

COMMERCIAL DOCKET PILOT PROJECT

Progress Report

The commercial court docket judges (“judges”) met on August 23, 2019, to reflect over the past year to discuss what works and what improvements could be made in an effort to provide timely and well-reasoned case management and disposition to substantial business disputes in the commercial court dockets.

Quantitative Data

As of December 2019, a total of 81 cases have been filed in the commercial docket: 54 cases have been filed in Waukesha County and 27 cases have been filed in the Eighth Judicial District. Currently, there are 36 pending cases. Forty-five cases have been closed and were disposed as follows: 33 cases have been disposed through stipulations for dismissals based on settlements, two cases were removed to federal court, five cases were voluntarily dismissed after addressing the temporary injunctions, two cases had default judgments, a final disposition in a receivership case, and two cases that were closed due notice of bankruptcy filings. The following data is also displayed in Attachment A.

1. Class Codes

There are currently eight class codes for commercial court docket cases:

- Forty-one out of 81 cases have been filed under the Prohibited Business Activity Class Code, which incorporates cases involving tortious or statutorily prohibited business activity, unfair competition or antitrust; claims of tortious interference with a business organization; claims involving restrictive covenants and agreements not to compete or solicit; claims involving confidentiality agreements.
- The remaining 40 cases have been spread out across the other six class codes:
 - Internal Business Organization (17 cases);
 - Business Sale/Consolidation (2 cases);
 - Sale of Securities (3 cases);
 - Intellectual Property Rights (3 cases);
 - Franchisor/Franchisee Claim (3 cases);
 - UCC Claims in excess of \$100,000 (10 cases); and
 - Receiverships in Excess of \$250,000 (2 cases).

2. Age of Pending Cases

Out of the 34 pending cases in the commercial docket, seven cases have been pending over one year, 14 cases are between eight and ten months old, and the remaining 15 cases are less than six months old.

3. Time to Disposition

Out of the 45 closed cases, the commercial docket has resolved 37 cases in less than one year: 28 cases have been resolved within six months and another nine cases have been resolved within one year. Two cases were concluded within 16 months and another six concluded within 24 months.

Qualitative Data

All attorneys who have participated in the commercial court docket have been asked to fill out a survey describing their experience. The judges reviewed the survey results received at the time of the August meeting. These results are illustrated in Attachment B. The feedback from the survey is consistent with the anecdotal feedback the judges have received. The judges report that attorneys repeatedly comment that they have found it extremely beneficial to meet face-to face on an expedited timeline. They indicate expedited scheduling helps set the tone to resolve disputes quickly, which is mutually beneficial to all of the parties. In addition, expedited scheduling helps to minimize and/or avoid collateral damage to stakeholders that could be directly impacted by the lawsuit. Additional survey results are still being collected, but initial results show that attorneys are pleased with the process due to cases being resolved in an expeditious manner.

Case Management and Procedural Objectives

1. General Overview

During this initial pilot project period, the judges focused on establishing reasonable timeframes for cases to be ready for trial. At the outset of the pilot project, the general consensus was to have cases resolved within eighteen months of being transferred into the commercial court docket. On average, cases outside of the commercial court docket take three years. As indicated by the data, the commercial court docket is accomplishing this goal in the majority of circumstances.

The judges also discussed scheduling routine status conferences that strike a balance between updating the judge on case progress, while not unduly burdening the parties with excessive hearings. The consensus was for monthly status conferences, depending on the complexity of the case. Status conferences are held by telephone, unless a specific case or situation warranted an in-person conference. Phone conferences help avoid friction between parties and allow for the case to keep moving forward.

In addition, the judges report that allocating time for commercial court docket cases has not had a negative impact on their other cases. The judges have been able to develop ways to add the commercial court docket cases into their normal caseload. The attorneys have been appreciative of the judges' prioritizing their calendars to make time for hearings as soon as possible and, in some situations, with very short notice. The judges continue to provide feedback on the amount of time that is needed to devote to the commercial court docket. We will use this information to determine whether adding additional resources and/or making adjustments in caseload distribution might be necessary.

The judges maintain a spreadsheet of cases which they use at their regular monthly conference call to discuss commercial court docket matters. The report is organized by the age of the case and provides a quick snapshot of the case characteristics and status. The spreadsheet also displays milestones reached in the cases such as status conferences, scheduling conferences, summary judgment, final pretrial, and trial.

2. Caseload Distribution

The pilot project was designed to examine how a commercial court docket would work in either a county model or a district model. The cases have been distributed equally within each model by tracking the cases assigned to each judge. The district model adds a layer of complexity since cases are filed in multiple counties at any given time. The challenge of assigning cases in the district model has been overcome by implementing a procedure that ensures quick and efficient communication among several clerks of circuit court offices. An email notification was established to allow quick and equitable case assignments by the District Court Administrators office. The county model accommodates a process that enables the civil supervisor to communicate directly with the district court administrator and chief judge. This allows for an equal distribution of the cases without being slowed by the assignment process. At this juncture, the commercial court docket has not received a substitution request and therefore has not had to reassign a case based on substitution.

3. Case Management Forms

Certain standardized forms have been developed for the commercial court docket cases. The judges specifically discussed developing a standard discovery protocol for cases in the commercial court docket. The discussion for this protocol focused on being flexible, but would be dependent on the size and complexity of the case, as well as, the information provided in the management report (Form CV-985). The judges agreed that developing a standard discovery protocol would promote consistency, and, once established, could provide examples of types of discovery for different size and complex cases.

The judges also discussed developing a default scheduling order that could be used if the parties were unable to reach an agreement on scheduling of the case. Several modifications to the Order on Proposed Timeline and Discovery (Form CV-986) have been suggested. The commercial court docket judges will evaluate the form and circulate any recommended changes.

Finally, the judges discussed deposition best practices as it relates to the potential impact on the discovery process. They agreed, best practices should focus on moving complex litigation more expeditiously through the court system which, in the long term, has the potential for lowering costs to the litigants.

Improvements and Recommendations

1. Expansion of Case Types

The judges are recommending that the eligibility criteria for assignment of cases to the commercial court docket should be expanded to include two other case types: 1) Receiverships in excess of \$250,000, and 2) Confirmation of Arbitration Award and Compel/Enforce Arbitration Award. The judges, attorneys practicing in the commercial docket, and members of the business advisory committee thought these complex business issues would fit comfortably within the existing commercial court docket case types.

2. Continuing Education

The commercial court docket judges believe that education for both the judiciary who hear commercial court docket cases and for attorneys who file these cases is necessary for the success of the docket. The judges attended the Thirteenth American College of Business Court Judges (ACBCJ) Conference in October of 2019. The ACBCJ provides substantive continuing professional education programs designed to aid specialized business court judges and other judges who frequently address complex business issues. Each year, the ACBCJ invites the Law & Economics Center to help develop an annual educational program that will help judges better understand the economic principles underlying the issues they face on the bench. The 2019 conference featured informative and entertaining discussions lead by experts in economics of consumer protection, data privacy, mandatory arbitration agreements, and other hot topics facing judges nationwide.

In addition to gaining knowledge from educational conferences such as the ACBCJ, the judges also recommend the Advisory Committee develop and implement a training program for judges and lawyers interested in participating in the commercial court docket. Further, the judges would like to establish a shared drive on CCAP that can serve as a repository for resources that will be helpful to all commercial court docket judges now and in the future. Law reviews, articles, publications, newsletters, and other critical resources can be stored on the shared drive so they can be readily available for judges to review.

3. Recognizing CDPP Cases: Quality Control

The Commercial Docket Pilot Project (CDPP) coversheet was submitted by the plaintiff(s) in 27 out of 81 cases. In light of the cover sheet being submitted in less than half of the cases, a quality control process is being instituted in order to identify any cases that could potentially be a part of the commercial court docket. The goal is to create a set of quality control guidelines that can be utilized by court staff to help capture any cases that have been filed without a commercial court docket cover sheet. For instance, it is recommended to have a subject matter expert (e.g. civil supervisor) conduct a secondary review of all civil complaints that are filed under class codes 30303 (Other Contract), 30701 (Declaratory Judgment), and 30704 (Other Injunction/Restrain Order) to make sure a case wasn't filed under an incorrect class code by the attorney or intake court staff. Implementing a quality control system and guidelines combined with routine training will equip court staff with the necessary tools to quickly identify cases that may belong in the commercial docket. Court staff should refer such cases to the judge for review and final determination.

4. Routine Communication with Legal Community

In addition to a quality control system, reoccurring training and dissemination of information to the local bar associations will occur in the future. Information will include an effort to improve the utilization of the commercial court docket coversheet. Reoccurring presentations at local bar associations combined with routine publications with the State Bar will ensure the legal community is informed about the commercial court docket. The judges also expressed their desire to convey the message that the commercial docket was not created for commercial and business litigants to cap their losses; rather, the commercial docket is intended to adjudicate disputes efficiently. The commercial court

docket does this through timely decisions based on articulated core legal principles that promote confidence in the process and provide future guidance for conducting ongoing business practices outside of the courtroom.

5. Surveys

The judges made two recommendations on how to improve the survey process. First, they recommend that the surveys contain a comment field where attorneys are able to provide feedback and elaborate on questions within the survey. Second, the judges recommend that an electronic mechanism (e.g. SurveyMonkey) be utilized to help enhance the completion rate. The judges recommend that additional follow-up is necessary so that attorneys understand the importance of their feedback in this process to ensure success of the commercial court docket.

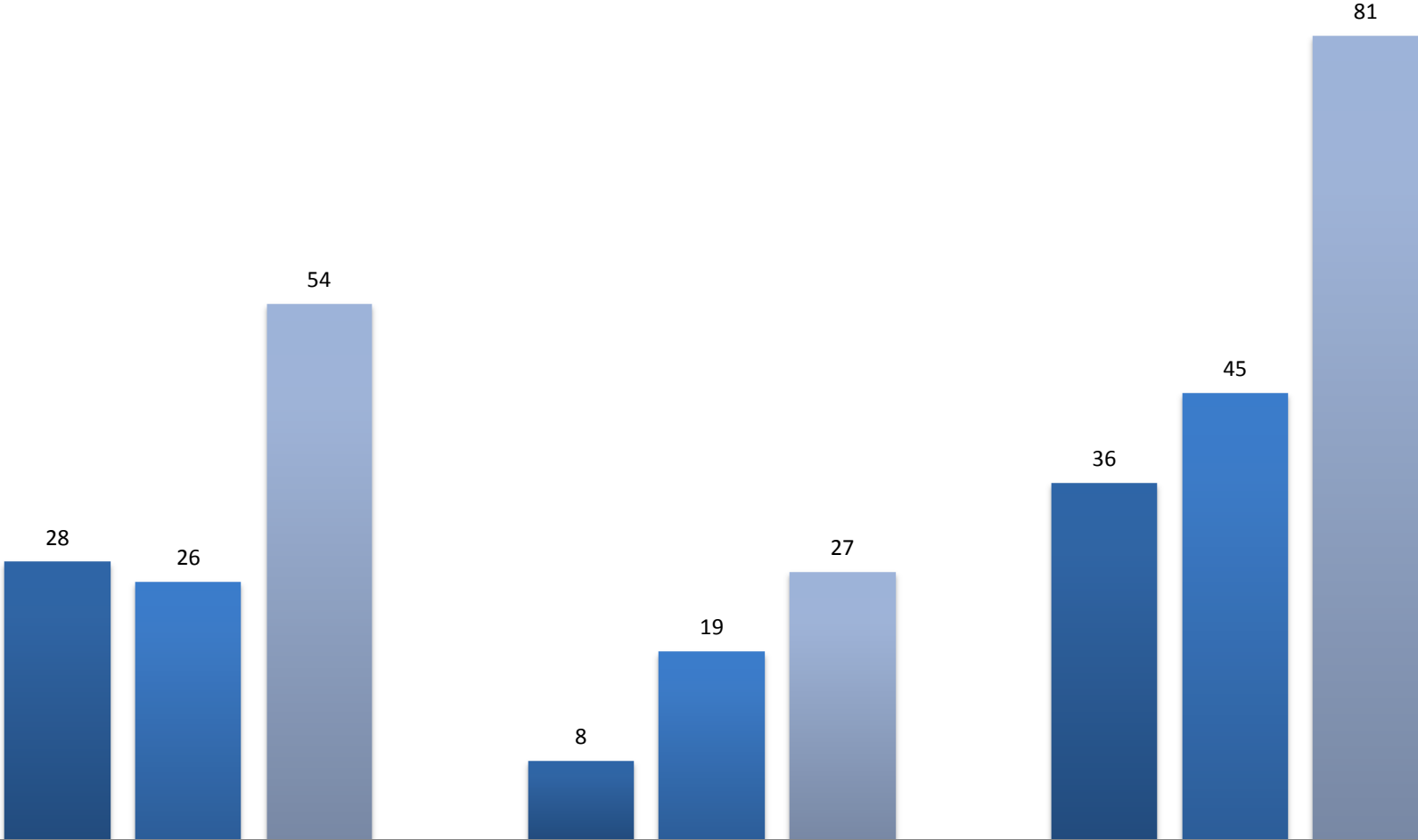
In conclusion, the judges believe a dedicated commercial court docket will benefit the Wisconsin legal system. They support the proposal to expand and extend the pilot project in an effort to gather additional evidence to verify the usefulness and to identify any improvements or changes that may be necessary before a commercial court docket achieves permanent statewide status.

Attachment A

Quantitative Data

CDPP Cases

■ Pending cases ■ Closed Cases ■ Total Cases

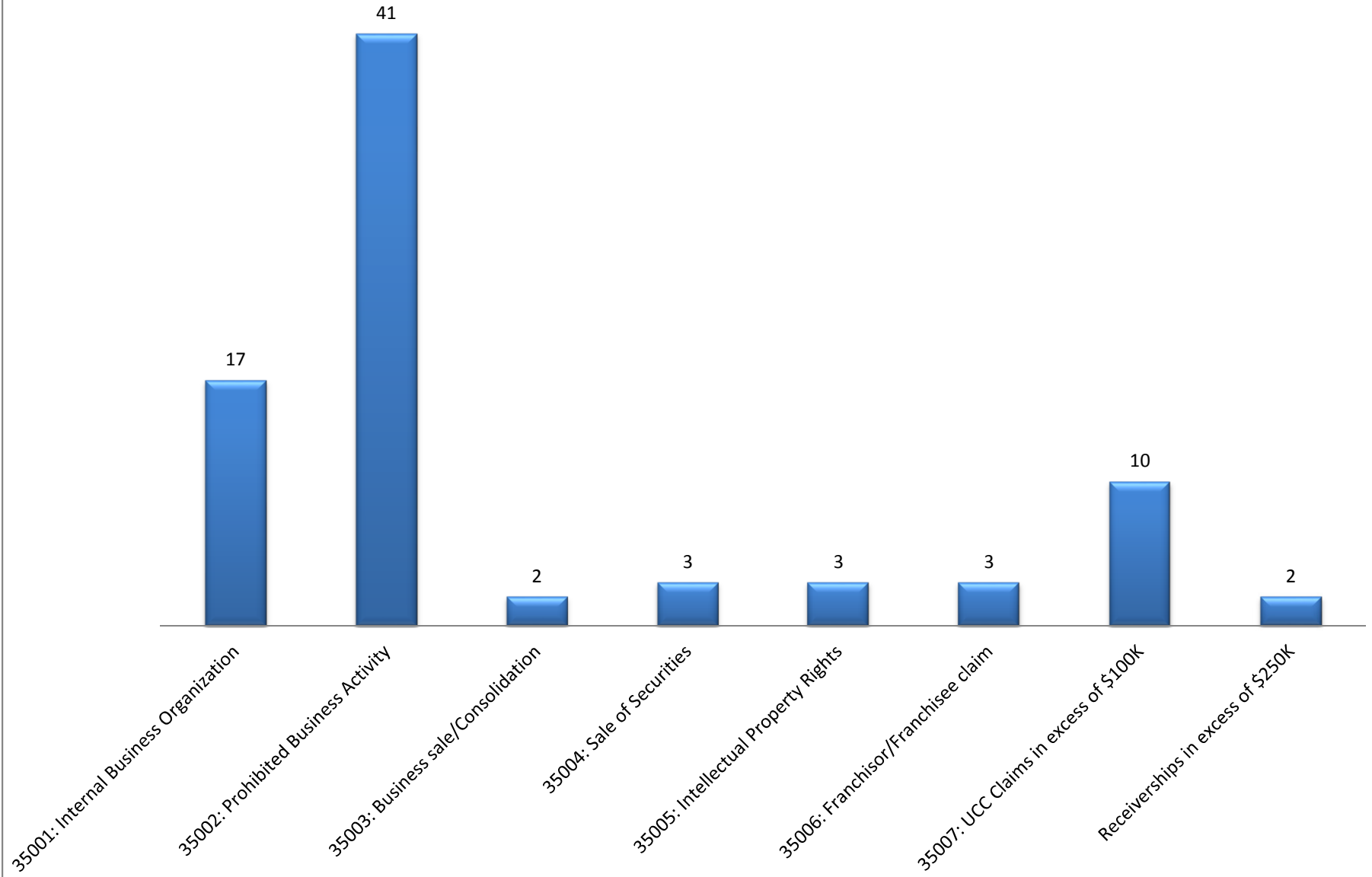


Waukesha

District 8

Commercial Docket Totals

Commercial Docket Class Codes



CDPP Cases by Judge

18



Aprahamian

18



Domina

18



Bohren

3



Atkinson

6



M. Judge

7



Hock

1



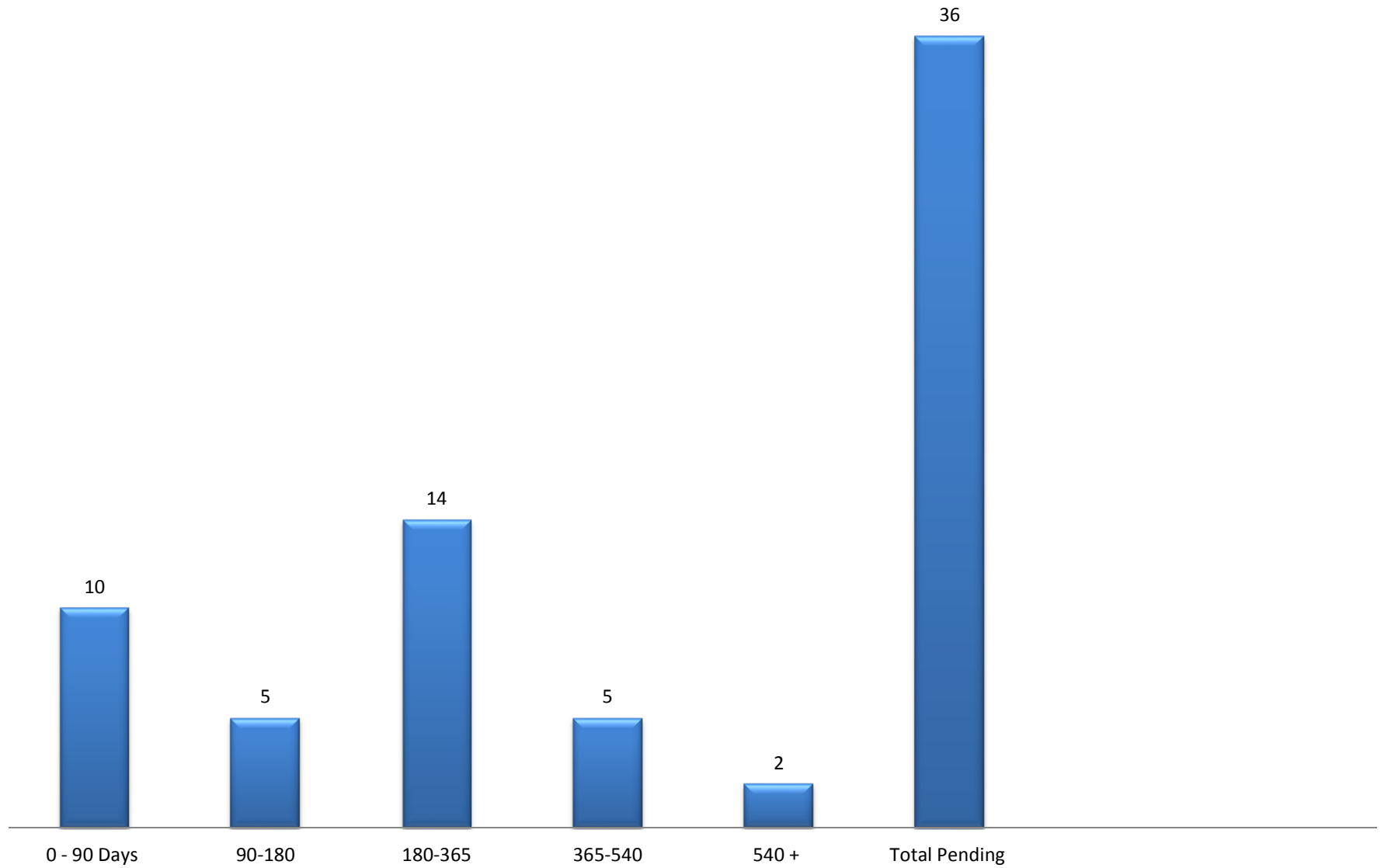
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10

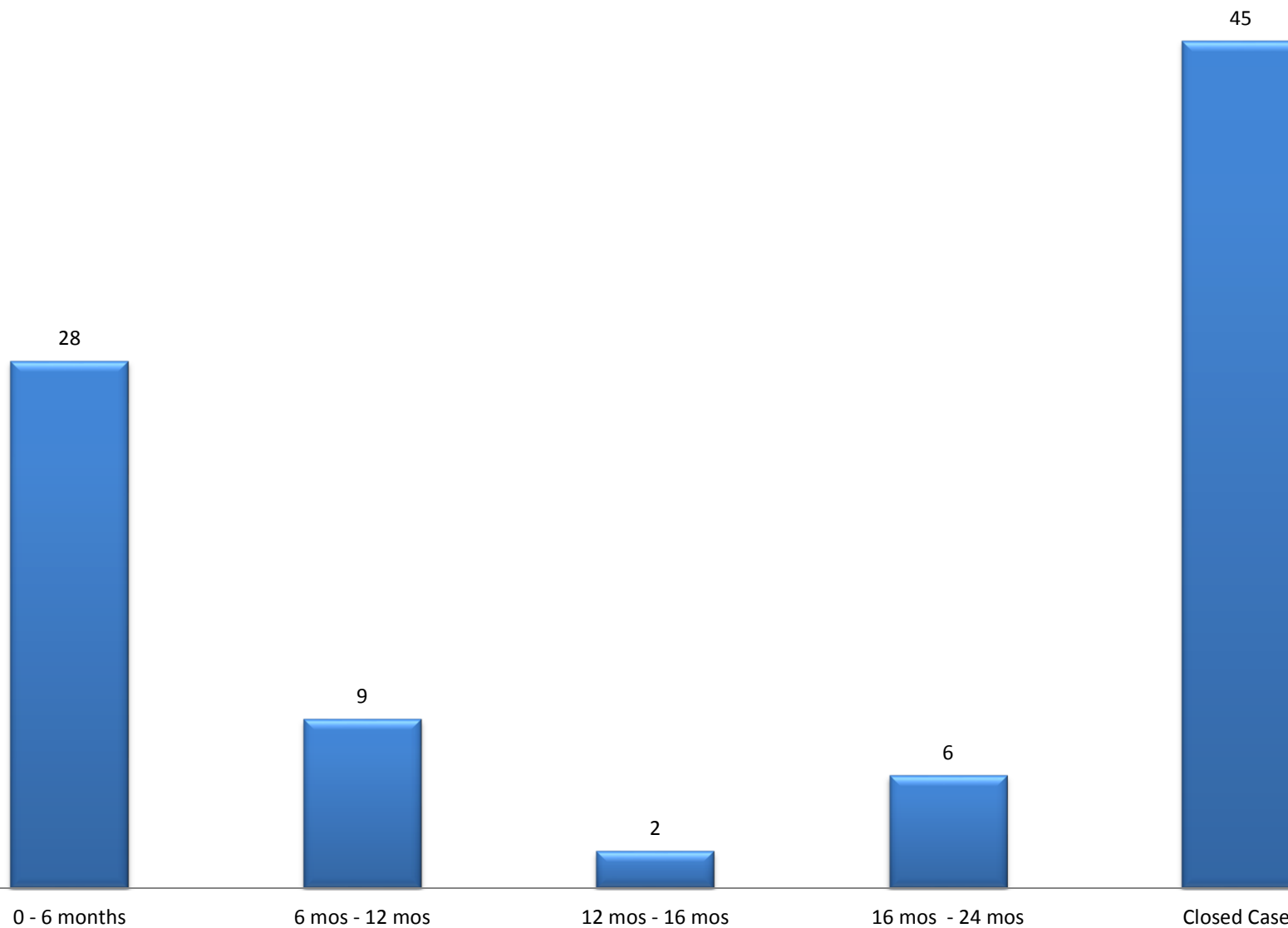


Morrison

CDPP Age of Pending



CDPP: Time to Disposition



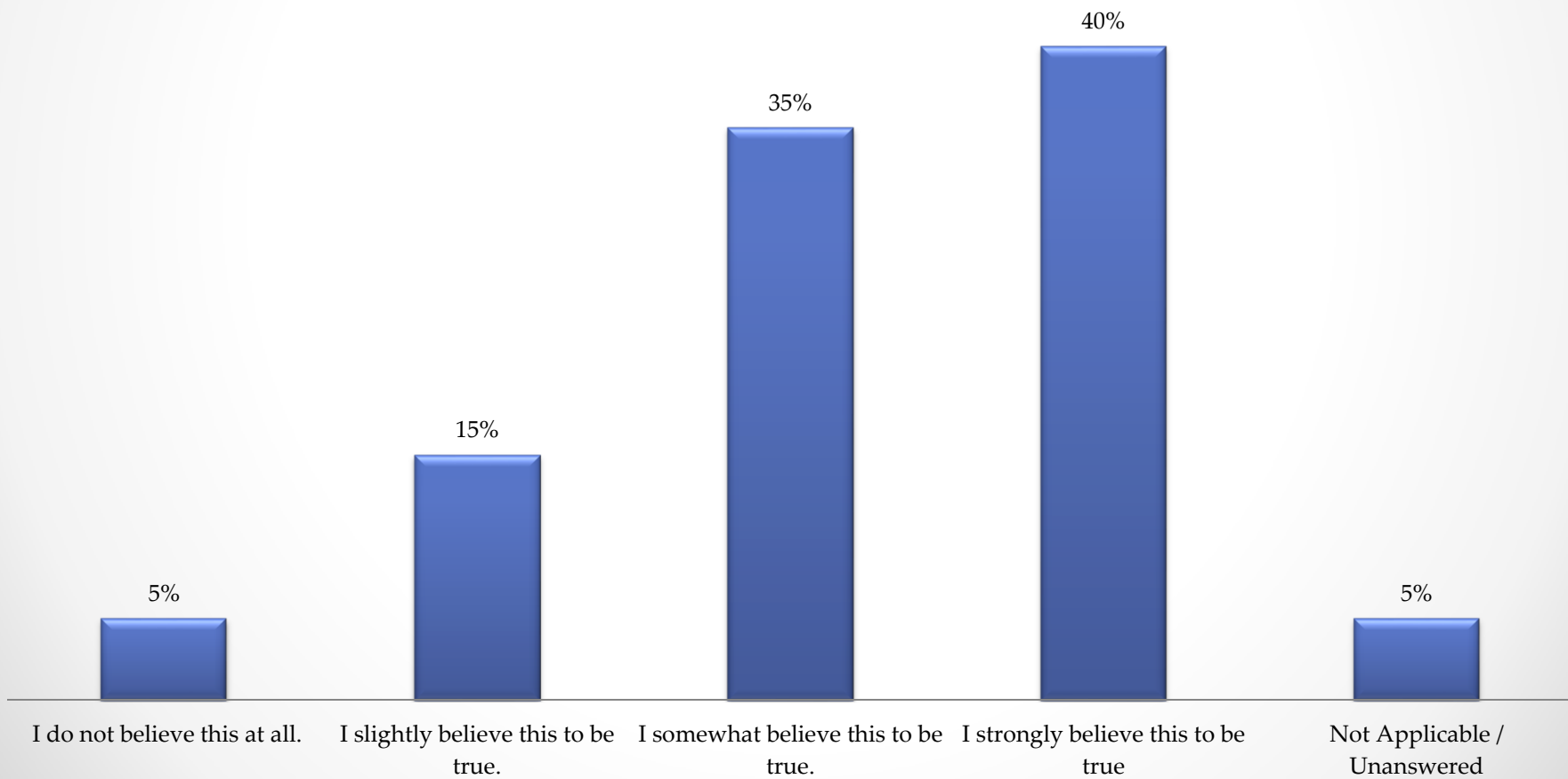
Attachment B

Qualitative Data



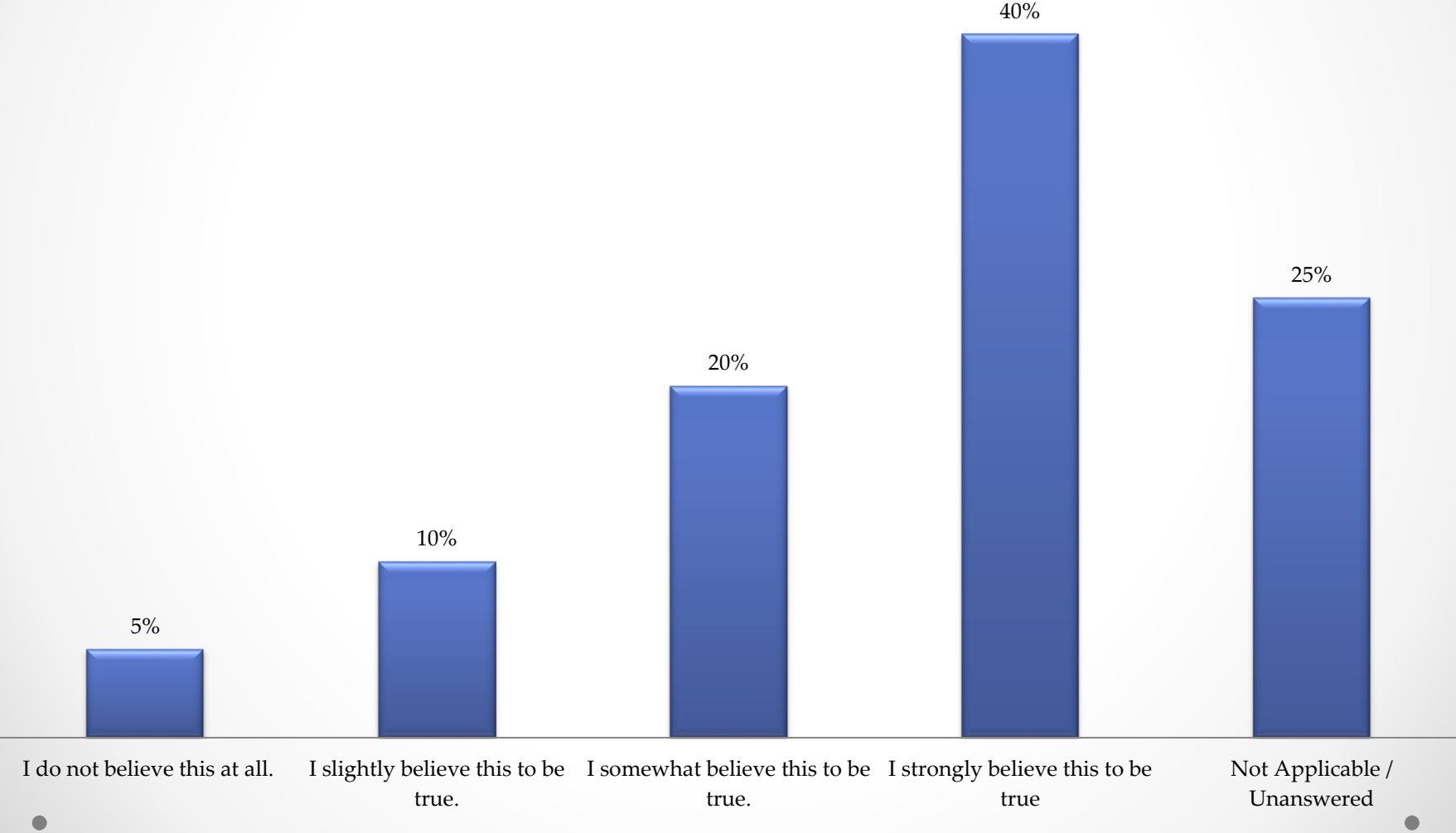
Q1. Providing a judge with experience in managing complex business litigation cases.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



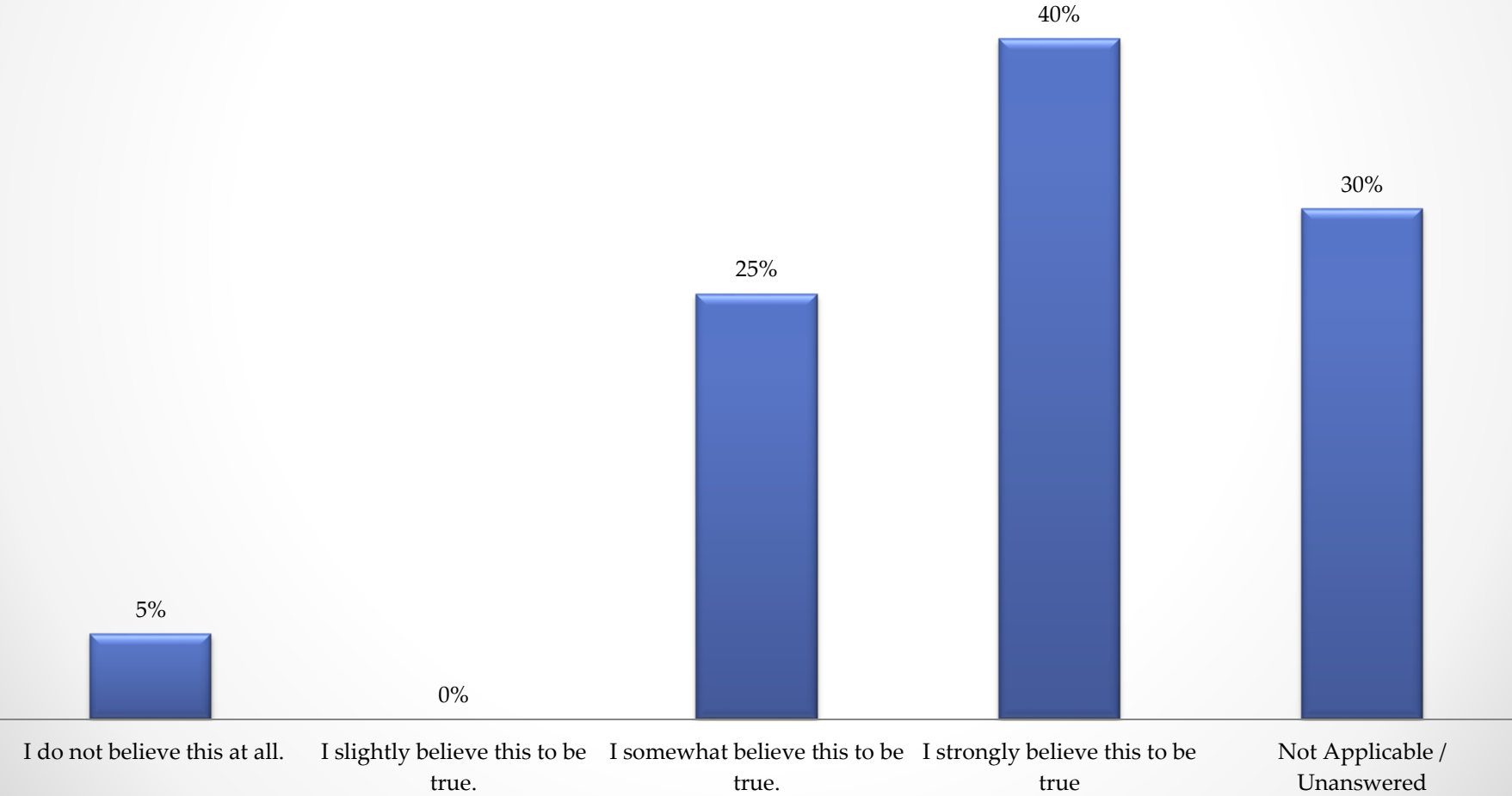
Q2. Developing a detailed case management timeline with the court.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



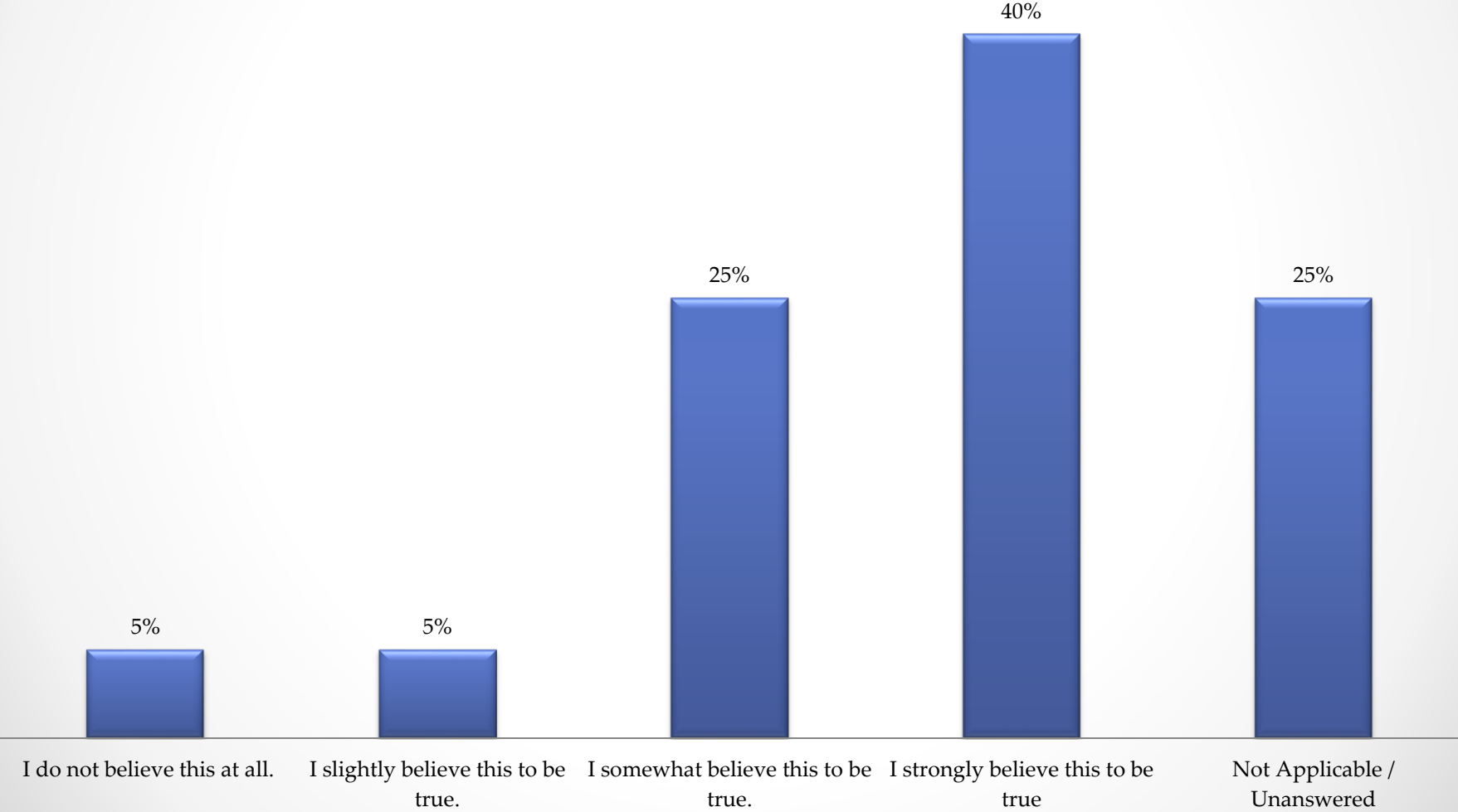
Q3. Effectively managing discovery-related issues.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



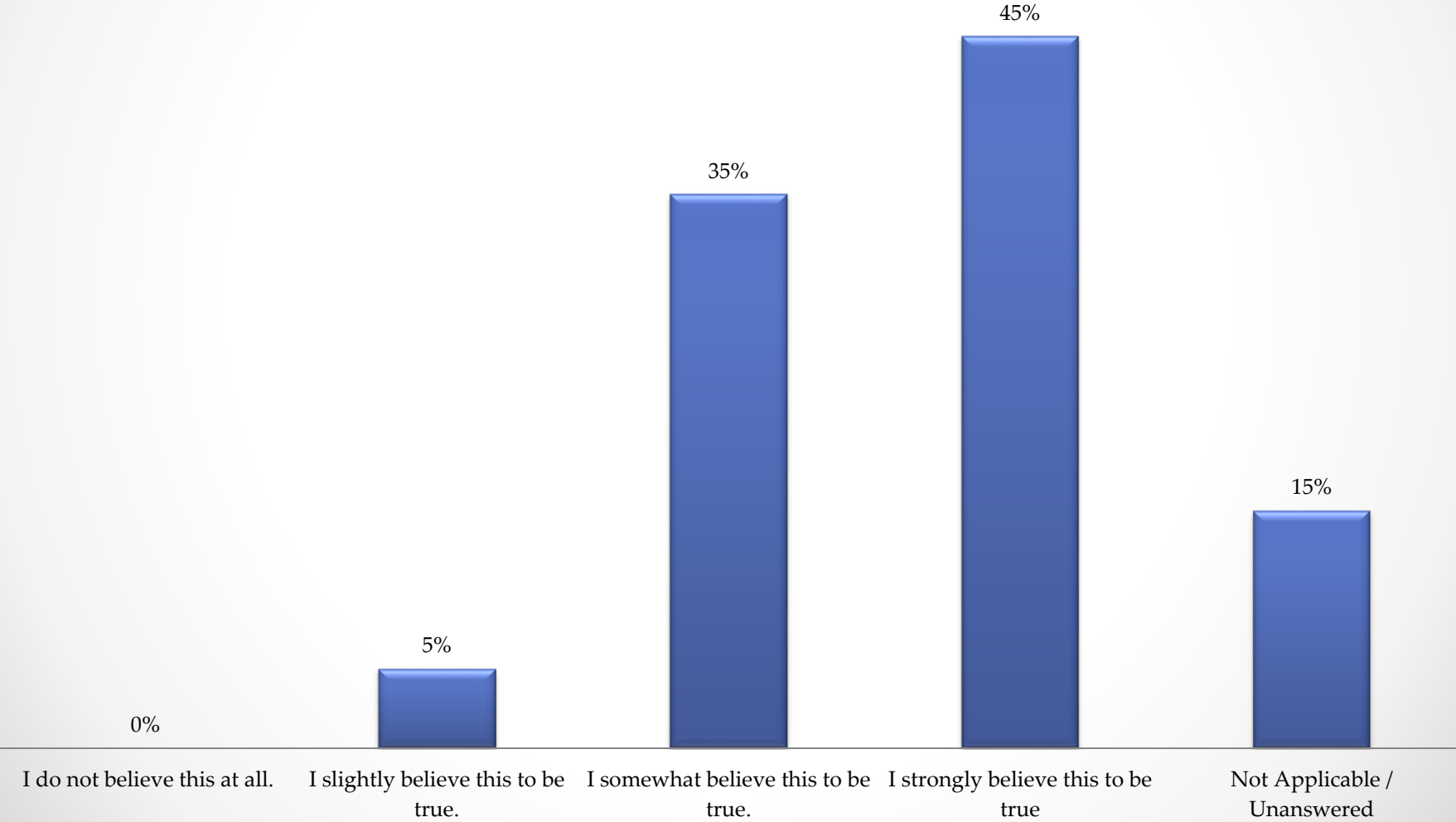
Q4. Limiting the number of continuances.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



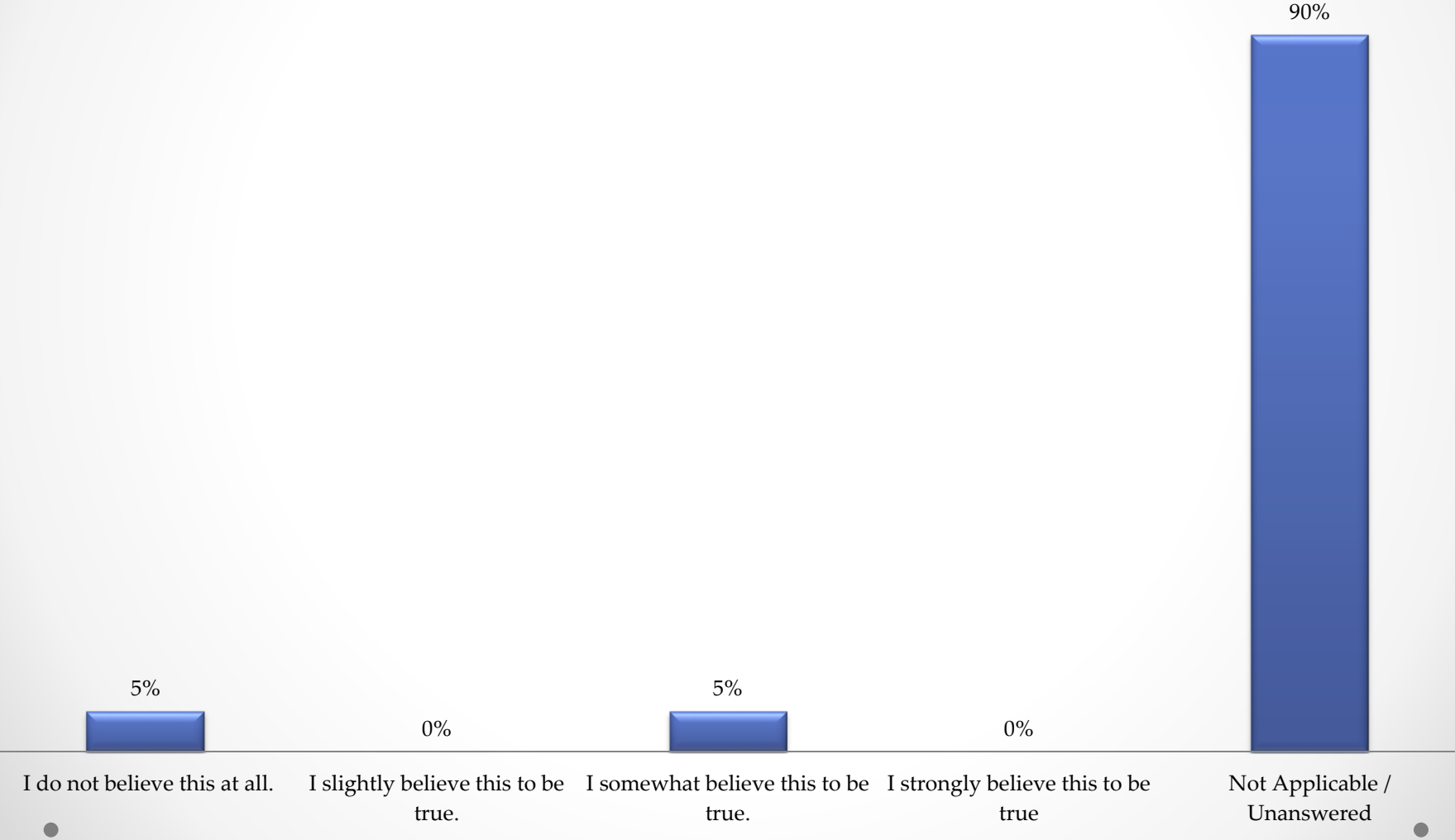
Q5. Judge employing an effective strategy for settling the case.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



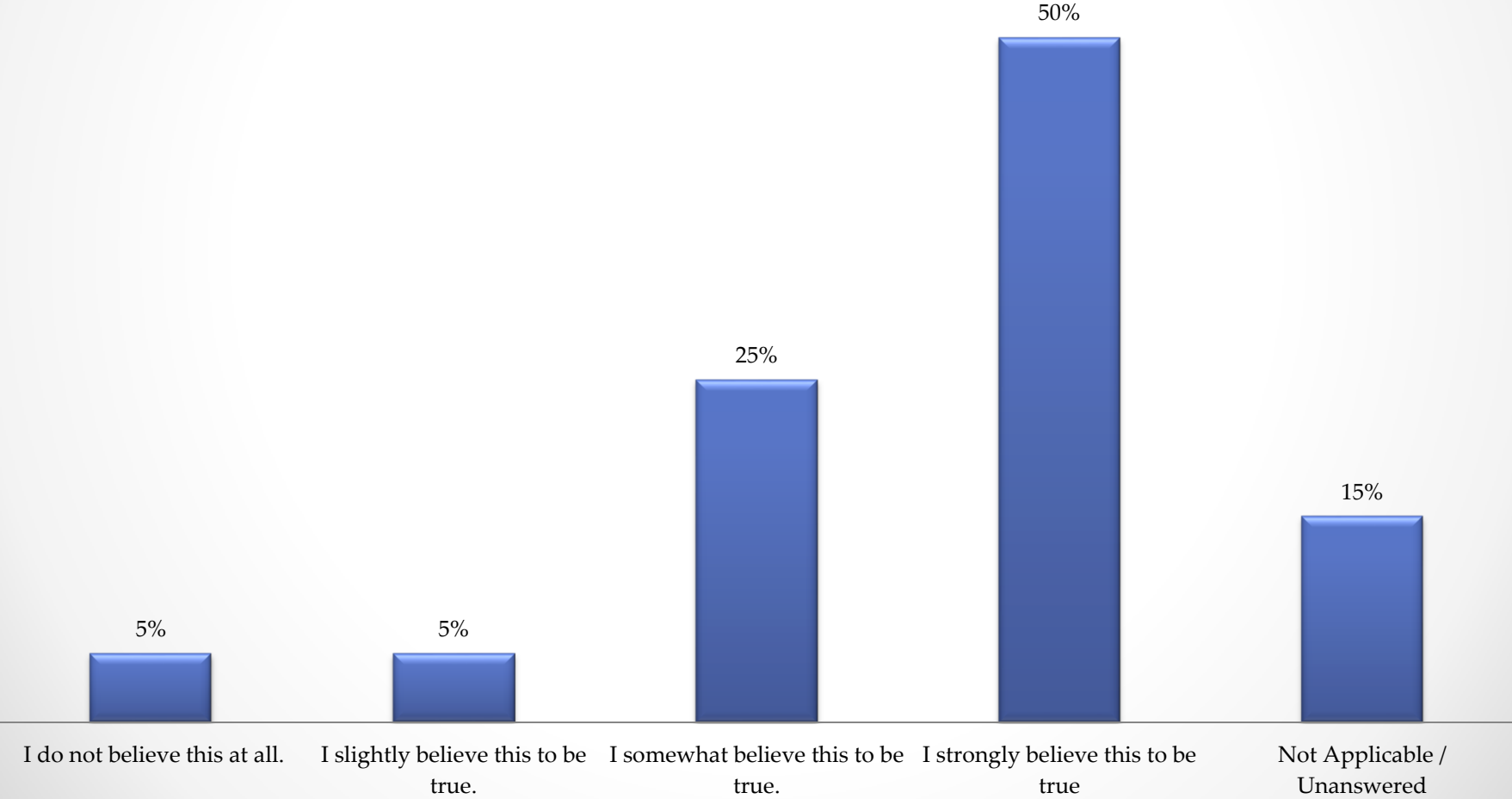
Q6. Judge effectively managing the trial.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



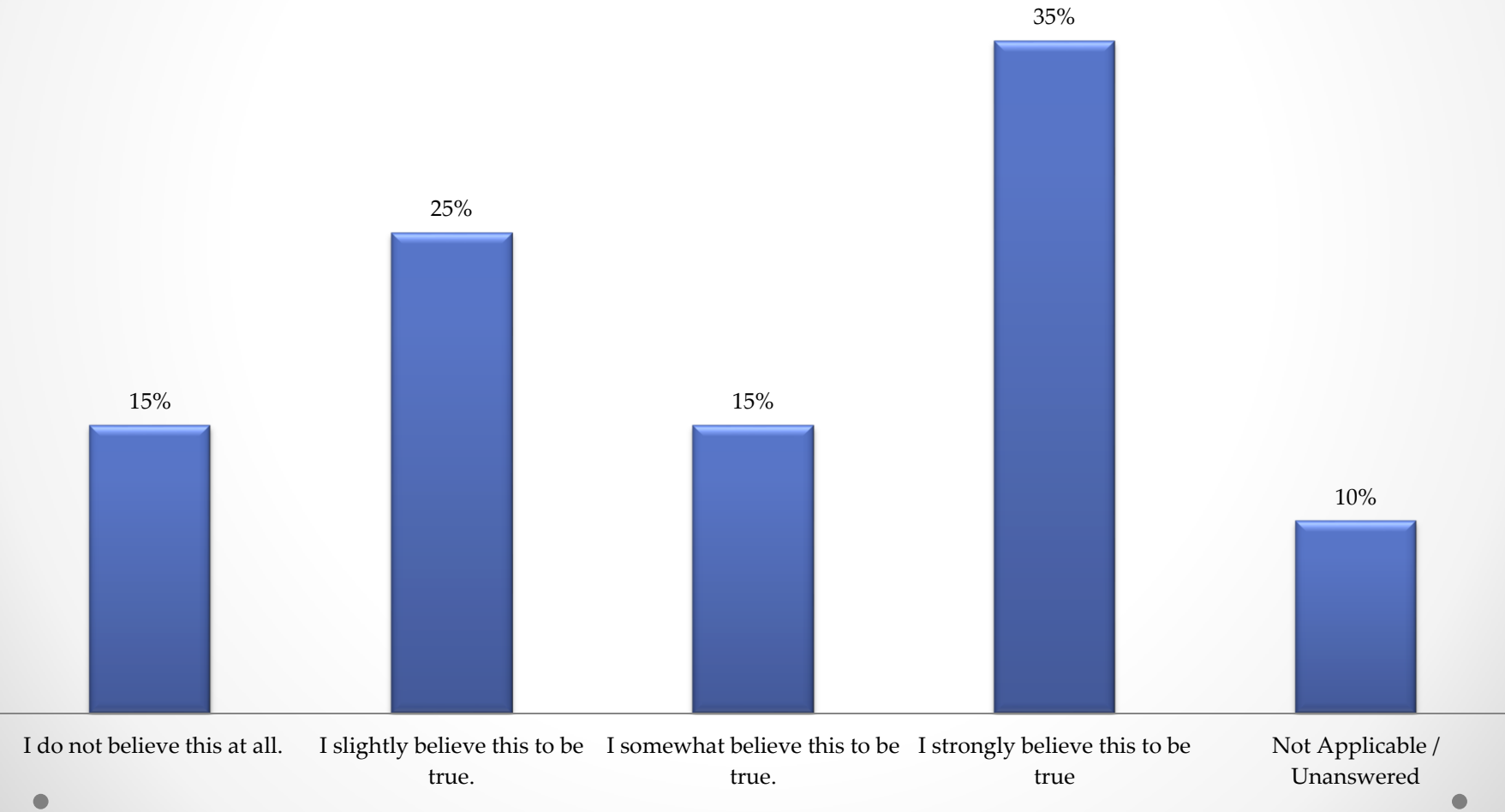
Q7. Reducing delays in bringing the case to trial or settlement.

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



Q8. Achieving a resolution of the case at a lower overall cost (work time and expenses).

I believe the commercial court docket demonstrated this feature more effectively than the traditional circuit court docket.



Q9. I believe the commercial court docket should become a permanent component of the Wisconsin Court System.

