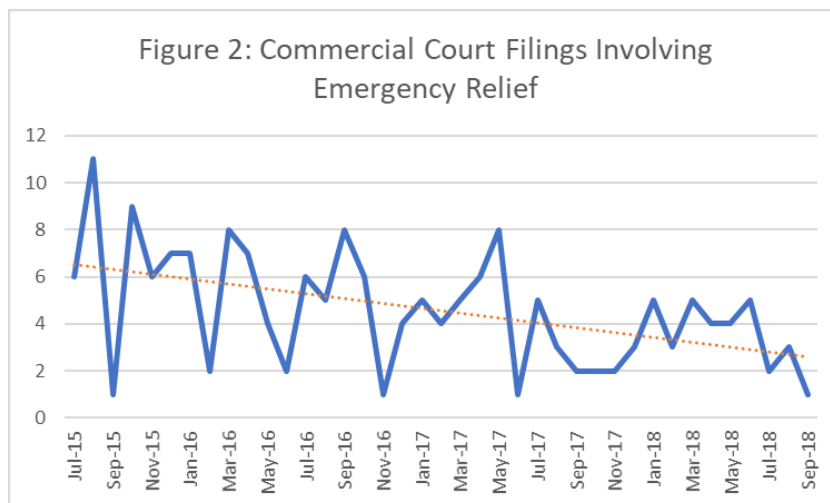
<sup>4</sup> Cases involving questionable eligibility for the Commercial Court included name changes (5 cases), foreign judgments (9 cases), unauthorized practice of law (1 case), and a petition to amend a marriage license (1 case). It is possible that these cases were erroneously assigned to the Commercial Court based on the Civil Case Cover Sheet.

<sup>5</sup> Fifty-seven percent of emergency cases were uncontested compared to 46 percent of non-emergency cases.

It is apparent from the number of cases filed in the Commercial Court that changes adopted during the pendency of the pilot program have affected the caseload. In August 2016, for example, a fourth judge was assigned to the Commercial Court due to the unexpectedly high number of filings and increased workload associated with commercial cases, especially those involving emergency relief. This reduced the average new filings per judge from 22 in FY2016 to 17 in FY2017. In addition, amendments to the eligible criteria enacted in February 2017 reduced the number of new Commercial Court filings from a monthly average of 67 (July 2015 through January 2017) to 61 (February 2017 to June 2018), a 9 percent decrease. Additional Experimental Rule 8.1 amendments that became effective in July 2018 also appear to be having their intended effect. From July through November 2018, the average is 47 new Commercial Court filings, a 23 percent reduction.

Figure 1 shows the proportion of the Commercial Court caseload filings for each case type. Although month-to-month variation in case type filings occurs, the proportion of tort cases has stayed fairly flat; the proportion of contract cases has decreased slightly, however, while the proportion of other civil cases has increased from an average of 11 percent in FY2015 to 14 percent for the first two months of FY2018. During the 2017 focus group, several attorneys reported that the Commercial Court was viewed as a particularly good venue for cases involving emergency relief, which might have contributed to the unanticipatedly high filing rate for such cases. However, the proportion of Commercial Court cases seeking emergency relief has trended downward over the lifetime of the program (see trend line in Figure 2) from 9 percent in FY2015 to 5 percent in the first three months of FY2018. Although Other Civil cases involve a disproportionately high number of emergency relief petitions, it does not appear that the Commercial Court’s reputation as a good venue for cases requiring emergency relief is driving the increase in Other Civil cases. The Commercial Court judges are seeing a greater variety of commercial cases, but the workload for those cases is not necessarily as frontloaded as cases involving emergency petitions.





### Time to Disposition and Survival Analyses

For approximately the first two years of the pilot project, average quarterly new filings exceeded terminations by a significant margin.<sup>6</sup> Beginning in July 2017, however, the filings-to-terminations ratio stabilized with approximately 150 cases pending for each Commercial Court judge. The second progress report included analyses of cases involving petitions for emergency relief, finding that the time to disposition and manner of disposition were comparable to similar cases filed before implementation of the Commercial Court.<sup>7</sup> Too few non-emergency cases had disposed during that time to do an analysis of time and manner of disposition, but a preliminary

<sup>6</sup> ARIZONA COMMERCIAL COURT PILOT PROJECT: PROGRESS REPORT TO THE ARIZONA JUDICIAL COUNCIL (Dec. 1, 2017), Appendix A (Commercial Court Filings and Terminations, 10 27 2017).

<sup>7</sup> *Id.*, Appendix C.

analysis conducted in April 2018 to inform the deliberations of the Review Committee found that non-emergency cases filed in the Commercial Court appeared to take longer to resolve compared to similar cases filed before implementation of the Commercial Court.<sup>8</sup> Now that another six months have passed, the NCSC has updated the analyses and found somewhat more promising results.

The analysis employs a statistical technique called survival analysis to estimate the probability that a case assigned to the Commercial Court would be fully disposed at any given point in time and compares that to the same probability for cases that would have been eligible for the Commercial Court before its implementation. This technique is used to estimate time to disposition for cases that are still pending (called “censored cases”), and for which we cannot know for certain what the actual time to disposition will be. The dataset extracted from iCIS in September 2018 included 1,044 non-emergency contested cases filed in the Commercial Court since its inception; 613 (59 percent) of those cases had been closed. These cases were compared against a baseline sample of 75 non-emergency contested cases filed between July 2012 and June 2015 that would have been eligible for the Commercial Court if it had existed at that time; all the baseline cases had been fully disposed.

The average (mean) time to disposition for Commercial Court cases that were fully disposed was 373 days (slightly over one year) compared to 415 days (13.5 months) for cases in the pre-Commercial Court baseline sample. The longer average time to disposition for baseline cases was influenced in part by one case that took 1,540 days (51 months) to dispose, which skewed the average upward; the median time to disposition for both the baseline and Commercial Court datasets was 345 days (11 months). Because the Commercial Court itself is only 42 months old, it is not known whether any of the still pending Commercial Court cases would match or exceed the maximum time to disposition in the baseline sample.

Figure 4 shows that the probability that a baseline case is still pending (blue line) declines more rapidly over time than a Commercial Court case (green line).<sup>9</sup> In other words, baseline cases disposed at a faster rate than Commercial Court cases. For example, the horizontal line at the 0.5 marker on the y-axis in Figure 4 delineates the point in time at which half of the cases are expected to be fully disposed. This point occurs at approximately 13 months for the baseline cases compared to approximately 17 months for the Commercial Court cases.<sup>10</sup> However, this result appears to be caused primarily by delays in case processing that occurred early in the Commercial Court pilot project. Figures 5 through 8 compare the survival curves for Commercial Court cases filed in

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<sup>8</sup> Email correspondence from Paula Hannaford-Agor (NCSC) to Richard Woods (Superior Court, Maricopa County) and Mark Meltzer (Arizona Administrative Office of the Courts), dated April 12, 2018. Ms. Hannaford-Agor explained that the longer time to disposition for Commercial Court cases might be due to differences in the caseload compositions of the Commercial Court and baseline samples including inchoate differences in case complexity.

<sup>9</sup> The cut marks on the Commercial Court survival curve indicate the presence of censored (pending) cases in the dataset.

<sup>10</sup> Alternatively, at the 1-year mark, 51 percent of baseline cases had been fully disposed compared to 32 percent of Commercial Court cases; at the 2-year mark, 85 percent of baseline cases had been disposed compared to 72 percent of Commercial Court cases.



calendar years 2015, 2016, 2017, and 2018, respectively, against the baseline cases. With each successive year, the gap between the survival curves for the baseline and Commercial Court samples narrows, indicating that the disposition rate for Commercial Court cases is increasing over time. Although it is too soon to tell, the trajectory of the 2018 survival curve may ultimately show Commercial Court cases resolving at the same rate or possibly even faster than the baseline cases.

Figure 4: Survival Functions -- All Cases

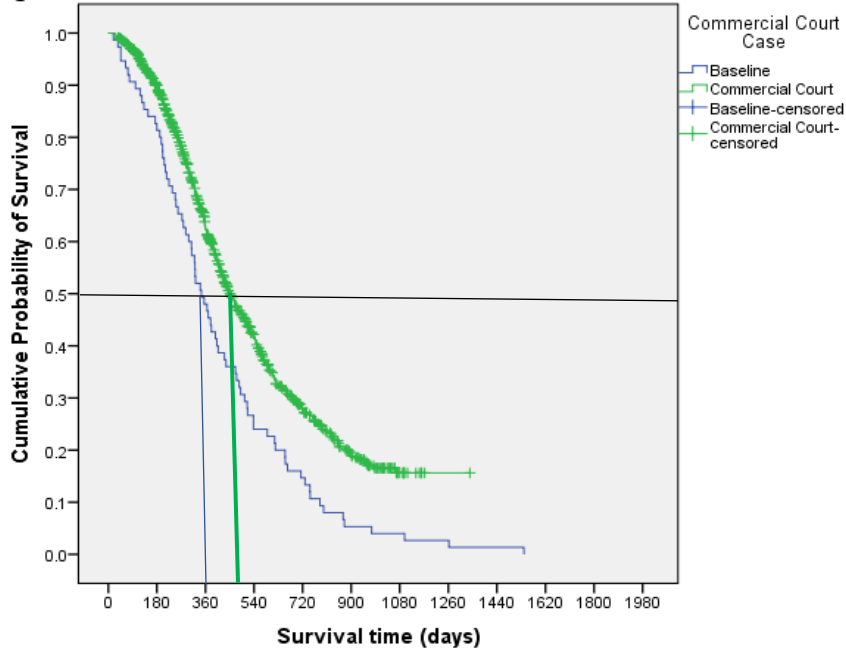


Figure 5: Survival Functions -- 2015 Cases Only

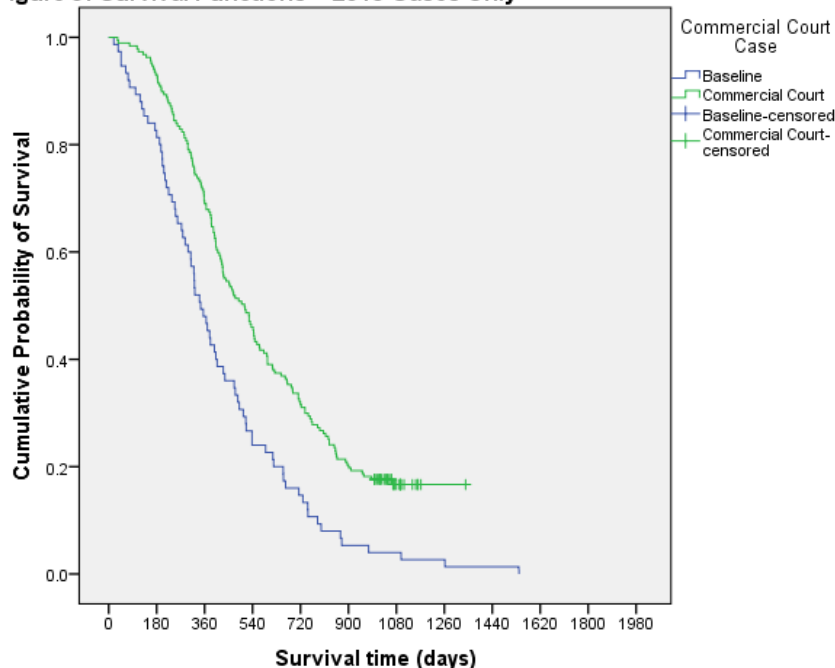


Figure 6: Survival Functions -- 2016 Cases Only

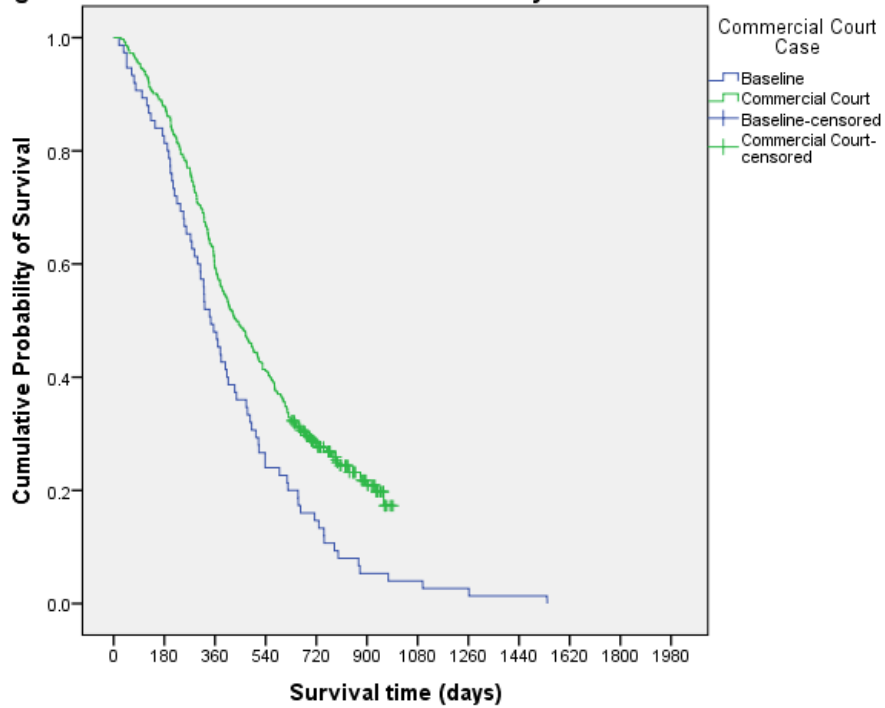


Figure 7: Survival Functions -- 2017 Cases Only

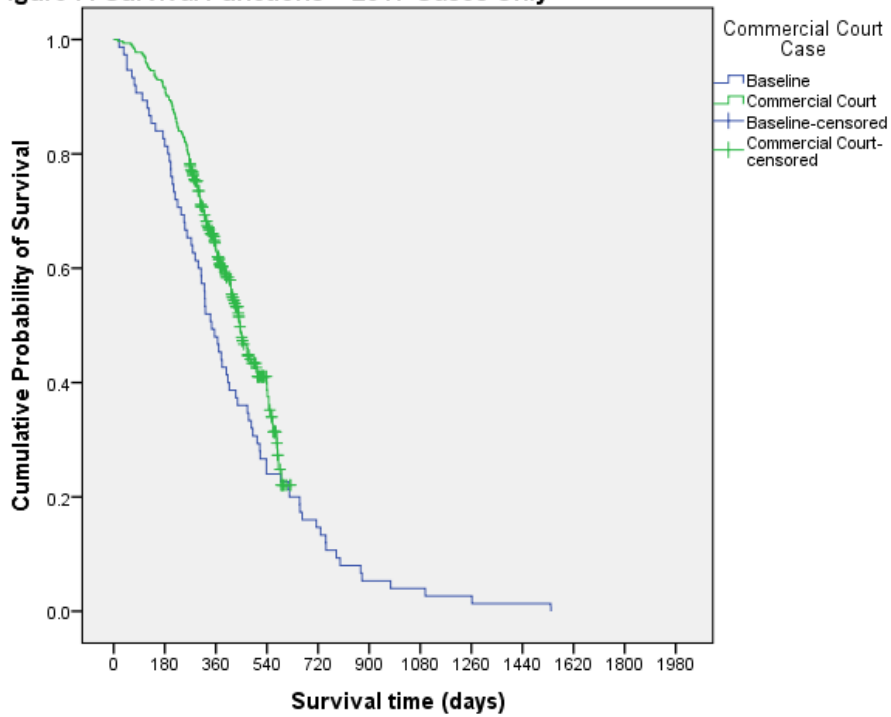
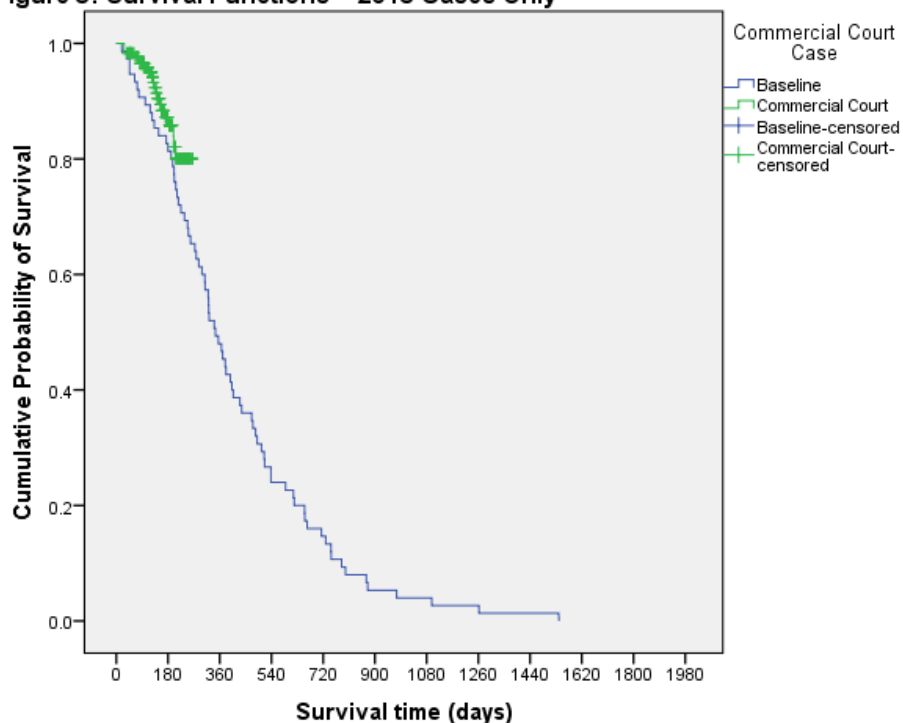


Figure 8: Survival Functions -- 2018 Cases Only



### *Attorney Surveys and Focus Groups*

Results of the survival analyses confirm early concerns expressed during the attorney and litigant focus groups about delays in getting opinions issued on motions due to heavy workload and lack of adequate support for judges. These concerns were addressed early in the pilot project with the decisions to add a fourth judge to the Commercial Court and to restrict eligibility criteria for assigning cases to the Commercial Court. Both steps likely contributed to the improved closure rate for Commercial Court cases. Despite concerns, the overwhelming consensus of the attorney survey responses and the attorney and litigant focus groups was a great deal of support for the Commercial Court. In particular, participants in both the survey and focus groups emphasized the value of having early access to judges experienced and knowledgeable about commercial litigation. In detailed comments, attorneys also noted the effectiveness of the judicial case management practices that were formalized in Experimental Rule 8.1 (e.g., early case management conferences) and the increased accountability that judges imposed on parties.

Appendix B of the second progress report summarized the survey responses of 101 attorneys. Over the past year (2018), an additional 8 attorneys have responded to the survey, bringing the total number of responses to 109. The addition of those responses does not change general findings from the previous progress reports, which were overwhelmingly positive. But additional exploration of the data reveals some nuanced differences among respondents, which are highlighted in Table 2. For example, many of the case management techniques employed by the Commercial Court judges were more appreciated by attorneys with less experience than their more-experienced peers. This may reflect more acceptance of active judicial involvement by

younger lawyers compared to more seasoned lawyers who may be more accustomed to an attorney-driven case management. In the focus groups, several attorneys also noted the helpfulness of judicial involvement for setting client expectations, which may be more challenging for younger attorneys. How cases ultimately resolved also affected the attorneys' perceptions of the Commercial Court. For cases that settled, attorneys were more likely to agree that the court's settlement efforts or mediation was appropriate than cases that resolved through a formal judgment on the merits. However, attorneys in cases that did resolve by judgement were more likely to agree that the Commercial Court made litigation more cost effective.

Self-selection bias may have played a part in responses to the question about whether the Commercial Court should continue after the three-year pilot project. Attorneys with only one case and attorneys with four or more cases assigned to the Commercial Court reported higher support for the Commercial Court than attorneys with only two or three cases. Some of this effect is related to when an attorney completed the survey.<sup>11</sup> Attorneys who completed their survey in 2016 were in the first cohort of cases assigned to the Commercial Court and may have had a more positive experience before workload problems arose, especially as compared to attorneys who completed their surveys in 2017 before the impact of the program adjustments (fourth judge, revised eligibility criteria) had taken effect. A higher concentration of attorneys who completed their surveys later in the three-year pilot period had four or more cases assigned to the Commercial Court, suggesting that they had intentionally opted into the pilot project based on previous positive experiences.

Of particular importance, the year that an attorney completed the survey significantly affected opinions about the Commercial Court. The most positive responses were offered by attorneys who completed the survey in 2016, with measurable declines in support in both 2017 and 2018. Again, the responses are still positive overall, but the softening in support may reflect ongoing concerns about delays associated with the unanticipatedly high judicial workload.

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<sup>11</sup> Surveys were distributed to the attorneys of record in Commercial Court cases immediately after the case was closed. Attorneys with multiple cases assigned to the Commercial Court were only asked to respond to the survey once.

	If you participated in a settlement conference before a Commercial Court judge, the settlement conference promoted earlier resolution of the case.	If e-discovery was used, it was effectively managed through Rule 8.1.	The court conducted or required settlement efforts or mediation in a manner appropriate for this specific case.	The Commercial Court Pilot Program made litigating this specific case more cost effective.
<b>Number of Years in Practice</b>				
5 or less	5.00	4.00	4.25	4.00
6 to 10	4.40	3.00	4.45	3.44
11 to 20	3.80	2.80	3.59	3.04
More than 20	4.00	3.82	3.96	3.73
	F = 4.446, p = 0.0222	F = 3.160, p = 0.044	F = 2.851, p = 0.046	F = 2.423, p = 0.054
<b>Number of Cases in Commercial Court</b>	<b>I believe the Commercial Court program should continue after the three-year pilot project</b>	n/a	n/a	n/a
1 Case	4.36			
2 to 3 Cases	4.17			
More than 4 Cases	4.64			
	F = 3.217, p = 0.044			
<b>Manner of Disposition</b>	<b>The Court conducted or required settlement efforts or mediation in a manner appropriate for this specific case.</b>	<b>The Commercial Court Pilot Program made litigating this specific case more cost effective.</b>		
Settlement	4.11	3.43		
Judgment	3.17	4.29		
	F = 5.565, p = 0.007	F = 4.064, p = 0.009		
<b>Year of Survey Response</b>	<b>Early intervention by the Commercial Court judge promoted resolution of the case.</b>	<b>I believe the Commercial Court program should continue after the three-year pilot project</b>	<b>My client in this case was satisfied with the Commercial Court process.</b>	
2016	4.2	4.65	4.54	
2017	3.5	4.45	3.94	
2018	3.38	4.08	3.74	
	F = 3.219, p = 0.045	F = 2.374, p = 0.099	F = 3.963, p = 0.023	

\* Survey Responses based on a 5-point Likert Scale ranging from 1=Strongly Disagree to 5=Strongly Agree

## **Conclusions and Recommendations**

In July 2018, the Arizona Judicial Council adopted the recommendations of the Review Committee to make Experimental Rule 8.1 a permanent rule of the Arizona Rules of Civil Procedure and, in effect, making the Commercial Court in Maricopa County a permanent track within the Civil Department. Over the course of the three-year pilot program, however, the initial goal of creating a venue in which to manage all business-to-business cases shifted to a much narrower focus on commercial cases involving more complex legal and evidentiary issues. Most of this shift was driven by pragmatic concerns about judicial workloads. Initial predictions of commercial case filings underestimated the actual volume as well the higher proportion of cases involving emergency relief, in which judicial involvement tends to be heavily frontloaded.

The February 2017 revisions to Experimental Rule 8.1 that restricted the eligibility of cases helped to control the volume of cases, but those rules explicitly changed the orientation of the Commercial Court from a venue available to the larger Arizona business community to one which sought to apply the unique experience of the Commercial Court judges to a more discrete pool of cases that would most benefit from that expertise and intensive case management attention. Those rules also recognize that not all business-to-business cases require in-depth legal expertise in commercial law or extensive case management experience. More than half of the cases assigned to the Commercial Court were uncontested and closed without any meaningful judicial involvement.

In fact, the Arizona Committee on Civil Justice Reform reached similar conclusions about civil case management generally in its recommendations to establish a system of proportionality-driven, differentiated case management. Seeking to coordinate Experimental Rule 8.1 with the new civil justice rules, the Review Committee recommended that for cases seeking monetary damages exclusively, only those falling into Tier 3 (monetary damages greater than \$300,000) be eligible for assignment to the Commercial Court. Tier 2 (monetary damages from \$50,000 to \$300,000) cases seeking equitable relief (e.g., partnership dissolution, shareholder complaints) would still be eligible for Commercial Court assignment. Business-to-business cases eligible for mandatory arbitration (Tier 1, less than \$50,000) would not be eligible. The general trajectory of new case filings assigned to the Commercial Court since July 2018 suggests that these revisions will result in considerably more manageable caseloads in the future.

The survival analyses also show that these changes have alleviated much of the backlog that caused the unexpectedly high workload demands. Case processing times are still longer than those in the baseline cases, but the differences have narrowed considerably over the past three years. In fairness, restricting eligibility to more complex commercial cases may yield a caseload that is predisposed to a longer expected time to disposition. So even if the survival curves for the Commercial Court cases never match or exceed those for the baseline cases, it would not necessarily mean that the Commercial Court cases are being managed less efficiently. Rather, it may mean that the baseline sample reflects a less complex caseload than the Commercial Court.

It is also clear from the attorney survey results and focus group comments that expeditious case processing is not the most important consideration. Since its inception, the most frequently noted benefit of the Commercial Court expressed by key stakeholders is the assignment of highly experienced judges with specific commercial litigation expertise. Attorneys and litigants consistently remarked that judges were able to identify and keep the parties focused on key legal and evidentiary issues, ultimately saving time and controlling costs. Although some complained about the amount of time judges took to enter a decision on pending motions, there was great consensus that the quality of judicial decision-making in the written opinions was exemplary. Active judicial involvement in case management – especially the judges’ genuine interest in the cases and their accessibility and engagement in case conferences and hearings – was also greatly appreciated.

The most challenging aspect of maintaining the Commercial Court appears to be finding an acceptable compromise between the longstanding policy preference for regular judicial rotation across divisions of the Superior Court and the strongly held belief that judicial assignments to the Commercial Court should extend beyond the usual two- to three-year rotation timeframe. There are legitimate arguments supporting both sides. It is important for the Superior Court leadership to maintain a well-rounded trial bench to ensure maximum flexibility in judicial assignments and to foster a shared appreciation for workload conditions across the entire bench. On the other hand, the acquisition of sufficient judicial expertise needed to effectively manage complex commercial cases takes time, even for judges who may have worked in a civil litigation practice before taking the bench. From a judicial resource perspective, it is inefficient not to use that expertise to its fullest.

One strategy for achieving both objectives could involve flattening the learning curve for judges who are under consideration for assignment to the Commercial Court by providing informal education on topics and issues that often arise in commercial litigation. For example, the currently assigned Commercial Court judges might be tasked with leading a study group that would meet periodically (e.g., monthly, quarterly) to discuss evolving case law, or discrete case management problems, or other issues likely to arise in Commercial Court cases. Judges who are interested in commercial litigation could attend on a voluntary basis, and their commitment to doing so might be one factor in future decisions about Commercial Court assignments. This type of informal education would also benefit the entire Civil Department by distributing relevant judicial expertise to commercial cases that are no longer eligible for the Commercial Court or cases in which the parties opted not to request the assignment. As those judges develop greater expertise, they might also be enlisted to conduct judicial settlement conferences or other support for Commercial Court cases that would alleviate some of the workload associated with Commercial Court caseloads. As Commercial Court judges rotate into other divisions of the Superior Court, judges who demonstrate interest and aptitude during their Civil Department assignment could have their assignment formally extended for up to two years as formal assignments to the Commercial Court.

In closing, the Superior Court leadership may also want to consider two additional operational suggestions. First, the revisions to Experimental Rule 8.1 have now shifted the focus of the

Commercial Court from routine business-to-business commercial disputes to more complex commercial disputes. The existing Commercial Court caseload also included a surprising number of complex tort cases (intentional torts, medical and professional malpractice, construction defect) that would not normally be considered eligible for Commercial Court assignment, but might be appropriate for assignment to the Complex Litigation docket. Although the Arizona Rules of Civil Procedure differentiate between complex litigation cases and commercial cases, the Superior Court has operationally consolidated these two dockets by assigning the same judges to the Complex Litigation docket and the Commercial Court. Superior Court leadership should consider making this consolidation more formal, and perhaps seeking an amendment to the Arizona Rules of Civil Procedure to ensure that the rules reflect this operational reality.

Finally, the Review Committee recommends that the Superior Court consider assessing a supplemental fee of \$500 per side to cases assigned to the Commercial Court, providing funding for one or more law clerks or staff attorneys to support the Commercial Court judges. The Review Committee estimated that 40 such cases per month would generate \$480,000 per year. Given the revisions to the eligibility criteria for commercial cases and the slight softening of support for the Commercial Court in the second and third years of the attorney survey, the Superior Court should keep careful notice of the filing trends to ensure sufficient funding to support those positions.



## **Acknowledgements**

This evaluation was very much a collaborative endeavor between the NCSC and the Superior Court of Arizona in Maricopa County. The NCSC is grateful for the opportunity to learn from the individuals involved in implementing and operating the Commercial Court about the unique challenges they faced and the decision-making process they employed in formulating solutions to address those challenges, which will greatly assist court leaders nationally as they develop policies and procedures to better meet litigant needs. The NCSC especially wishes to recognize the following individuals:

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Hon. Dawn Bergin, Commercial Court Judge  
Hon. Roger Brodman, Commercial Court Judge  
Hon. Daniel Martin, Commercial Court Judge  
Hon. Timothy Thomason, Commercial Court Judge  
Hon. Christopher Whitten, Commercial Court Judge

### Civil Department

Keith Kaplan, Court Administrator, Civil Department  
Peter Kiefer (ret.), Court Administrator, Civil Department  
Gloria Braskett, Civil Judicial Clerk Supervisor  
Faith Sawyer, Civil Clerk Lead

### Arizona Supreme Court, Administrative Office of the Courts

Mark Meltzer, Court Services Division

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