

## Changes to the Administration of Commercial Litigation in Arizona: A Brief Overview of the Commercial Court Pilot Program

By: **Andrea Marconi and Spencer G. Scharff**

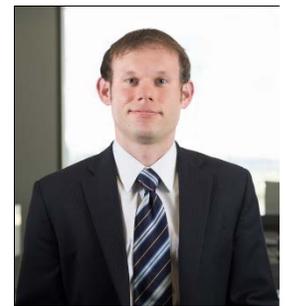
On February 18, 2015, Chief Justice Bales of the Arizona Supreme Court issued an Administrative Order authorizing the Superior Court of Maricopa County to establish a pilot commercial court. The pilot program was officially launched on July 1, 2015 and will run until June 30, 2018. With the adoption of this pilot program, Arizona has joined 19 other states that have formed similar commercial courts.



Andrea L. Marconi  
Partner

### Purpose of the New Court

In its official report to the Arizona Supreme Court, the Business Court Advisory Committee (the “Advisory Committee”) outlined five principal reasons for establishing a commercial court: (1) to make Arizona a more favorable forum for resolving business disputes; (2) to improve the business community’s access to justice; (3) to expeditiously resolve business cases and reduce litigation costs; (4) to improve the quality of justice; and (5) to gain the business community’s support for the State of Arizona’s dispute resolution system. In sum, the Commercial Court aims to process commercial cases more efficiently in order to help reduce the burdensome costs associated with commercial litigation. In order to achieve these goals, the Commercial Court relies upon streamlined rules of procedure and judicial expertise.



Spencer G. Scharff  
Associate

### Streamlined Arizona Rules of Civil Procedure

Newly-promulgated Arizona Rule of Civil Procedure 8.1 arms judges on the Commercial Court with the necessary tools to streamline commercial cases and reduce the expense of litigation. For example, the new rule authorizes Commercial Court judges to modify the existing rules governing civil motion practice in order to promote “the efficient and prompt resolution of motions.” Ariz. R. Civ. P. 8.1(g). It is expected that Commercial Court judges will adopt rules permitting motions to be submitted in letter form, which should decrease the time and costs associated with drafting motions.

The new rule also mandates a number of other steps that are designed to identify and resolve notoriously troublesome and costly issues at the outset of the litigation. For example, Rule 8.1 ensures early judicial involvement and oversight by making in-person or telephonic scheduling conferences mandatory. Ariz. R. Civ. P. 8.1(f)(1). The parties are also required to identify and attempt to resolve issues concerning the disclosure and production of electronically stored information (“ESI”) prior to filing a joint case management report. Ariz. R. Civ. P. 8.1(f)(2).

## **Judicial Expertise**

Judges Dawn Bergin, Roger Brodman, and Christopher Whitten will serve as the first three Commercial Court judges. If the pilot program is extended past June 2018, these judges will likely have a significant influence on the procedures and customs of the Commercial Court well after their tenure on the court as the protocol adopted by the judges will serve as the starting point for future modifications and revisions.

The Supreme Court's Administrative Order did not specifically charge the Maricopa County Superior Court with identifying and appointing judges with strong commercial-litigation backgrounds, but the Advisory Committee's report emphasized that such expertise was essential to the success of the court. In fact, the Advisory Committee noted that the committee members unanimously held this belief.

In light of the emphasis on commercial expertise, the Maricopa County Superior Court selected three judges whose resumes contain extensive and varied commercial litigation experience. Prior to serving on the bench, Judge Bergin practiced complex commercial litigation at a large firm in Phoenix and also served as an Associate General Counsel for Rural/Metro Corporation. Likewise, Judge Brodman spent 23 years in private practice, specializing in construction and real estate litigation matters, before his appointment to the bench in 2007. The third judge selected to serve on the Commercial Court, Judge Whitten, not only served on the Business Court Advisory Committee that designed Commercial Court pilot program, but also served the last year as Maricopa County's Presiding Tax Court Judge.

## **How Will the Formation of the Commercial Court Affect Your Business?**

During the pilot program, the Commercial Court has mandatory jurisdiction over "commercial cases" filed in Maricopa County Superior Court, which means that all cases within Rule 8.1's scope will be adjudicated in the Commercial Court. Rule 8.1's scope extends to all cases where: (1) at least one plaintiff and one defendant are business organizations, (2) the primary issues of law and fact concern a business organization, or a business contract or transaction. Ariz. R. Civ. P. 8.1(a)(1).

A certain class of commercial cases is subject to a \$50,000 amount in controversy requirement. Those cases include, for example, cases that (1) arise from a contract or transaction involving the sale of goods; (2) involve the sale of services by, or to, a business; (3) involve professional malpractice claims, other than a medical professional, that arises from services the professional provided to a business; (4) arise out of tortious or statutorily prohibited business activity, such as unfair competition tortious interference, misrepresentation or fraud; or (5) arise under any type of commercial insurance policy purchased by a business, including an action involving coverage, bad faith, or a third-party indemnity claim. Ariz. R. Civ. P. 8.1(c).

On the other hand, Rule 8.1 identifies a class of cases that are inherently commercial in nature and are not subject to an amount in controversy requirement. Those cases include, for example, commercial cases that (1) concern the internal affairs, governance, dissolution, receivership, or liquidation of a business; (2) arise out of obligations, liabilities, or indemnity claims between or among owners of the same business or which concerns the liability or indemnity of individuals within a business; (3) relate to trade secrets or misappropriation of intellectual property, or arise from an agreement not to solicit, compete, or disclose; (4) arise from a commercial real estate transaction; or (5) arise from a relationship between a franchisor and a franchisee. Ariz. R. Civ. P. 8.1(b).

Finally, Rule 8.1 identifies seven categories of cases that are ineligible for assignment to the Commercial Court, unless the criteria specified in Rule 8.1(b) and (c), discussed above, “predominate the case.” Ariz. R. Civ. P. 8.1(d). The presumptively ineligible categories of cases include (1) evictions; (2) eminent domain or condemnation; (3) civil rights; (4) personal injury torts; (5) administrative appeals; (6) domestic relations matters; and (7) wrongful termination of employment. *Id.* Notably, the Rule does not define “predominate,” and thus the interpretation of this provision will largely be left to the Commercial Court judges’ discretion.

The newly-created Commercial Court offers a number of advantages to companies transacting business in Arizona, but retaining counsel that understands this new court’s procedures is essential to taking full advantage of the Commercial Court’s cost-saving and efficiency benefits.

The attorneys at Thorpe Shwer, P.C. are prepared to help your business navigate the uncharted waters of Arizona’s Commercial Court Pilot Program. Our attorneys are frequently recognized as industry leaders by their peers, clients, and various legal and business publications in the area of Commercial Litigation, including the 2015 edition of *Best Lawyers®* for Commercial Litigation; the 2014 edition of *Super Lawyers®* for Civil Litigation-Defense and General Litigation; and the 2014 edition of Martindale-Hubbell®’s *Arizona’s Top Rated Lawyers* for Litigation.

For more information or assistance in business and commercial litigation matters, please contact Andrea Marconi at 602-682-6104 or [amarconi@thorpeshwer.com](mailto:amarconi@thorpeshwer.com).

[View Andrea's Bio](#)  
[V-Card](#)

[www.thorpeshwer.com](http://www.thorpeshwer.com).