

**Commercial Court Q & A**

The Arizona Supreme Court recently established a pilot program that provides a new superior court venue for commercial litigation. The three-year pilot program will begin July 1, 2015 in Maricopa County.

**Q. What's a commercial court?**

A. It's a special civil docket that's designed to effectively manage and efficiently resolve commercial litigation.

**Q. What are the advantages of a commercial court?**

A. A commercial court is designed to resolve business cases expeditiously, and to reduce the expense of litigation. Many litigators have horror stories about commercial cases that last far longer than they should, or involve litigation expenses that exceed the amount at issue. On the other hand, a number of commercial cases require extensive discovery or have complex underlying legal issues. Parties in these cases will have the benefit of judges who are knowledgeable about commercial transactions and business issues. This specialized court should therefore improve the quality of justice in commercial cases. It should also increase the business community's confidence in Arizona's system of commercial dispute resolution.

**Q. Who are the judges in Arizona's pilot commercial court?**

A. Judges Christopher Whitten, Dawn Bergin, and Roger Brodman initially will be assigned to the commercial court pilot program. They are experienced jurists with extensive knowledge of commercial law and the practicalities of business. They understand not only legal issues in business cases, but also the complexities, realities, and nuances of commercial disputes.

**Q. How will these judges control litigation costs?**

A. The rules for the pilot commercial court require in-person or telephonic scheduling conferences under Rule 16(d). That is, the parties must actually speak with the assigned judge before the court will enter a scheduling order. The rationale is that early, hands-on judicial management will promote cost-effective and efficient case processing. An early conference between the parties and the judge will help identify factual and legal issues in the case, and focus the parties on discovery that is needed for those issues and that is appropriate for the amount in controversy. Commercial court judges may also adopt an abbreviated motion practice, such as "letter motions," to manage commercial cases efficiently. The judges will utilize a toolbox of case management options to reduce litigation costs and to assure fair and timely dispositions.

**Q. How will commercial court judges deal with electronically stored information?**

A. A majority of commercial cases involve disclosure and discovery of electronically stored information, or "ESI." Parties in the pilot court cases will be required to confer and attempt to reach agreements regarding ESI. The commercial court has prepared a two-page ESI checklist to assist the parties with their Rule 16(b) discussions. The ESI checklist includes

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dozens of topics, including (1) the preservation of ESI, (2) phased ESI discovery, (3) searching for and producing ESI, (4) privilege considerations, and (5) proportionality and costs. The checklist is flexible; some of these topics may not apply, depending on the nature and complexity of the case. The parties may consider topics in any appropriate sequence.

### **Q. What is a commercial case?**

A. Rule 8.1(a) specifies that a commercial case is one in which at least one plaintiff and one defendant are “business organizations,” the primary issues of law and fact concern a “business organization,” or the primary issues of law and fact concern a “business contract or transaction.” These phrases in quotation marks are further defined in the rule.

### **Q. Is there a requirement for an amount in controversy?**

A. Rule 8.1 recognizes that certain types of cases are inherently commercial in nature, such as cases involving corporate governance, dissolution, or receivership, shareholder derivative actions, the sale of a business, commercial real estate transactions, or cases involving trade secrets, franchise relationships, or covenants not to compete. There is no amount in controversy requirement in these cases. Other types of cases, including those arising under a contract or transaction governed by the Uniform Commercial Code, or a coverage dispute under a commercial insurance policy, require a threshold of \$50,000 in controversy.

### **Q. What’s the process for getting a case assigned to the commercial court?**

A. It is mandatory that a plaintiff filing a commercial case in Maricopa County include in the caption of the initial complaint the words “commercial court assignment requested.” That assures that a defendant who is served with the complaint will be aware of the potential assignment. The plaintiff must also check a new box on the civil cover sheet that indicates the case is eligible for commercial court. A judge may subsequently hear a motion to reconsider that order, provided a party files the motion within a specified time limit. A judge with a general civil docket may also order transfer of a case to the commercial court on motion of a party or on the court’s own initiative.

### **Q. Is the pilot program mandatory or voluntary?**

A. It is mandatory for all eligible commercial cases. However and as noted above, a party can request the judge to reconsider assignment of a case to the commercial court.

### **Q. Can a case initially assigned to the commercial court be transferred thereafter to Maricopa County’s complex civil litigation program?**

A. Yes. An assignment to the commercial court does not preclude subsequent transfer of an eligible case to the complex civil litigation court.

### **Q. Will commercial cases filed in judicial districts other than downtown remain in those districts?**

A. No. All commercial cases in Maricopa County will be heard downtown, regardless of the district where the complaint was filed.

**Q. Why is the commercial court a “pilot” program?**

A. The commercial court over the long-term should prove to be a valuable and effective component of the superior court. It’s expected that in the immediate future, a pilot program will empirically demonstrate a commercial court’s usefulness, and help to identify improvements before the commercial court achieves a permanent or statewide status. Maricopa County was chosen for the pilot because it has more civil filings and more judicial officers than any other county. Maricopa County is also the location of the complex civil litigation court, and it has developed experience over the past decade with the operation of a specialty civil court. Maricopa County will collect and evaluate objective and subjective data regarding the pilot commercial court on a continuing basis. It will present annual reports concerning the pilot program to the Arizona Judicial Council.

**Q. Is more information available?**

A. Yes. Please visit the Arizona Judicial Branch webpage. The [Business Court Advisory Committee’s materials](#), including its final report, are available on the “committees and commissions” webpage. Administrative Order 2015-15, available on the [“AZ Supreme Court Orders”](#) page, includes an appendix containing Rule 8.1 of the Arizona Rules of Civil Procedure and the new joint report form.