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4.15.22

FILED

APR 19 2022

**CLERK OF SUPREME COURT
OF WISCONSIN**

SENT BY MAIL

Chief Justice Ziegler and
Justices of the Wisconsin Supreme Court
c/o Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

Re: Rule Petition 16-05D, In re Creation of a Pilot Project for Dedicated Trial Court
Judicial Dockets for Large Claim Business and Commercial Cases

Dear Chief Justice Ziegler, Justices and Deputy Clerk:

Pursuant to the letter dated March 11, 2022 of the Supreme Court Commissioner, Petitioner Business Court Advisory Committee (the "Committee") provides the following Response to the comments received in connection with Petition 16-05D to extend the Pilot Program for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases.

Overview of Business Court Pilot Program History

After publishing the petition, soliciting written comments, and a public hearing, this Court approved the Business Court Advisory Committee's rule petition asking the court to create the business court pilot project and the Business Court pilot project commenced effective July 1, 2017, and was initially authorized for a period of three years with a review scheduled in July 2020. S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017) (approving pilot project following receipt of public comment and public hearing). The pilot project and its review was extended for an additional two years. S. Ct. Order 16-05A (issued February 12, 2020). The court added Dane County as

an additional county that could hear commercial court docket cases as part of the pilot project. S. Ct. Order 16-05C (issued March 13, 2020).¹

On February 11, 2022, the Petitioner Business Court Advisory Committee filed its written petition asking the court to extend the pilot project and the Supreme Court's review for an additional two years – from 2022 to 2024. In addition to requesting an extension, the Committee also asked the Court to revise the Interim Rule to reflect that the Chief Justice seeks local input from chief judges of the Judicial Administrative District before making an appointment under this rule.

By letter dated March 11, 2022, Supreme Court Commissioner Julie Anne Rich notified a list of potential “interested persons,” including all Wisconsin circuit court and court of appeals judges, various individual judges and judicial associations, legal practitioners, court administrators, legal regulatory agencies, State Bar Associations, Marquette and University of Wisconsin law schools, Public Defender offices, legal aid organizations, and commercial business organizations.² (See Ex. 1, Commissioner Rich's 3/11/22 Ltr. for complete list of interested persons.)
<https://www.wicourts.gov/scrules/archive/1605.htm>.

In response, the Court received eight (8) comments from: (ret.) Dane County Circuit Court Judge John Markson, (ret.) Dane County Circuit Court Judge Richard G. Niess, Wisconsin Court of Appeals Judge Lisa K. Stark, Attorney and Stoughton Municipal Judge Matthew Roethe, and Will Stites (all opposed to the petition), and Attorneys Lon E. Roberts, Matthew D. Rowe, Paul G. Swanson (along with 47 other attorney signatories) (all in favor of granting the petition and in support of the Business Courts).

The Business Court Advisory Committee members appreciate the opportunity to work towards implementing and continuing to improve this Business Court Pilot Project, have reviewed the comments and provide the following response to those comments.

¹ See generally *Petition Archive* for copies of all filings, comments and orders.
<https://www.wicourts.gov/scrules/archive/1605.htm>.

² Prior to approving the initial Pilot Project, Commissioner Rich sent a similar letter dated December 19, 2016 notifying essentially the same list of “interested persons” of the initial rule petition and seeking comment. (See Ex. 2, Commissioner Rich's 12/19/2016 Ltr. for complete list of interested persons.) The Court received only three comments - from the Wisconsin Banker's Association, Chair of the Business Law Section of the State Bar of Wisconsin (both in support of the pilot program), and Wisconsin Court of Appeals Judge Lisa K. Stark (raising several concerns about the lack of evidence supporting the need for the program and suggestions about how to better implement the program.)

Response to Comments

The Committee notes and joins in the comments from Attorneys Lon E. Roberts, Matthew D. Rowe, Paul G. Swanson in their support for continuing the Business Court Pilot Project.

We will address the remaining comments by topic, as those commenting in opposition echoed one another and raised duplicative points in several respects.

Comment that there is a Lack of Data or Evidence to Support the Necessity of the Business Court Pilot Project

Three commenters, Judges Niess, Stark and Markson, raised in some form or another similar concerns and criticisms that there is generally no proven need for a Business Court. *See e.g.* J. Markson (“this business court is entirely unnecessary . . . [b]usiness cases are no different than other cases . . . the procedures for handling business cases are no more demanding than those for other cases . . . [o]ur system ain’t broke, and we should leave well enough alone.”) In support of this contention, they specifically assert that there was insufficient data/evidence to support the need to create the Business Court Pilot Project and/or argue that there now is insufficient data/evidence to show that the Pilot Project has operated successfully.

With respect to the general contention that there is no need for the Business Court, the Petitioner respectfully disagrees with the principle that business cases are no different than other cases. First, to acknowledge that commercial business cases present unique and complex issues is not a value judgment against any other area of law. In fact, it hardly seems controversial to recognize the law is not a one size fits all practice. Lawyers regularly specialize their practices because doing so allows them to become well versed in a particular area and by doing so better, more efficient advocates. It is not a knock on a lawyer who has practiced commercial litigation for 25 years to suggest that it would likely be more difficult for them to handle a family law case than a lawyer who had practiced family law for a similar lengthy career. Both are experienced in litigation. Yet each area involves unique questions of law, procedure and factual issues. It stands to reason that the same could be said of the Courts adjudicating these areas of law. Again, it should not be controversial to suggest this given that there is a long track record in Wisconsin for creating specialized dockets not only separating civil and criminal courts but also further specializing dockets within the civil courts –*i.e.* family law courts, probate courts, small claims courts *etc.*

Judge Niess makes the slippery slope argument of “how many specialized, dedicated courts should we have?” This Court does not need to answer that question to determine the question at hand which is whether continuing this single specialized court is a good idea.

We also do not think that the old adage of “[if it ain’t broke why fix it?” fairly applies to the analysis. Rather, proposing an innovation does not have to be premised on an assertion or proof that the current way is “broken” but instead can be simply an improvement. That is the case here. The Business Court Pilot Project is not premised on proving the existing system was “broken” but on the idea (guided by looking at many other states who had successfully implemented similar business courts) that there could be a way to make our court system even better.

As to the specific critiques regarding the data, notably, the commentators concede there is data available and referenced as Exhibits A and B to the February 11, 2022 Rule Petition. In fact, as summarized in the attached Power Point Presentation which incorporates that data (*see also* Ex. 3 at pp. 32-41), the responses by participants in the Pilot Program to survey questions reflect that the vast majority of participants – 90% and above (not merely 58% as Judge Stark misreported) – believed to some varying degree that the Business Court docket outperformed the general civil court docket on nine different metrics per the following results:

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.

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.

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.

Responses:

I slightly believe this to be true: 5%

I somewhat believe this to be true: 31%

I strongly believe this to be true: 58%

Subtotal: 94%

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.

Responses:

I slightly believe this to be true: 5%
I somewhat believe this to be true: 31%
I strongly believe this to be true: 54%
Subtotal: 90%

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.

Responses:

I slightly believe this to be true: 8%
I somewhat believe this to be true: 32%
I strongly believe this to be true: 46%
Subtotal: 86%

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

Responses:

I slightly believe this to be true: 5%
I somewhat believe this to be true: 33%
I strongly believe this to be true: 58%
Subtotal: 96%

While the commenters acknowledge the above data related to the ongoing Pilot Project, Judge Niess critiques the data as insufficient, biased and unreliable mainly because it reports on the opinions of actual users of the business courts – both litigants and Judges. This critique is confusing. It is difficult to follow why the opinions and experiences of the actual participants in the Business Court Pilot Project would not be relevant or how participating in the program creates a “bias.” Far from being biased, the data represents the opinions of both sides of the cases - winners and losers. It is not clear that any amount of data would be sufficient for those who appear predisposed to dislike the Pilot Program, despite having not participated in any cases within it. That said, gathering information and data is a key objective of this Pilot Program. And as such, the Advisory Committee remains very open to continuing to gather information in other ways as well, including by any concrete suggestions provided by critics. But that can only be accomplished by granting the petition and continuing the Pilot Program for an additional two years.

Comment that the Business Court Pilot Program Creates a Negative Public Impression of the Courts and the Judicial System and Compromises the Public's Confidence in Both

A common critique among the commentators is that the Business Court Pilot Project improperly elevates business disputes to the exclusion of other litigants. Despite repeat calls for data, the commentators offer none to support this point. There is not a single comment or anecdotal example of how the existence of the business courts in various jurisdictions impaired fair access to other litigants.

For example, Judge Stark states “[f]inally, whatever limited benefits the CCDs provide to business and commercial parties cannot offset the diminished reputation that the court system suffers when viewed as biased toward business interests. As I said in my 2017 submission, we cannot and should not create the impression that business, above all, deserves the fastest, most cost efficient, most predictable, and fairest disposition of all cases.”

Judge Niess also offers the critique that classifying cases involving over \$250,000 as a business court case is somehow elevating “big business” over so called “Mom-and-Pop shop” cases involving \$75,000. That argument ignores the fact that many “big business” entities have disputes that fall below \$250,000 and “Mom-and-Pop shops” have claims exceeding \$250,000. Further, there already exists a separate small claims civil docket for cases involving amount in dispute less than \$10,000. Yet none of the commentators appear to be suggesting that the existence of a small claims docket, where separate judges are assigned to hear those cases with different procedural rules, is nefarious or undermining the public confidence in our justice system.

On one had the commentators say they are concerned about the public's perception of the judicial system being compromised – while they appear on the other hand to be taking the lead in feeding the public with misperceptions about the program.

Many of those misperceptions are summarized in an op-ed piece authored by Judge Niess and circulated to various publications throughout the state. (Ex. 4, Richard Niess, *Shadowy Business Courts Corrupt Justice System, Urban Milwaukee*, March 31,

2022).³ Specifically and contrary to what Judge Niess (and others) have claimed the Advisory Committee offers the following responses to those misperceptions.

Comment that the Commercial Court Docket Pilot Program was Created in “Secret” or Without Public Comment

The claim that this was created in secret or as part of some shadow court is just false. As discussed above in the introductory remarks of this letter, the Business Court Pilot Project was created pursuant to a public process. A hearing was held to discuss the Petition at an open rules conference on November 7, 2016, after which the Court voted to approve the Pilot Program by a vote of 5 to 2. The Court also voted to solicit written comments and to conduct a public hearing to obtain additional input regarding the Pilot Project. The Court solicited comments from organizations around the state. *See* Letter from Julie Anne Rich, Supreme Court Commissioner, to Interested Persons (Dec. 19, 2016), <https://www.wicourts.gov/supreme/docs/1605intrpersoc.pdf>.

The Supreme Court conducted a hearing on February 16, 2017 and heard testimony from members of the Committee and others. The Court then discussed the Petition at a following open rules conference (open to the public via WisconsinEye). A majority of the Court voted to approve the interim commercial court rule, subject to certain amendments, and to authorize the Committee to create some guidelines for the

³ The Committee also notes it has received numerous emails in response to Judge Niess’ editorials, published in many publications across the state, that repeat Judge Niess’ references to the program with titles like “Shadowy Business Courts Corrupt Justice System” and “Stain on our Courts: The unnecessary commercial docket.” The articles portray the Pilot Program as being granted “out of the public view,” and that it is part of a hidden agenda to favor “big business.” The editorials contain salacious, patently incorrect comments like the following:

*Here is how it works: the Chief Justice, currently **Annette Ziegler**, receives recommendations from big business and selects a limited number of business court judges*

(*See* Ex. 3, Richard Niess, *Shadowy Business Courts Corrupt Justice System*, Urban Milwaukee, March 31, 2022.) Judge Niess further referred to the Wisconsin Supreme Court as having a “penchant for secrecy” and that it didn’t allow for any public hearing, opportunity to comment or public notice for this program. Not surprisingly, many citizens sent the Committee expressing concern about a “secret court” set up in a non-public manner to favor only “big business.”

Pilot Project, which would be made available on the Wisconsin court system website. All of this information is still available on that website today.⁴

There was nothing secret about the creation of the Pilot Program or of the Pilot Program's operation. The Wisconsin court system website contains information about the program, helpful forms for use with the program, and published decisions of judges with commercial court judges. The website lists a contact person to handle questions, too. See www.wicourts.gov/services/attorney/comcourtpilot.htm

As part of the Pilot Program, more case codes were created to help collect data about the Program. And as part of the Program, judges are encouraged to issue written decisions which are maintained on this website with the hope that it will inform others. Many decisions from these Business Courts have already been posted for review. And as part of the program, all participating litigants are offered the opportunity at the conclusion of their cases to provide feedback about the program and whether they thought it was helpful.

Moreover, throughout the last several years, many articles have been published about the Pilot Program as well. See Lon Roberts, *The commercial court docket pilot program: Wisconsin's 'business court'*, Wis. L.J. (Mar. 2, 2021), <https://wislawjournal.com/2021/03/02/the-commercial-docket-pilot-program-wisconsins-business-court/>; Joe Forward, *Business Dispute? It Should Go to the Business Court Docket*, InsideTrack (Sept. 15, 2021), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=13&Issue=18&ArticleID=28617>; Joseph S. Goode, Mark M. Leitner, Klay A. Baynar, *Using Business Courts to Enhance Commercial Law in Wisconsin*, (Mar. 2020), <https://llgmke.com/using-business-courts-to-enhance-commercial-law-in-wisconsin/>; Joe Forward, *Commercial Litigation: Business Court Pilot Project Still Open for Business*, InsideTrack (Dec. 4, 2019), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=11&Issue=21&ArticleID=27333>; Michael J. Aprahamian, *The Need for Speed: Commercial Court now Open for Business*, Wis. Law. (Jan. 1, 2018), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=91&Issue=1&ArticleID=26094>

⁴ Notably, Judge Niess devotes an extensive amount of his comment to rehashing and critiquing the information discussed as part of the public hearing in 2017. This is interesting, considering one of his main tenants of criticism is that the Business Court Pilot Project was created “in secret” and “without public comment.” It appears that Judge Niess now concedes that these statements about the creation of the Court were not accurate. His comments are also interesting considering that although he was one of the many “interested persons” invited to offer comment in 2017, he neglected to do so at the time.

Comment that the Committee was Stacked with Pro Business Interests

In his editorials, Judge Niess portrayed the Committee as being “stacked” with attorneys representing only “big business.” That is also incorrect. The Committee includes judges and attorneys, all of whom share the common thread that they have relevant experience handling commercial cases. Beyond that, they come from a diverse background of practices. They do not solely represent or favor “big business.” For example, member Attorney Paul Swanson, a litigator for decades, represents primarily small commercial businesses in receivership and other commercial cases. Attorneys Brenner and Gierke similarly represent big and small businesses and individuals in their practices, but Attorney Gierke also practices in product liability cases and represents individuals in both commercial and employment matters which would fall outside of the business court purview. The one other thing they all have in common is that they have all volunteered their time to help improve the Program and ultimately to provide information about whether or not the Commercial Docket should be adopted, in whole or part, as something more permanent.

Comment that the Selection of the Judges to Commercial Court Docket Favor Big Business

Judge Niess suggested that judges are selected to participate in the Pilot Program based on “recommendations from big business.” As this Court already knows, that is also patently false. Judges are selected by the Chief Justice based upon their experience with commercial issues and their willingness to take on these responsibilities as extra duty assignments. The Chief Justice has had no involvement in the assignment of any judge to any particular case.

Comment that the Training was Politically Motivated

Judges who have commercial dockets as part of the program were portrayed in the Judge Niess editorials as being trained by an institution funded by the Koch brothers. In reality, judges who agree to take on commercial court dockets simply agree to educate themselves about typical commercial court cases and issues that arise in such cases. They can get training and information about commercial court cases and best practices in a number of ways and none of them is required or mandatory. One option is a national program offered by the American College of Business Courts. That group meet at annually, and the George Mason University Antonin Scalia Law School sponsors educational programs at that meeting. The focus is best practices to efficiently handle commercial court cases and the sharing of experiences from judges around the country who handle similar dockets – it is not a political endeavor. Judges may, but do not have to, attend that annual meeting. Judges may get information about commercial court issues and practices in many other ways, including CLE programs and seminars, judicial programs, publications (such as *The Business Courts Benchbook*, an American Bar Association publication), etc. There is no particular “required” training.

Comment that there was no Rationale Reason for the Project Itself

Again, the business court is like many other specialty courts which have been created in Wisconsin and across the country where judges obtain specialized knowledge and training so that they can handle the unique problems of their particular dockets. Family law, drug courts, domestic violence courts, veterans courts, felony courts are all notable examples of these kind of dockets that have been implemented and successfully operated in Wisconsin for many years. This does not disparage in any way the ability of judges to hear complicated matters. All of these courts recognize that justice is served when judges can have the necessary knowledge, experience and specialized training to decide the particular cases before them.

As discussed in the original Petition, this program is certainly not unique to Wisconsin. Over 26 states currently have commercial court dockets and/or are also testing commercial court programs. Many of the states surrounding Wisconsin are using or trying commercial court dockets. There is no reason that Wisconsin would not investigate the benefits of programs that are working very well in other states.

Comment that “Big Business” is “Favored” by this Pilot Program

The creation of a commercial court docket does not “favor” big business over consumers, individuals or others. First, as this Court is aware, only cases involving certain designated commercial disputes are resolved on the commercial court docket. In other words, most cases involve “business v. business” disputes. The Pilot Program does not involve consumer disputes, discrimination or other typical labor issues, personal injury cases, civil rights cases, consumer contracts or transactions, political or governmental cases, *etc.*

Not unlike similar previous innovations within our Courts that improved the delivery of justice in Wisconsin by creating focused and specialized dockets, such as the Small Claims Court, Drug Courts, Family Law Courts and Veterans Courts, the Commercial Court docket has streamlined the resolution of generally complex commercial litigation. The judges assigned to the Commercial Court Pilot Project have volunteered for this duty and have been selected based on experience and a willingness to tackle this area of law directly. They have performed well. So far, litigants of all sizes and types have indicated that they were well served by the program. That is the point of the Program – to determine whether another specialty docket is warranted.

As noted above, many states have created similar commercial court dockets with great success. As authors who examine business courts around the country noted over a decade ago:

Ultimately, a successful business court depends in each instance on the actual judge hearing business court cases. Judges presented daily with a field of law in which to cultivate their understanding, knowledge, and ability are more likely to come to deeper understandings about the inner workings of the legal principles they face; the patterns that may reveal themselves in the conduct of business cases; and the patterns of thinking and behavior that may appear in parties and counsel. The judge without that experience, faced with business disputes, typically may have to rely upon a less developed understanding of these factors in rendering decisions.

**A History of the Creation and Jurisdiction of Business Courts in the Last Decade,* Mitchell L. Bach and Lee Applebaum, *The Business Lawyer*; Vol. 60, November 2004.

Conclusion

The Pilot Program began in April 2017 with only with commercial court dockets in District 8 and Waukesha County. As you know, it has been expanded to include several other districts and counties. For that reason alone, it would be helpful to have more time to gather information and feedback about the program. But in addition, the effects of COVID-19 cannot be ignored. Dockets around the entire state and nation were impacted by the pandemic, and obviously impacted cases and the collection of information. For that reason as well, the Program should be extended for two more years to make up for those unusual circumstances.

Those providing comments added other miscellaneous criticisms about having a commercial court docket. Frankly, extending the program would allow more time to address those criticisms. And there would be more time to provide accurate information about the Project to the legal community and the public in general.

But, it is apparent to the Advisory Committee from the comments of those who have actually participated in the Business Court Pilot Project, that it has aided in the efficient and effective delivery of justice to the litigants, a benefit that does not come at the expense of other participants in our Judicial system, but rather fosters confidence that issues will be decided or resolved within a reasonable time.

This is a Pilot Project. Changes have been made over time and with hope will continue to be made if the Court grants the Petition to continue the program.

A great deal of time and effort has been invested in the Business Court Pilot Program. Numerous judges have invested their time and effort. The members of the Advisory Committee have voluntarily provided their time and effort as well. Litigants have taken the time to provide feedback as well. So far, the results and feedback show a lot of promise for this Program and the improvements for our system. It would be a terrible waste of these investments to end the program now.

For all of these reasons, we ask that the Petition to amend the program and extend it for an additional two years be granted.

Respectfully On Behalf of Petitioner Business Advisory Committee,



Nora E. Gierke, Business Court Advisory Committee Member

Encs. Exhibits 1-4

cc Clerk of the Supreme Court (by email: clerk@wicourts.gov) (word copy)
Attorney Laura A. Brenner, Chair, Business Court Advisory Committee
The Hon. Jim Morrison, Business Court Advisory Committee Member
The Hon. Michael Aprahamian, Business Court Advisory Committee Member
The Hon. Michael Fitzpatrick, Business Court Advisory Committee Member
Attorney Paul G. Swanson, Business Court Advisory Committee Member
Attorney John A. Rothstein, Business Court Advisory Committee Member



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

110 E. MAIN STREET, SUITE 440

MADISON, WISCONSIN 53703

Nancy A. Kopp
Julie A. Rich
David W. Runke
Mark A. Neuser
Commissioners

Telephone (608) 266-7442

March 11, 2022

To: Interested Persons – See Attached List

Re: Rule Petition 16-05D, In re Creation of a Pilot Project for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases

Greetings:

I am assisting the Wisconsin Supreme Court with its consideration of rule petition 16-05D, filed on February 11, 2022, by Attorney Laura A. Brenner, Chair, on behalf of the Business Court Advisory Committee (Committee). This petition asks the court to extend the pilot project and the Supreme Court's review for an additional two years. In addition to requesting an extension, the Committee asks the court to revise the Interim Rule to reflect that the Chief Justice seeks local input from chief judges of the Judicial Administrative District before making an appointment under this rule.¹

You have received this letter because you or your agency or organization potentially have an interest in this matter. A copy of the petition can be found on the court's website at <https://www.wicourts.gov/scrules/pending/index.htm>.

The court voted to solicit written comment. Any comment to the rule petition should be filed by April 8, 2022 with the Clerk of Supreme Court, Attention: Deputy Clerk-Rules, P.O. Box 1688, Madison, WI 53701-1688. If possible, email a Microsoft Word version of your response to clerk@wicourts.gov. See comment guidelines at the court's website at <https://www.wicourts.gov/scrules/process.htm>. The petitioner may file a response to the comments by April 15, 2022.

¹ This court approved the Business Court Advisory Committee's rule petition asking the court to create the business court pilot project and the Business Court pilot project commenced effective July 1, 2017, and was initially authorized for a period of three years with a review scheduled in July 2020. S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017) (approving pilot project following receipt of public comment and public hearing). The pilot project and its review was extended for an additional two years. S. Ct. Order 16-05A (issued February 12, 2020). The court added Dane County as an additional county that could hear commercial court docket cases as part of the pilot project. S. Ct. Order 16-05C (issued March 13, 2020).

Please note, the court may take any action on a rule petition it deems appropriate, including any of the following:

- (a) Grant the request and adopt the amended interim rule as proposed, or a modified version, without further comment.
- (b) Reject the request for an extension and the amended interim rule as proposed without further comment.
- (c) Refer the rule petition to another entity for its review and recommendation.
- (d) Request further information or analysis from the petitioner or interested persons or entities.

You might wish to consult the court's website at <https://www.wicourts.gov/scrules/pending/index.htm> to follow this rule petition. Court communications on the petition and any written comments filed with the clerk's office will be posted on the website.

If you have specific questions or other comments regarding this matter, please contact me by mail at P.O. Box 1688, Madison, WI 53701-1688, by telephone at 608-261-6642, or by email at julie.rich@wicourts.gov.

Very truly yours,
/s/

Julie Anne Rich
Supreme Court Commissioner

cc: Chief Justice Annette Kingsland Ziegler
Justice Ann Walsh Bradley
Justice Patience Drake Roggensack
Justice Rebecca Grassl Bradley
Justice Rebecca Frank Dallet
Justice Brian Hagedorn
Justice Jill J. Karofsky
Attorney Laura A. Brenner, Chair,
Business Court Advisory Committee
Krista Miller, Legal Advisor, Office of Court Operations

List of Interested Persons for Supreme Court Rules

Badger State Sheriffs' Association, Attention: Executive Director
Board of Administrative Oversight, Attention: Lori S. Kornblum, Chair
Board of Bar Examiners
Chief Circuit Court Judges
Christian Gossett, Winnebago County District Attorney
Circuit Court Judges
Clerk of Supreme Court and Court of Appeals, Sheila T. Reiff
Court of Appeals, Attention: Chief Staff Attorney
Court of Appeals Judges
Court Operations: Diane M. Fremgen, Deputy Director for Court Operations
Court Operations: Ann Olson, Krista Miller, Amber Peterson, Elizabeth Barroilhet
Dean Dietrich, Attorney
Department of Administration, State Prosecutors Office, Attention: Kasey Diess, Director
Director of State Courts, Honorable Randy Koschnick
District Court Administrators
Eastern District of Wisconsin Bar Association, Attention: Katy Borowski, Executive Director
Hamilton Consulting Group, Attention: Rebecca Hogan, R.J. Pirlot, Adam Jordahl
Legal Action of Wisconsin, Attention: Deedee Peterson, Executive Director
Legal Aid Society of Milwaukee, Attention: Colleen Foley, Executive Director
Marquette University Law School, Attention: Joseph D. Kearney, Dean
Office of Lawyer Regulation, Attention: Timothy Samuelson, Director
Office of State Public Defender, Attention: Kelli S. Thompson
Office of State Public Defender, Attention: Jeremy C. Perri
Office of the Attorney General, Attention: Terri Surita
State Bar of Wisconsin, Attention: Larry Martin, Executive Director
State Bar of Wisconsin, Attention: Lisa Roys, Public Affairs Director
State Bar of Wisconsin, Attention: Cheryl Furstace Daniels, President
University of Wisconsin Law School, Attention: Daniel Tokaji, Dean
Western District Bar Association of Wisconsin, Attention: Ann Peacock
Wisconsin Asian American Bar Association, Attention: Bryant Park
Wisconsin Association for Justice, Attention: Bryan Roessler, Executive Director
Wisconsin Association of African American Lawyers
Wisconsin Association of Criminal Defense Lawyers, Attention: Peter McKeever
Wisconsin Association of Judicial Court Commissioners, Attention: Susan Schaubel
Wisconsin Bankers Association, Attention: John Knight
Wisconsin Bankers Association, Attention: Kris Cleven, Vice President-Legal
Wisconsin Clerks of Circuit Court Association, Attention: Regina Kolbow, Carlo Esqueda
Wisconsin Counties Association, Attention: Marcie Rainbolt
Wisconsin Defense Counsel, Attention: Jenni Kilpatrick, Executive Director;
Andrew Hebl, President
Wisconsin District Attorneys Association, Attention: Greta Mattison, Executive Director
Wisconsin Family Court Commissioners Association, Attention: David Pruhs, Exec. Secretary
Wisconsin Hispanic Lawyers Association, Attention: Pamela M. Ritger
Wisconsin Judicare, Inc., Attention: Beth Ann Richlen, Executive Director

Wisconsin Judicial Commission, Attention: Jeremiah VanHecke
Wisconsin Judicial Council, Attention: William C. Gleisner, III, Chair
Wisconsin Juvenile Court Clerks Association, Attention: Samuel Christensen
Wisconsin Municipal Judges Association, Attention: Honorable Robert Kupfer
Wisconsin Newspaper Association, Attention: Beth Bennett, Executive Director
Wisconsin Registers in Probate Association
Wisconsin Sheriffs & Deputy Sheriffs Association, Attention: Sandy Schueller
Wisconsin State Attorneys Association, Attention: John Gelhard
Wisconsin Trial Judges Association, Attention: Honorable Gregory Gill, Jr.
Wisconsin Tribal Judges Association, Attention: Honorable Gwendolyn Topping, President

List of Additional Interested Persons

Metropolitan Milwaukee Association of Commerce, Attention: Timothy Sheehy
Wisconsin Business Alliance
Wisconsin Manufacturers & Commerce, Attention: Kurt Bauer
Wisconsin Manufacturers & Commerce, Attention: Scott Manley
Attorney Richard G. Niess



Supreme Court of Wisconsin

OFFICE OF COURT COMMISSIONERS

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MADISON, WISCONSIN 53703

Nancy A. Kopp
Julie A. Rich
David W. Runke
Mark A. Neuser
Commissioners

Telephone (608) 266-7442

December 19, 2016

To: Interested Persons – See Attached List

Re: Rule Petition 16-05, In re creation of a pilot project for dedicated trial court judicial dockets for large claim business and commercial cases.

Greetings:

I am assisting the Wisconsin Supreme Court with its consideration of rule petition 16-05 filed October 26, 2016 by Attorney John Rothstein, on behalf of the Business Court Advisory Committee, appointed by Chief Justice Patience Drake Roggensack. The petition proposes a three-year pilot project to create dedicated trial court judicial dockets for large claim business and commercial cases in Waukesha County and in the Eighth Judicial District. A copy of this petition can be found on the court's website at <https://www.wicourts.gov/scrules/1605.htm>.

The court will conduct a public hearing and an open conference on Thursday, February 16, 2017, at 9:30 a.m. to discuss this matter further. Please note, the court may take any action on a rule petition it deems appropriate, including any of the following:

- (a) Adopt the rule proposed, or a modified version, without further comment.
- (b) Reject the rule proposed without further comment.
- (c) Refer the rule petition to another entity for its review and recommendation.
- (d) Request further information or analysis from the petitioner or interested persons or entities.

Any comment to the rule petition should be filed by January 23, 2017, with the Clerk of Supreme Court, Attention: Deputy Clerk-Rules, P.O. Box 1688, Madison, WI 53701-1688. If possible, email a Microsoft Word version of your response to clerk@wicourts.gov. See comment guidelines at the court's website at <https://www.wicourts.gov/scrules/petitioncomment.htm>. The petitioner shall file any response to the comments by January 30, 2017.

If you are interested in appearing in person at the public hearing, please notify the Deputy Clerk for Rules by January 30, 2017, at clerk@wicourts.gov or 608-261-4302.

You might wish to consult the court's website at <https://www.wicourts.gov/scrules/supreme.htm> to follow this rule petition. Court communications on the petition and any written comments filed with the clerk's office will be posted on the website.

If you have specific questions or other comments regarding this matter, please contact me by mail at Post Office Box 1688, Madison, WI 53701-1688, by telephone at 608-261-6642, or by email at julie.rich@wicourts.gov.

Very truly yours,

/s/

Julie Anne Rich

Supreme Court Commissioner

cc: Chief Justice Patience Drake Roggensack
Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman
Justice Rebecca Grassl Bradley
Justice Daniel Kelly
Attorney John Rothstein

List of Interested Persons for Supreme Court Rules Matters

Badger State Sheriffs Association, Attention: Executive Director
Board of Bar Examiners
Chief Circuit Court Judges
Christian Gossett, Winnebago County District Attorney
Circuit Court Judges
Court of Appeals, Attention: Chief Staff Attorney
Court of Appeals Judges
Court Operations, Sara Ward-Cassady, Director
Court Operations, Ann Olson
Court Operations, Marcia Vandercook
Dean Dietrich, Attorney (Wausau)
Diane M. Fremgen, Clerk of Supreme Court
Director of State Courts
Eastern District of Wisconsin Bar Association, Attention: Katy Borowski, Executive Director
League of Women Voters: Andrea Kaminski, Executive Director
Legal Action of Wisconsin
Legal Aid Society of Milwaukee, Attention: Kimberly Walker, Executive Director
Marquette Law School, Attention: Joseph D. Kearney
Office of Lawyer Regulation, Attention: Keith Sellen, Director
Office of State Public Defender, Attention: Kelli S. Thompson
Office of the Attorney General, Attention: Brad D. Schimel
Jeremy C. Perri, Attorney
State Bar of Wisconsin, Attention: George Brown, Executive Director
State Bar of Wisconsin, Attention: Lisa Roys, Public Affairs Director
State Bar of Wisconsin, Attention: Francis Deisinger, President
Steven Levine, Attorney
U.W. Law School, Attention: Margaret Raymond
Western District Bar Association of Wisconsin, Attention: Matthew Duchemin
Wisconsin Asian Bar Association, Attention: Robin Dalton
Wisconsin Association for Justice, Attention: Bryan Roessler, Executive Director
Wisconsin Association of African American Lawyers, Attn: Steven DeVougas
Wisconsin Association of Criminal Defense Lawyers, Attention: Peter McKeever
Wisconsin Association of Judicial Court Commissioners, Attention: Susan Schaubel
Wisconsin Bankers Association, Attention: Attorney John Knight
Wisconsin Bankers Association, Attention: Rose Oswalk Poels, CEO
Wisconsin Clerks of Circuit Court Association, Attention: Carlo Esqueda
Wisconsin Counties Association, Attention: Marcia Rainboldt
Wisconsin Defense Counsel, Attention: Jane Svinicki, Executive Director
Wisconsin District Attorneys Association, Attention: Greta Mattison, Executive Director
Wisconsin Family Court Commissioners Association, Attention: David Pruhs, Exec. Secretary
Wisconsin Hispanic Lawyers Association, Attention: Cain W. Oulahan
Wisconsin Judicare, Inc., Attention: Kimberly Haas, Executive Director
Wisconsin Judicial Commission, Attention: Jeremiah VanHecke
Wisconsin Judicial Council, Attention: April Southwick
Wisconsin Juvenile Court Clerks Association, Attention: Jody J. Bartels
Wisconsin Municipal Judges Association, Attention: Honorable Scott Letteney
Wisconsin Newspaper Association, Attention: Beth Bennett, Executive Director
Wisconsin Registers in Probate Association, Attention: Julie Kayartz
Wisconsin Sheriff & Deputy Sheriff Association, Attention: David Graves, Exec. Director
Wisconsin State Attorneys Association, Attention: John Gelhard

Wisconsin Trial Judges Association, Attention: Honorable Mary M. Kuhnmuench
Wisconsin Tribal Judges Association, Attention: Eugene White-Fish, President

List of Additional Interested Persons

Metropolitan Milwaukee Association of Commerce, Attention: Timothy Sheehy
Metropolitan Milwaukee Association of Commerce, Attention: Steve Baas
Wisconsin Business Alliance
Wisconsin Manufacturers & Commerce, Attention: Kurt Bauer
Wisconsin Manufacturers & Commerce, Attention: Scott Manley

EXHIBIT 3

The Commercial Court Docket Pilot Program

Presented to the Dane County Bar Association, April 12, 2022
by:

Hon. James Morrison
Marinette County, Chief Judge of the Eighth
Judicial District

&

Attorney Laura A. Brenner
Reinhart Boerner Van Deuren, s.c.

Agenda

- What is the purpose of the Commercial Court Pilot Program?
- Misperceptions
- How it Started
- How it is Going: What it Is (and What it Isn't)
- Lessons Learned So Far and Possible Improvements

Introduction

The business court docket is a specialty docket like so many others.

- Fundamental Purpose: to bring to complex commercial disputes the same kind of expertise that we bring to other specialized areas of the law and specialty dockets

It is a Pilot Project

- Information about it is readily available
- We are learning as we go
- Trying to learn about improvements
- We appreciate input from all sources

Some Misperceptions*

Misperceptions include:

- There is no reason to try anything new
 - Wisconsin state court judges can handle these cases just as they have in the past
- Business court dockets will
 - only be good for big businesses
 - will favor businesses over individuals
- Business court judges will
 - favor business cases over other cases
 - have a particular political bent
- This creates an impression that other judges cannot handle complex commercial cases
- The Pilot Program is handled in “secret”

*Each will be addressed during this program

Reasons for Pilot Program: Other Specialized Courts in Wisconsin Work Well

- Felony
- Misdemeanor
- Family
- Juvenile
- Probate
- Small Claims
- Drug

Reasons for Pilot Program

Complex commercial disputes:

- have become more complex over time
- typically have similar characteristics, such as:
 - complicated procedural, timing, and deadline issues
 - expensive, time-consuming, disruptive discovery (like e-discovery)
- affect many people other than the litigants, including employees, customers, creditors, third-parties, and the community at large

Many state court judges have little or no experience with complex commercial disputes

Reasons for Commercial Court Dockets

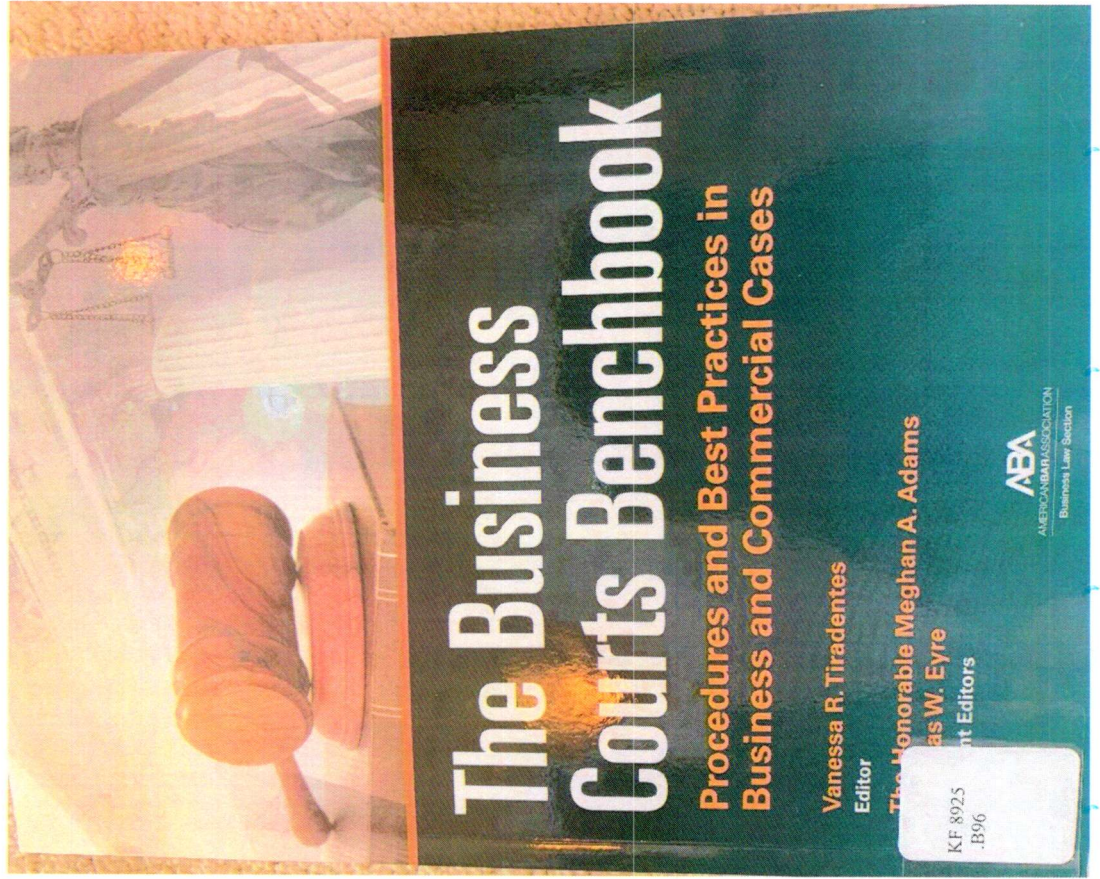
Commercial court dockets can help to:

- resolve complex commercial cases fairly and expeditiously for *all parties*
 - *delay tactics, overblown discovery, need for costly process to bring court up to speed on the law: often more burdensome for the “smaller” litigants*
- improve all parties' access to justice
- improve quality and predictability
- provide more guidance to help prevent repeat disputes
- make the Wisconsin state court system a more desirable forum for resolving business disputes
- process such cases more efficiently and effectively
- develop best practices as other business courts around the country have done

Many States Have Business Courts

- Twenty-six (26) states have one form or other of a business court docket in their jurisdictions.
- Those states include all of our surrounding states: Minnesota, Iowa, Illinois, Indiana and Michigan.
- Delaware's system has been well-known and popular for decades.

Business Courts Around the Country are Developing Best Practices



Prior Attempts at Commercial Court Docket

- Many courts began trying it in the 1990s
 - See *Business Courts: Towards A More Efficient Judiciary*, The Business Lawyer, Vol. 52, No. 3 (May 1997)(published by: American Bar Association)
- Failed attempt in Milwaukee County in 1990s
 - Purely voluntary
 - Different rules: limits on discovery, no ability to file summary judgment motions
 - Not well-received by lawyers or litigants

Our Pilot Program: Trying Something New



Our Pilot Program

- Started in 2017 after petition and open hearing
- Committee volunteers include judges and litigators who represent many types of clients (not just “big business”)
 - **Would love to have help**
- It is a *Pilot Program*
 - Goals include gathering information from all sources: judges, lawyers, litigants, the public
 - We are still working on improvements
- *Still not secret*: Information available on Wisconsin Supreme Court website
- For expansion request, notice sent to hundreds of groups asking for comment

Many Articles Explaining the Pilot Project

- Lon Roberts, *The commercial court docket pilot program: Wisconsin's 'business court'*, Wis. L.J. (Mar. 2, 2021), <https://wislawjournal.com/2021/03/02/the-commercial-docket-pilot-program-wisconsins-business-court/>
- Joe Forward, *Business Dispute? It Should Go to the Business Court Docket*, InsideTrack (Sept. 15, 2021), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=13&Issue=18&ArticleID=28617>
- Joseph S. Goode, Mark M. Leitner, Klay A. Baynar, *Using Business Courts to Enhance Commercial Law in Wisconsin*, (Mar. 2020), <http://lgmke.com/using-business-courts-to-enhance-commercial-law-in-wisconsin/>;
- Joe Forward, *Commercial Litigation: Business Court Pilot Project Still Open for Business*, InsideTrack (Dec. 4, 2019), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=11&Issue=21&ArticleID=27333>
- Michael J. Aprahamian, *The Need for Speed: Commercial Court now Open for Business*, Wis. Law. (Jan. 1, 2018), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=91&Issue=1&ArticleID=26094>.

Check out the Website

- <https://www.wicourts.gov/services/attorney/comcourtpilot.htm>

- Also not a secret



Where are the Commercial Court Dockets?

- Originally in:
 - District 8
 - Brown, Marinette, Oconto, Door, Kewaunee, Outagamie, Waupaca counties
 - Waukesha County
- Expanded to include:
 - Dane County
 - District 2:
 - Racine, Kenosha, Walworth counties
 - District 10:
 - Ashland, Barron, Bayfield, Burnett, Chippewa, Douglas, Dunn, Eau Claire, Iron, Polk, Rusk, St. Croix, Sawyer, Washburn counties

Who are the Judges?

Waukesha County

- Hon. Michael Arahamian
- Hon. Michael Bohren
- Hon. William Domina

Dane County

- Hon. Val L. Bailey-Rihn
- Hon. Julie Genovese
- Hon. Frank Remington

District 8

- Hon. Mark McGinnis
- Hon. Tammy Jo Hock
- Hon. James Morrison

District 10

- Hon. Scott Nordstrand
- Hon. Michael Schumacher
- Hon. Michael Waterman

District 2

- Hon. Jon E. Frederickson
- Hon. Eugene A. Gasiorkiewicz
- Hon. David Reddy

Misperceptions re: Judges with Commercial Court Dockets

- **Misperception: judges are hand-picked by “big business”**
 - No, appointed by Chief Justice after local input.
- **Misperception: selection based on “political bent”**
 - No, not a consideration. Factors such as judge’s experience with commercial matters, willingness to take part in program, etc. are considered.
- **Misperception: judges will “favor” these cases over their other cases**
 - No, they will handle their other obligations just as they do when they handle other specialty dockets.
- **Misperception: judges will “favor” business over consumers**
 - No, these are not consumer cases; they typically involve “business v. business” cases and no one is favored.
- **Misperception: it creates an impression that other judges cannot handle these cases**
 - No, like other specialty court dockets, it just means these judges have more, or are getting more, experience in this particular area of the law

For Litigants: Is Participation Voluntary?

No and Yes

- If a case falls within the type of cases designated for the commercial docket, assignment to the docket is mandatory.
- Discretionary transfer into commercial court upon joint petition of the parties.

Types of Disputes Covered

- Internal affairs of business organizations
- Prohibited business activities (*e.g.*, tortious or statutorily prohibited business activity, unfair competition or antitrust)
- Business sale, consolidation, or merger
- Sale of securities
- Intellectual property rights
- Franchise or similar distribution matters
- U.C.C. claims or disputes that exceed \$100,000
- Receiverships in excess of \$250,000
- Confirmation of arbitration awards and compelling/enforcing arbitration awards
- Cases involving commercial real estate construction disputes over \$250,000

Are there cases that are disqualified from the Commercial Court Docket?

Yes

- Personal injury
- Product liability
- Malpractice
- Civil rights
- Consumer contracts or transactions
- Landlord/tenant disputes
- Domestic relations
- Labor
- Tax disputes
- Environmental
- Small Claims
- Governmental

May parties obtain assignment of a case to a Commercial Court Docket?

It Is Possible

- Joint motion for discretionary assignment
- Chief Judge considers parties to the dispute, the nature of the dispute, the complexity of the issues presented, and whether the Commercial Court's resolution of the case will provide needed guidance to influence future commercial behavior or assist in resolving future disputes

Do the Rules Allow Parties to Bring Their Business Case in Any Venue with a Business Court?

No

- Normal statutory venue rules apply. The parties, however, can jointly petition to have a non-venued commercial case assigned to the commercial court docket.

We Qualify. Now What?



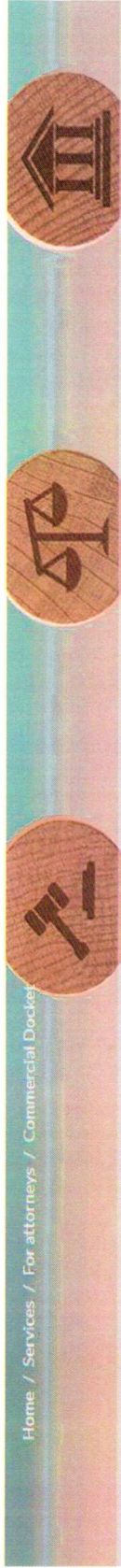
File it Correctly

- Use proper “case codes”
 - Class codes 35001 – 35010 are designated for the CDPP
 - Listed on CDPP Website:
<https://www.wicourts.gov/services/attorney/comcourtpilot.htm>
- What if I get it wrong?
 - Clerk can fix it.
 - Court can fix it.
 - You can fix it.
 - File a commercial docket cover sheet and call clerk’s office

Information is Readily Available: Commercial Court Docket Webpage

<https://www.wicourts.gov/services/attorney/comcourtpilot.htm>

[Wicourts.gov](https://www.wicourts.gov) / [Services](#) / [For attorneys](#) / [Commercial Docket](#)



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Commercial Docket Pilot Project

In April 2017, the Wisconsin Supreme Court approved the creation of a pilot project for dedicated circuit court judicial dockets for large claim commercial cases. The pilot project initially involved qualifying cases filed in Waukesha County and in the circuit courts of the Eighth Judicial Administrative District. In 2020 the pilot project was extended for an additional 2 years and expanded to include Dane County and the circuit courts of the Second and the Tenth Judicial Administrative Districts. The extension also added additional case types to the commercial docket, made clear that it was available for cases in counties or districts that are not included in the pilot project, as well as for cases that do not automatically qualify, if the parties and chief judge agree the case is suitable for the docket.

Resources

The following documents are in Adobe PDF format unless otherwise indicated.

- > [Supreme Court Order 16-05: In re creation of a pilot project for dedicated circuit court judicial dockets for large claim commercial cases](#)
- > [Supreme Court Order 16-05A: In re creation of a pilot project for dedicated trial court judicial dockets for large claim business and commercial cases](#)
- > [Supreme Court Order 16-05B: In the matter of the correction of interim commercial court rule](#)
- > [Supreme Court Order 16-05C: In re creation of a pilot project for dedicated trial court judicial dockets for large claim business and commercial cases \(Dane County\)](#)
- > [Guidelines for transferring a case to the commercial docket](#)



For Attorneys

Admission to the practice of law

Certificates & letters

[Commercial Docket Pilot Project](#)

CDPP Webpage

Lots of Helpful Information Available

- **Resource Section**

Wisconsin Supreme Court Orders on the Commercial Docket Pilot Project.

- **Commercial Docket Court Decisions Section**

Lists substantive decisions issued by judges in the commercial docket.

- **Required Forms Section**

These forms have been developed for use in the Commercial Docket Pilot Project and are required to be used for all cases.

Forms for case initiation (cover sheet) and forms related to case management.

- **Class Codes Section**

Cases filed under these class codes may be assigned to the commercial docket.

- **Commercial docket court judges**

List the judges currently assigned to the commercial docket.

Written Decisions from Commercial Court Cases

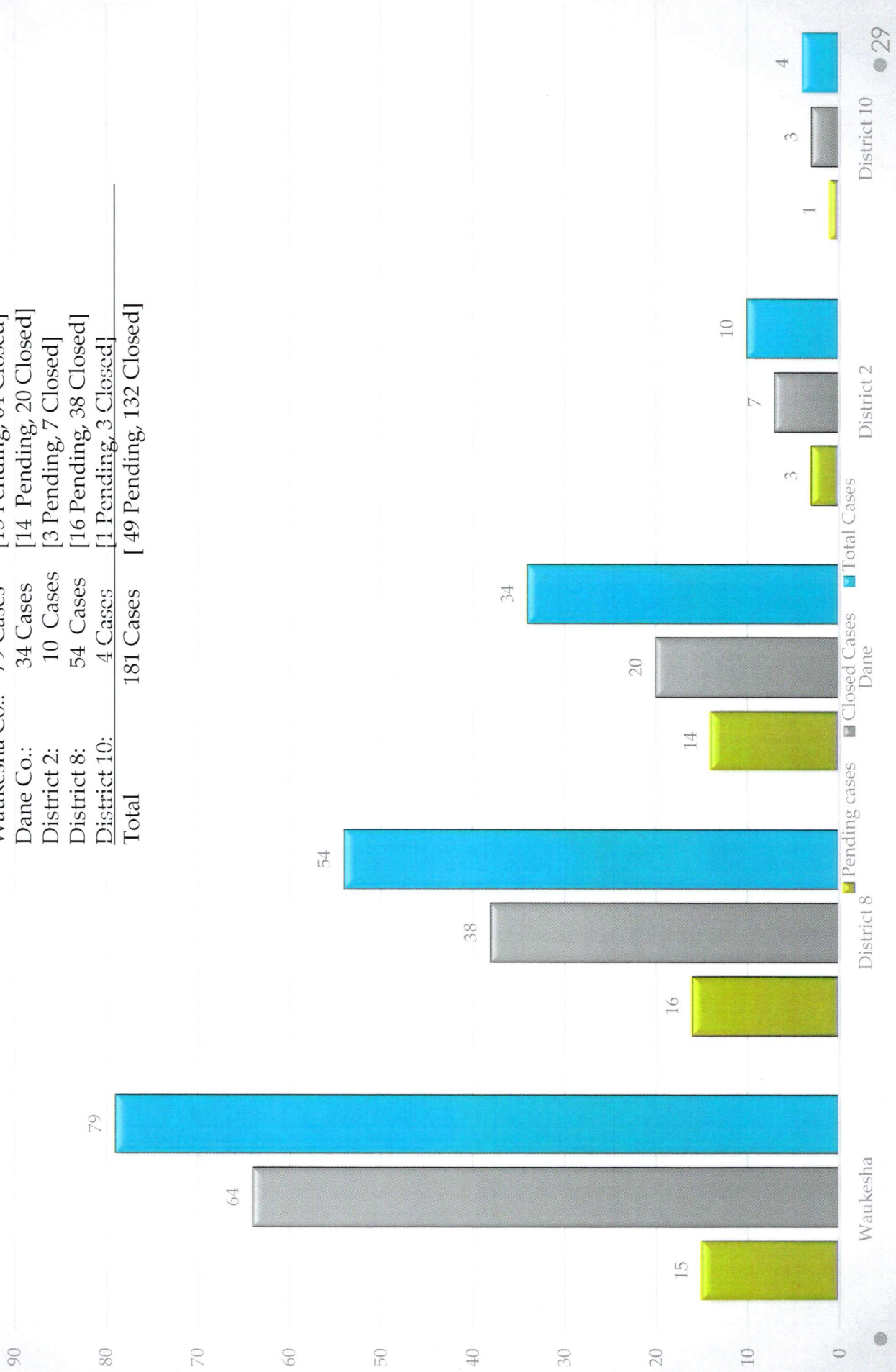
- Where are they?
 - Publicly available/more accessible
 - Posted on Commercial Docket Pilot Project portion of website
 - <https://www.wicourts.gov/services/attorney/comcourtpilot.htm>
- Some examples:
 - *Zyware, Inc. v. Dunahoo* (time limit for depositions)
 - *AMS Steam Products, LLC v. Whitaker* (arbitration)
 - *Mattheis v. Ihnen* (judicial estoppel and sham affidavit rule)

How is it Going so Far?

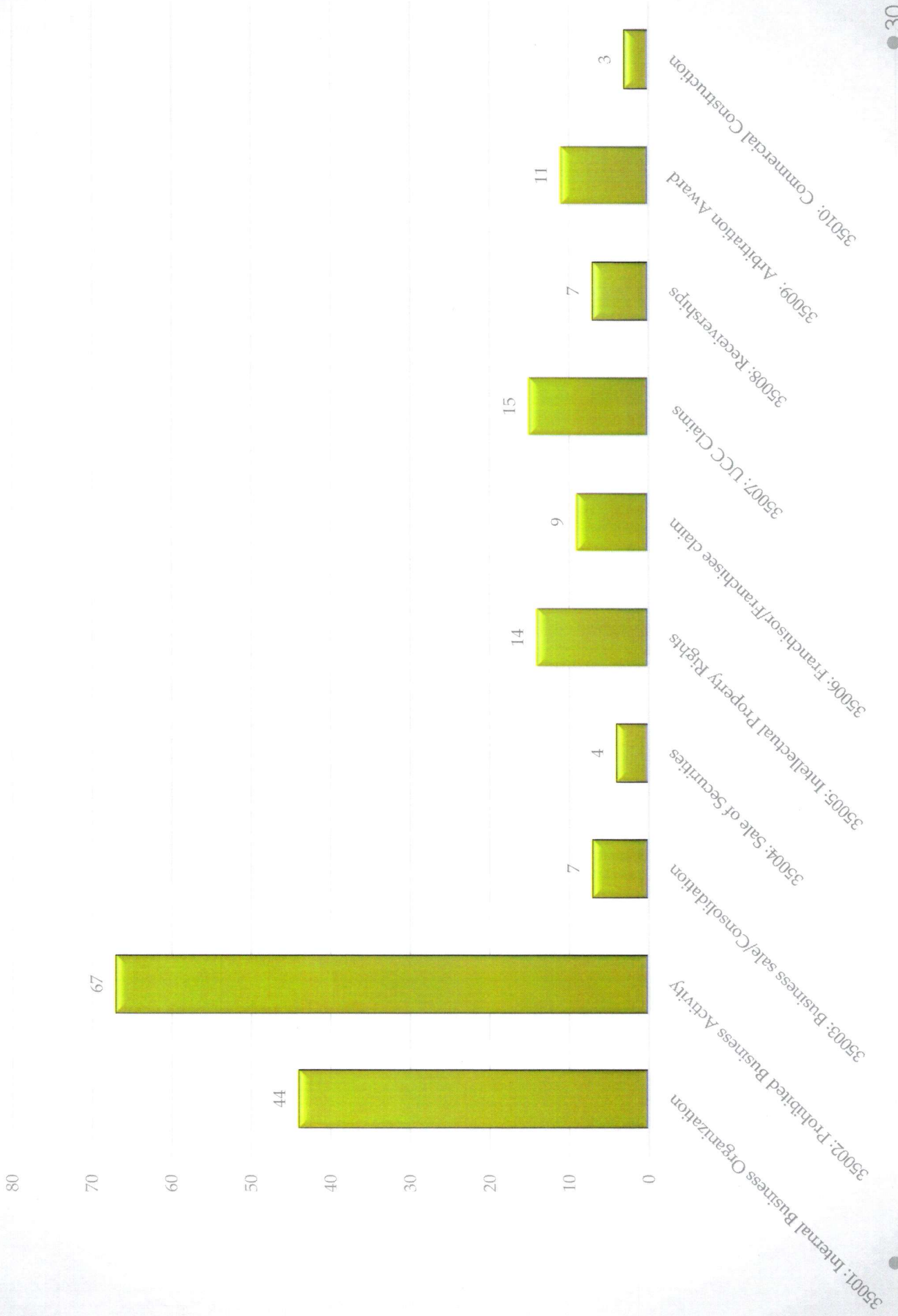
Gathering Quantitative Data

CDPP Cases

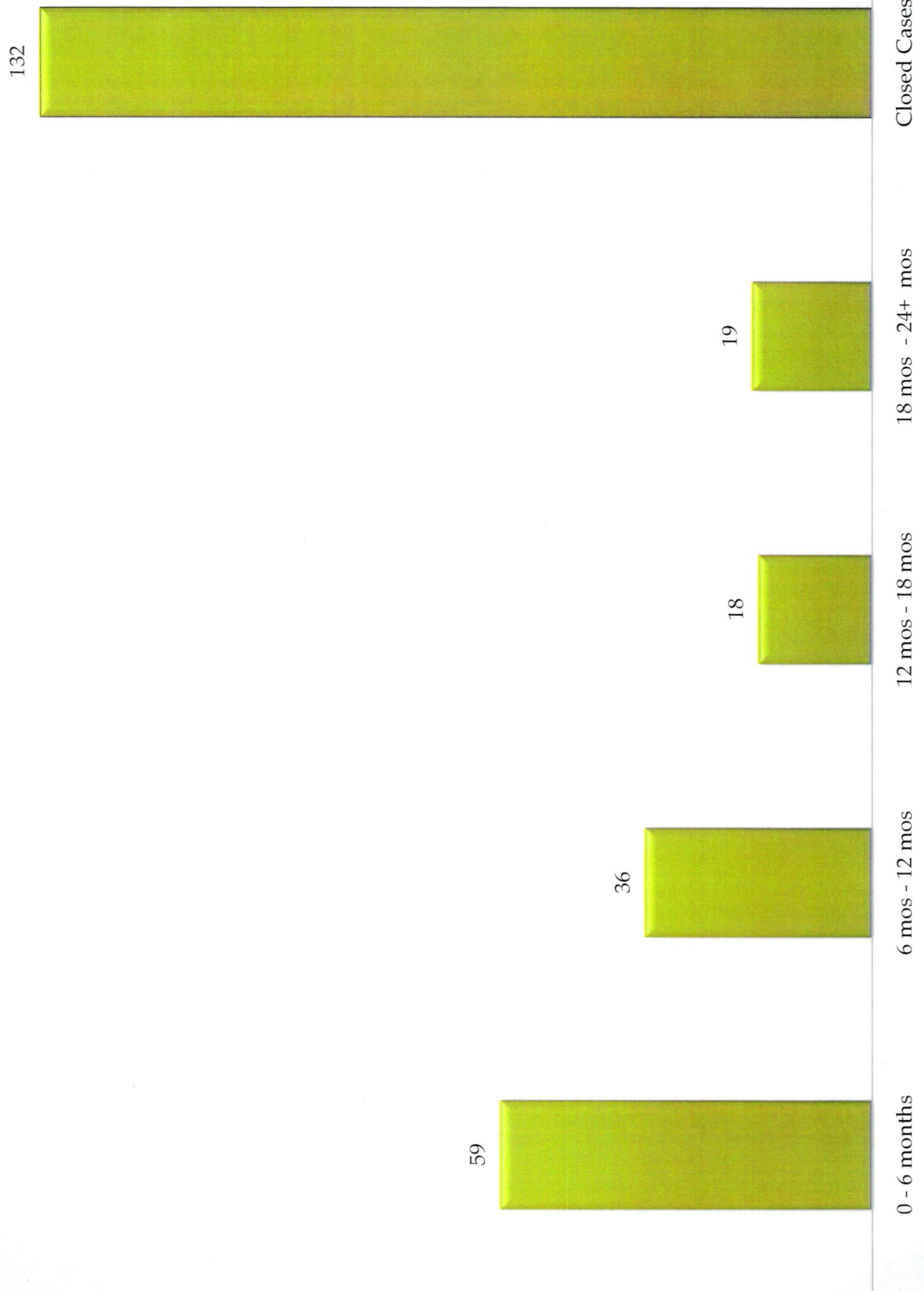
Waukesha Co.:	79 Cases	[15 Pending, 64 Closed]
Dane Co.:	34 Cases	[14 Pending, 20 Closed]
District 2:	10 Cases	[3 Pending, 7 Closed]
District 8:	54 Cases	[16 Pending, 38 Closed]
District 10:	4 Cases	[1 Pending, 3 Closed]
Total	181 Cases	[49 Pending, 132 Closed]



Commercial Docket Class Codes



CDPP: Time to Disposition

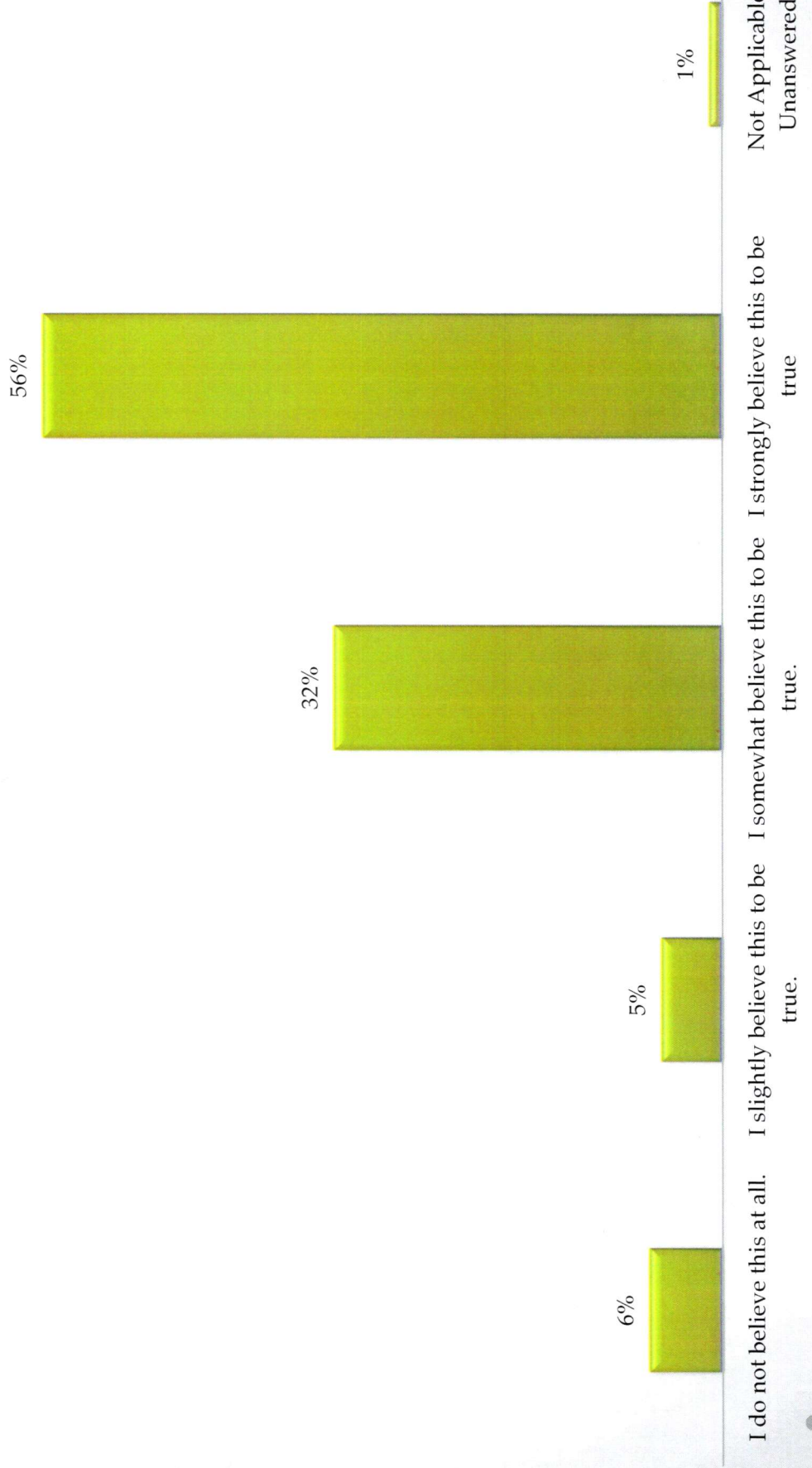


How is it Going so Far?

Gathering Qualitative Data

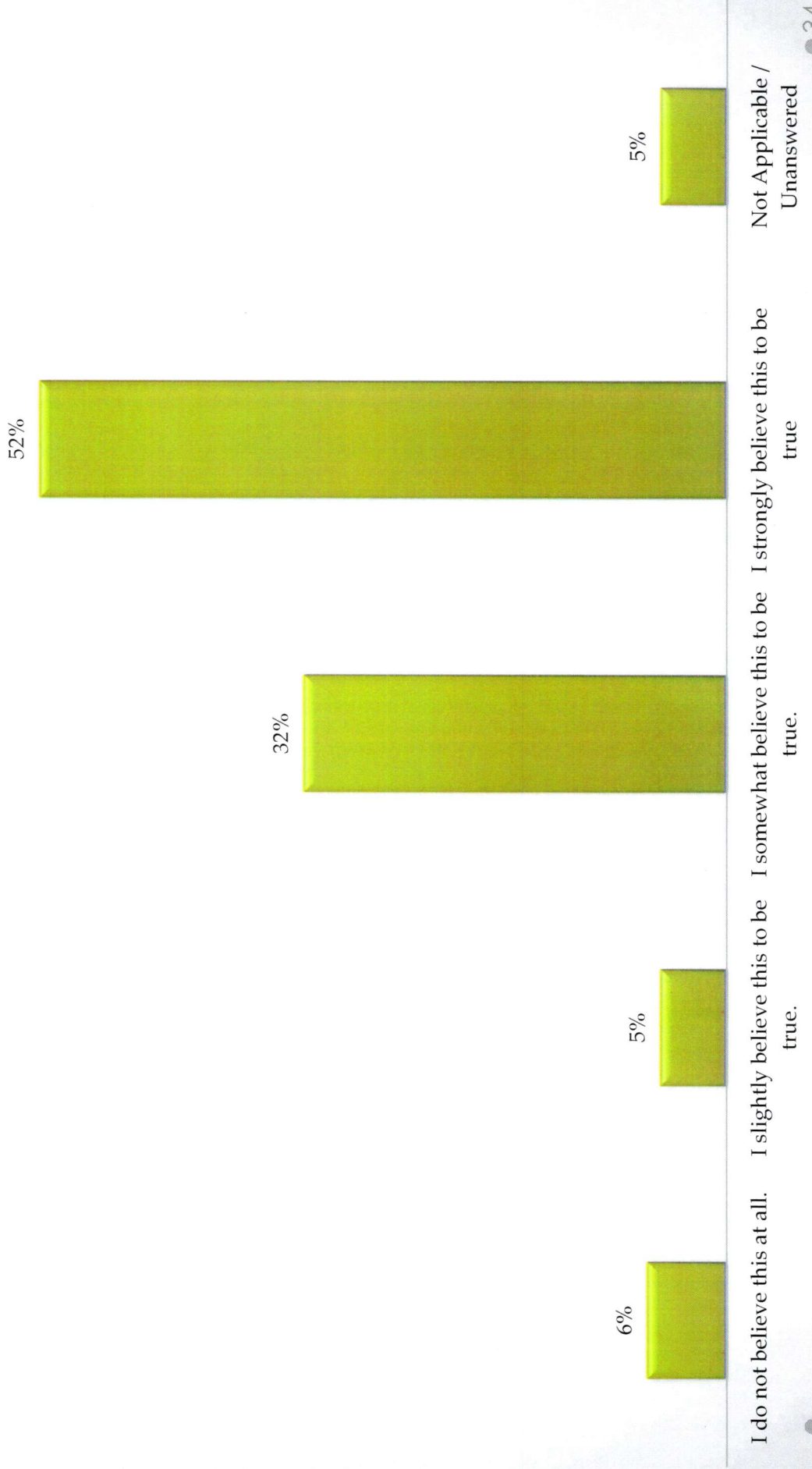
Q1. Providing a judge with experience in managing complex business litigation cases.

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



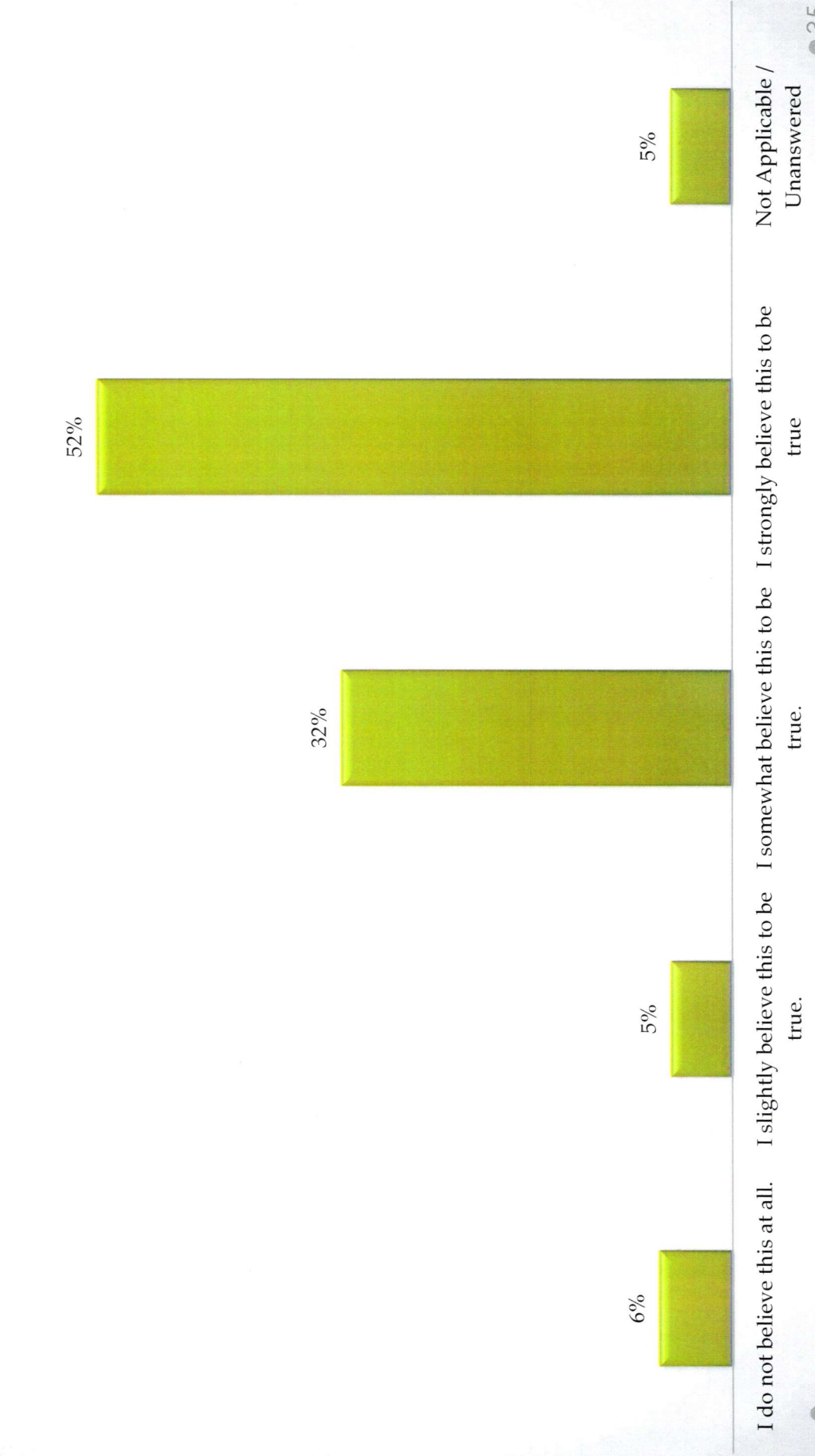
Q2. Developing a detailed case management timeline with the court.

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



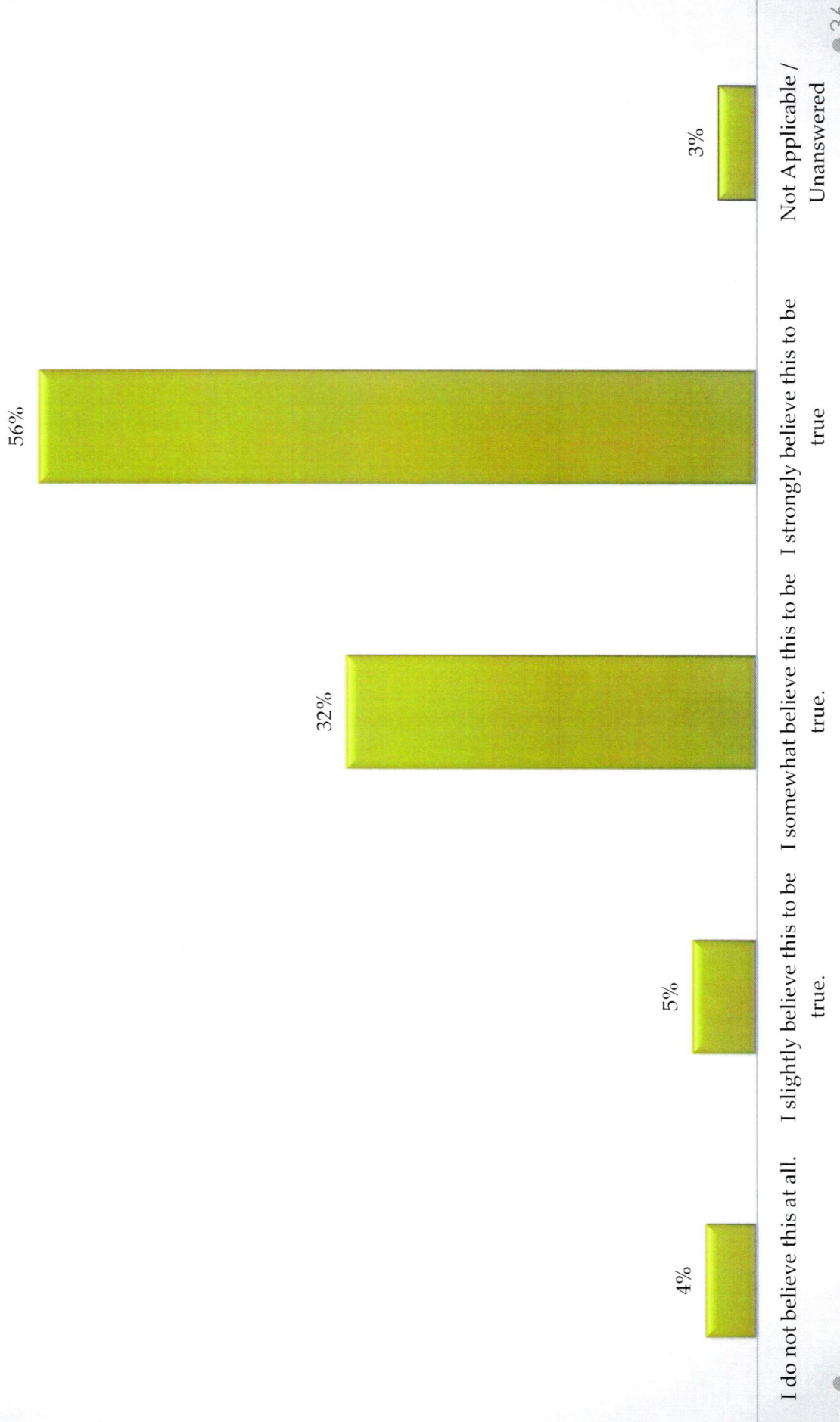
Q3. Effectively managing discovery-related issues.

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



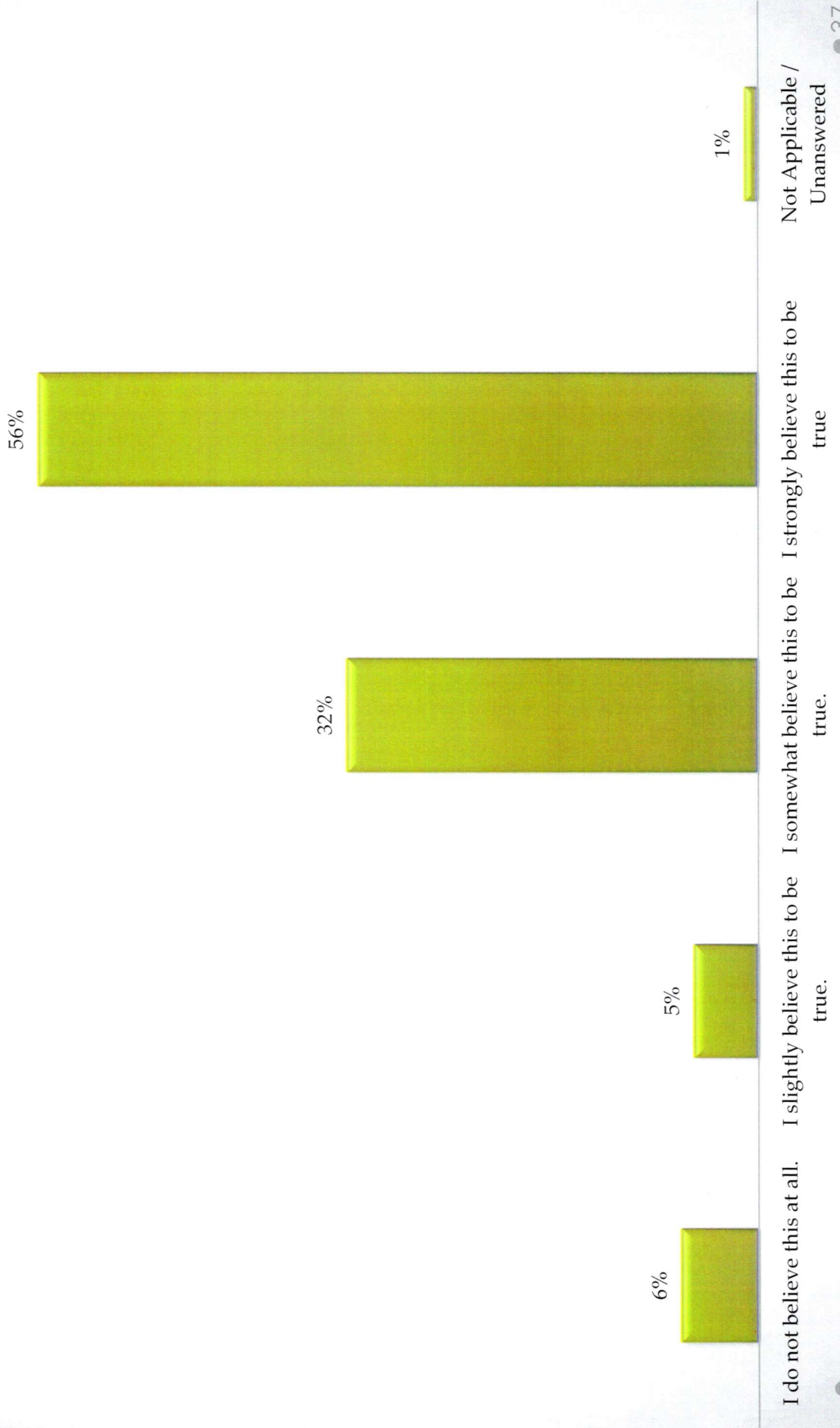
Q4. Limiting the number of continuances.

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



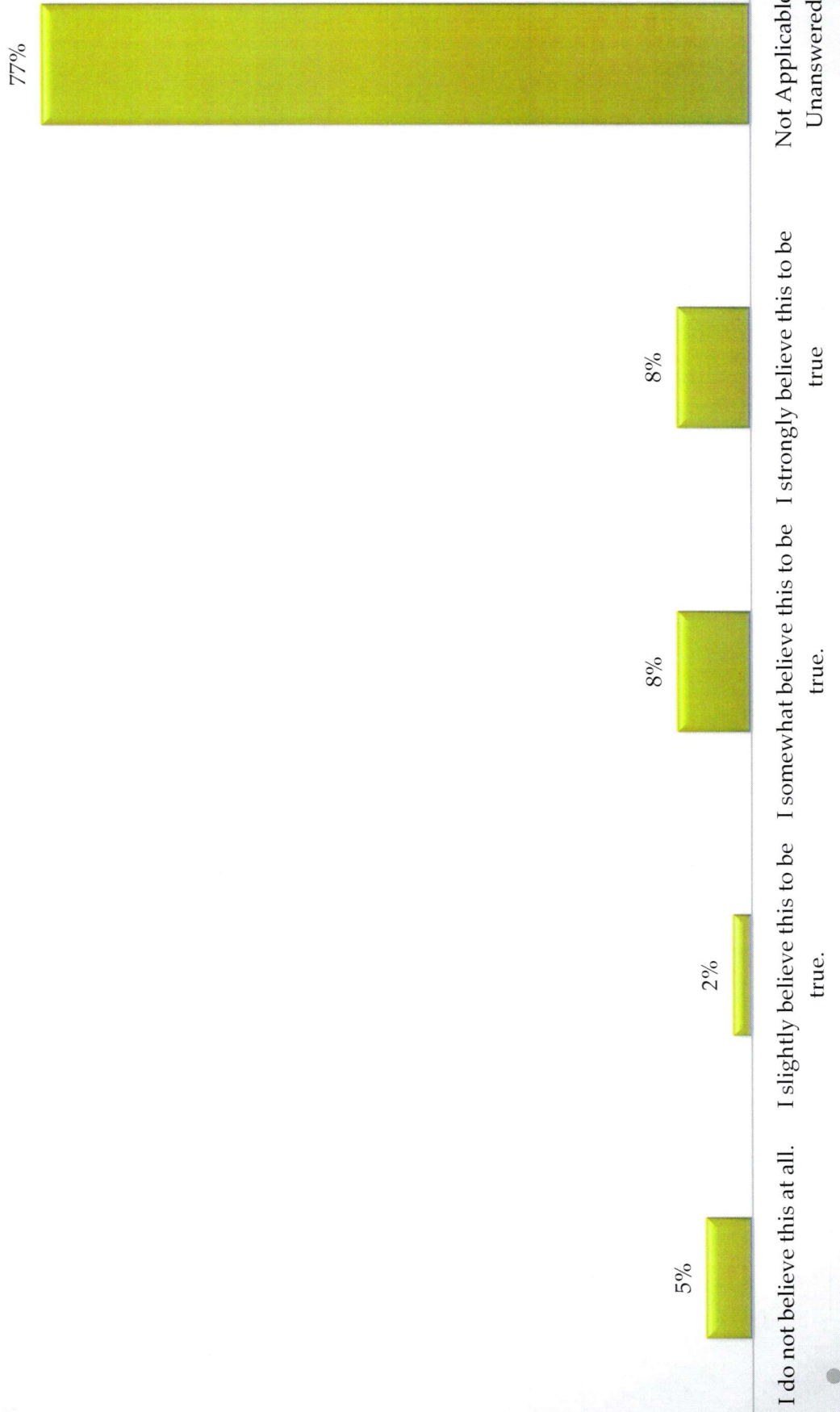
Q5. Judge employing an effective strategy for settling the case.

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



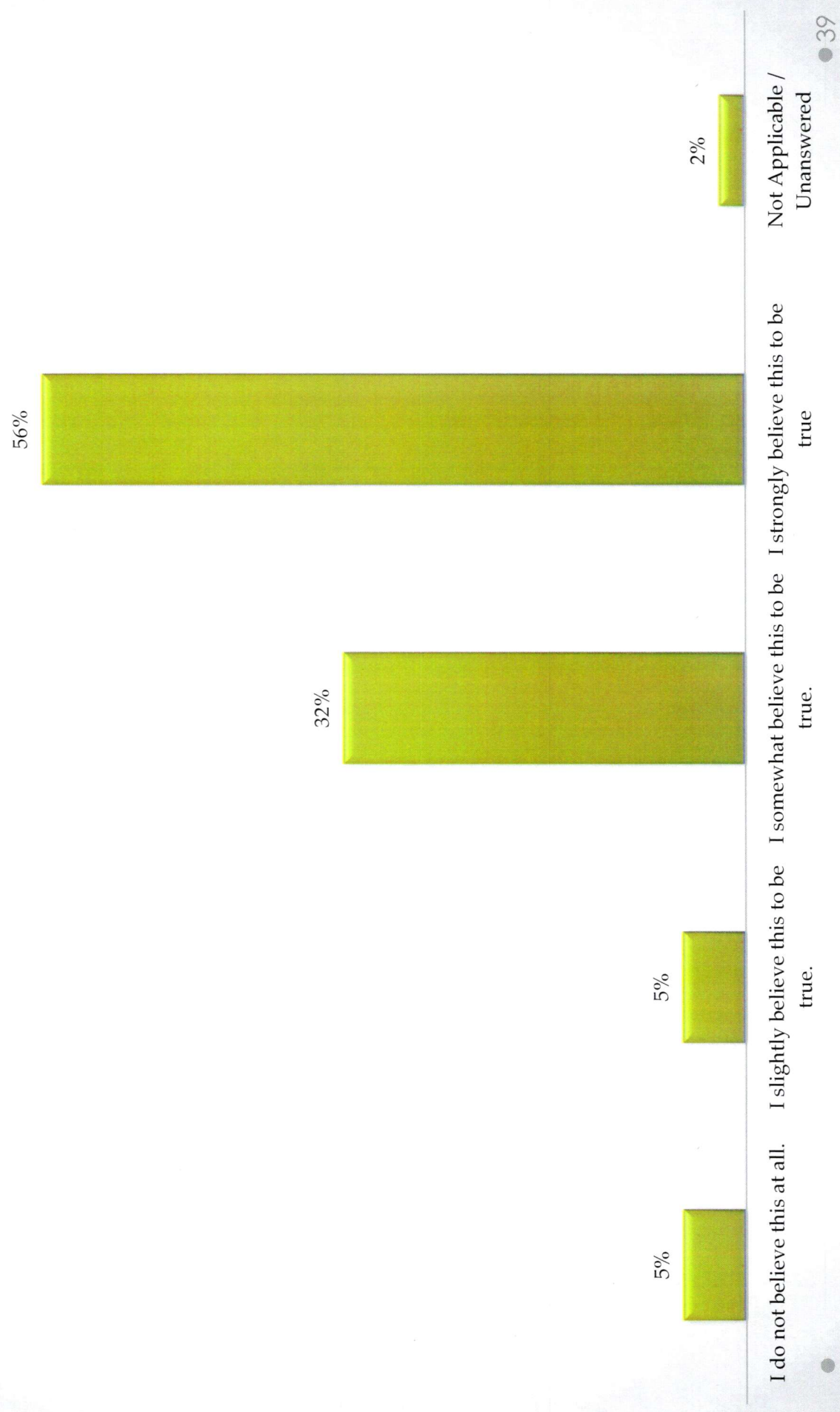
Q6. Judge effectively managing the trial.

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



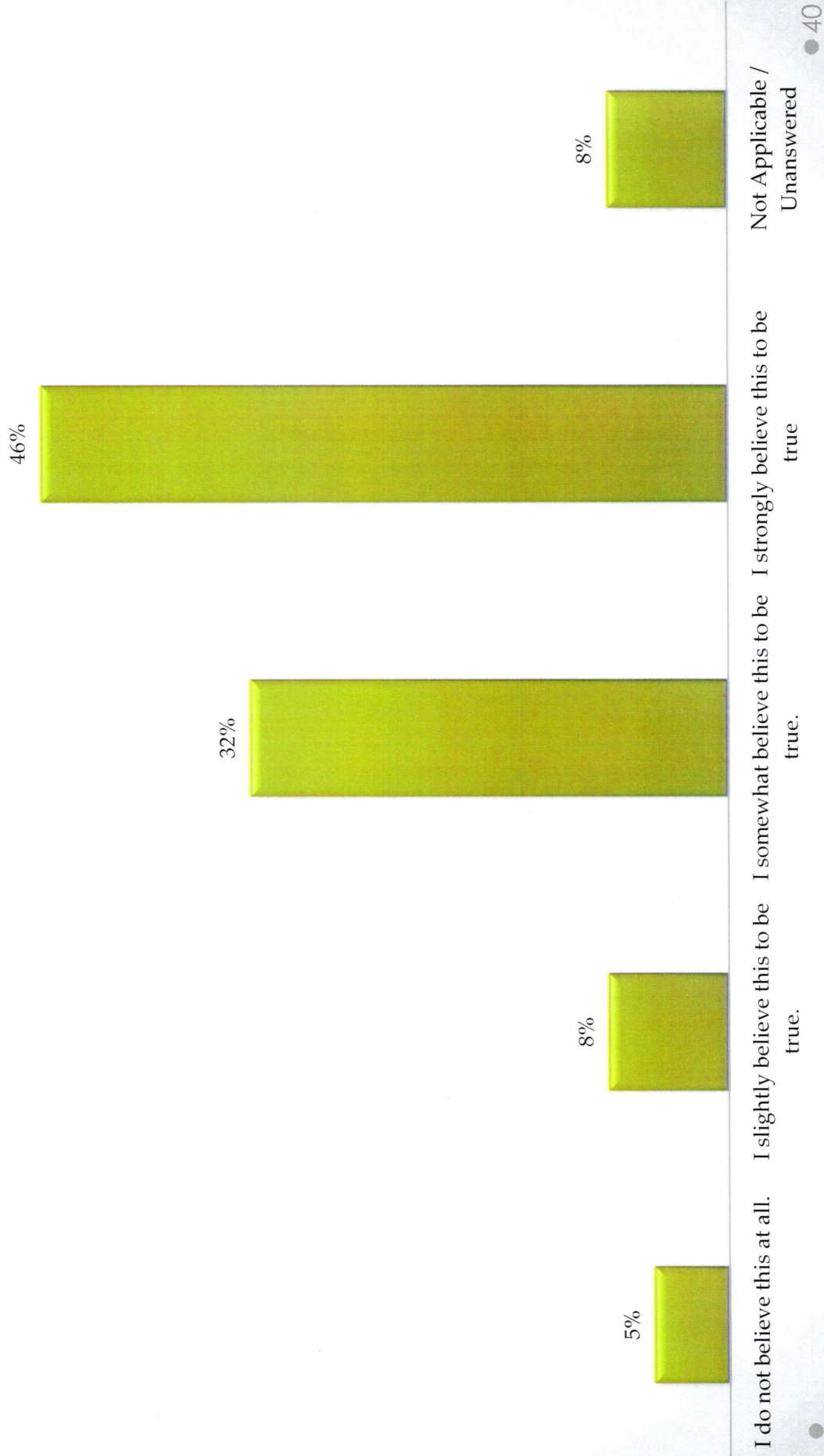
Q7. Reducing delays in bringing the case to trial or settlement.

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

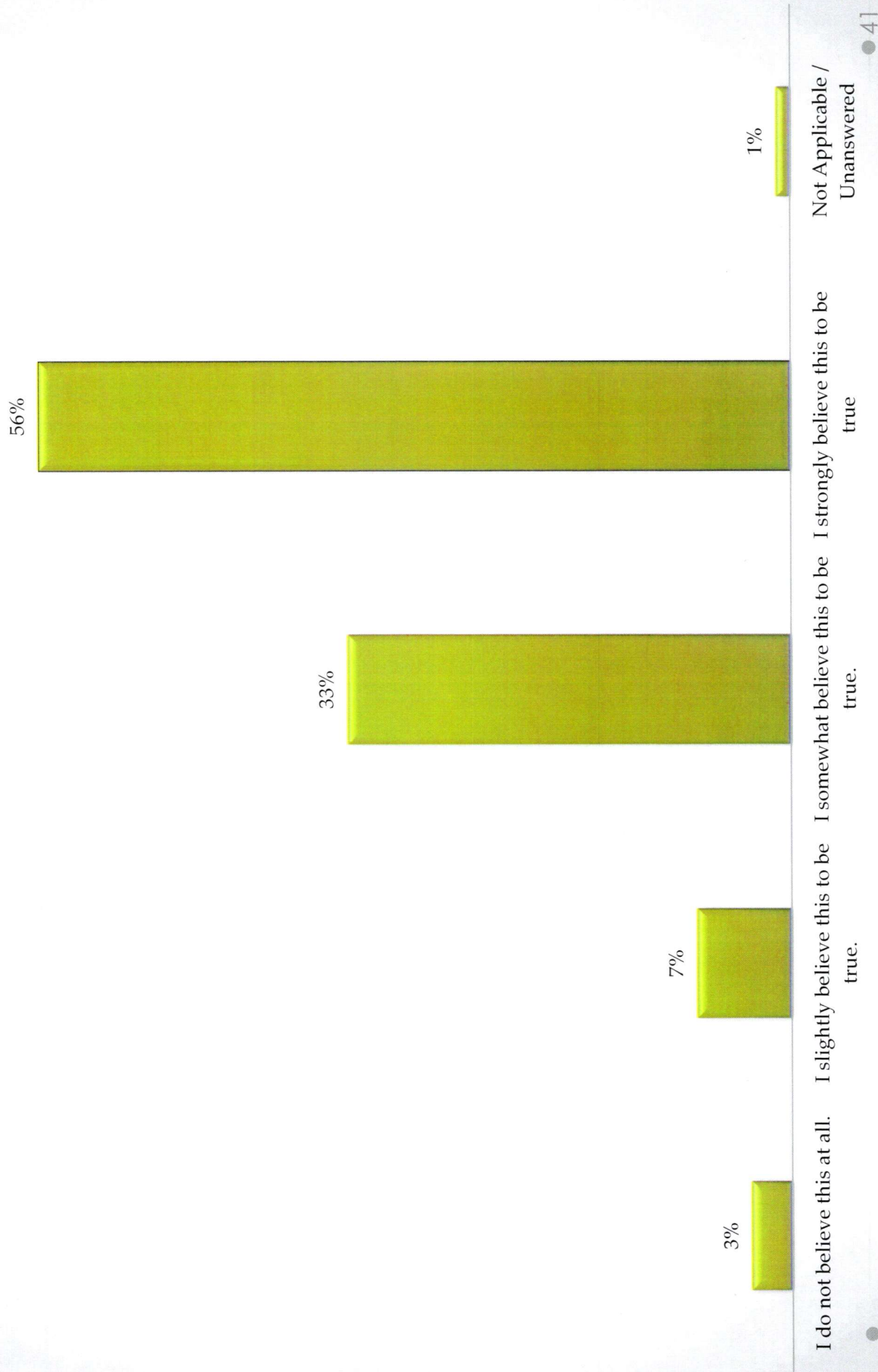


Q8. Achieving a resolution of the case at a lower overall cost (work time and expenses).

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.



Feedback

- Feedback from survey results seems to be in line with the anecdotal experiences of the judges
- Looking forward to gathering more information from the litigants, the bar, and the public in general
- There may be even more ways to improve it
- That is the reason for the request to extend the program for 2 more years

What do Lawyers and Litigants Want Commercial Court Judges to Know so Far?

- Parties agree: timing matters
 - But they don't always agree on whether a case should move quickly or slowly
- Temporary injunctions may be key
- We need help preventing discovery abuses
 - Sometimes that means there is too much discovery
 - Other times that means that there needs to be more
 - Cost is an issue: e-discovery practices can cost thousands of dollars and can be burdensome and disruptive
- Protection of confidential information balanced with right of public to access
- Early decisions can help
- Often need a solid schedule (including trial date)
- Most cases are not "just about money"

How to Dispel Misperceptions?



Conclusion

Ultimately, a successful business court depends in each instance on the actual judge hearing business court cases. Judges presented daily with a field of law in which to cultivate their understanding, knowledge, and ability are more likely to come to deeper understandings about the inner workings of the legal principles they face; the patterns that may reveal themselves in the conduct of business cases; and the patterns of thinking and behavior that may appear in parties and counsel. The judge without that experience, faced with business disputes, typically may have to rely upon a less developed understanding of these factors in rendering decisions.

****A History of the Creation and Jurisdiction of Business Courts in the Last Decade*** By Mitchell L. Bach and Lee Applebaum, The Business Lawyer; Vol. 60, November 2004

Thank you

From:

Judge James Morrison

Attorney Laura Brenner

EXHIBIT 4
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YOUR RIGHT TO KNOW

Shadowy Business Courts Corrupt Justice System

Business Court project creates two-tiered justice system. But it's not too late to end it.

By Richard Niess - Mar 31st, 2022 05:32 pm

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Wisconsin Supreme Court Justice Annette Ziegler. Photo by Coburn Dukehart/Wisconsin Center for Investigative Journalism.

Anyone who doubts that secrecy in government breeds poor public policy should take a look at the [Business Court Pilot Project](#) launched by our [Wisconsin Supreme Court](#).

For the last five years, the project has granted large commercial interests outsized influence over our court system’s handling of their cases, exactly as intended. The business court pilot debuted in 2017 in [Waukesha County](#) and the 8th judicial district (encompassing Brown, Marinette, Kewaunee, Oconto, Door, Outagamie and Waupaca Counties). It was expanded to other districts and, in a surprise move, to [Dane County](#) in 2020.

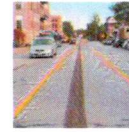
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Here’s how it works: the Chief Justice, currently [Annette Ziegler](#), receives recommendations from big business and selects a limited number of business court judges. These hand-picked



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judges then receive training out-of-state from special interests aligned with big business. They follow court procedures drafted by big business lawyers.

The process largely bypasses the voter-controlled and otherwise random judicial assignment of cases. It creates a two-tiered court system — one controlled by business interests and one for everybody else.

It began in September 2016, when then-Chief Justice **Patience Roggensack** formed the “Business Court Advisory Committee” to develop a specialty court proposed by big business, for big business. Ignoring the Supreme Court’s own internal operating procedures designed to promote transparency and diversity of opinion in appointing court committees, the chief justice stacked the committee with lawyers representing business interests.

The committee included no labor or consumer advocates, no one representing the viewpoints of the public, and no one speaking for other stakeholders in our circuit court system.

Working privately, the advisory committee soon hatched a petition to establish and control the business court, which it filed with the Supreme Court on October 26, 2016. Less than two weeks later, the court adopted the petition by a 5-2 vote, with no public hearing, no opportunity for public comment, and no public notice that the petition was even scheduled for a vote.

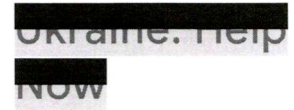
Thus, out of public view, our Supreme Court rapidly and fundamentally changed our circuit courts’ democratic structure for handling big-business commercial litigation,

simultaneously degrading judicial independence and corrupting



Gov. Evers Takes Action on 43 Bills by Gov. Tony Evers

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a cardinal principle underpinning our court system—that everyone should be treated equally when he or she comes before the court.

The business court model was forced on to the Dane County circuit court system beginning in July 2020. The Supreme Court is now weighing a petition to extend the pilot program, set to expire on June 30, 2022, for another two years.

The big business takeover of circuit court commercial litigation wasn't the first time our Supreme Court displayed a penchant for secrecy.

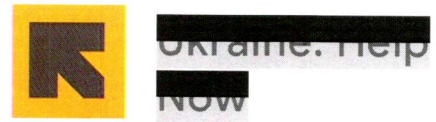
For example, in 2012, the Supreme Court majority voted to close administrative rules conferences to the public, reversing an open meetings policy that had informed Wisconsin voters on important court matters for years. "To sit out here in public and philosophize," said then-Justice Roggensack, "is really not the best use of our time.

A more transparent approach might have led to a different outcome on the Business Court pilot project. But it's not too late to comment on the request to expand the project for another two years. Written comments can be submitted to Attorney **Laura Brenner** at lbrenner@reinhardt.com, and should be received by 4:30 p.m. on April 8.

This time, transparency may produce a better result—a return to normalcy for our courts.

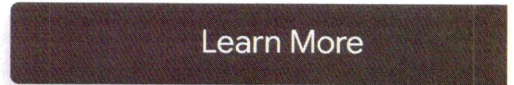
*Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (wisfoic.org), a group dedicated to open government. Attorney **Richard G. Niess** served as a Dane County Circuit Court judge from 2004 -2020, including 13 years as presiding judge of the civil division.*

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