

Iowa Business Court Program

Third Annual Evaluation Report (July 19, 2016)

A. Background

1. *Establishment of the Iowa Business Court:* In March 2012, the Iowa Civil Justice Reform Task Force released its final report proposing reforms to Iowa's civil justice system. One of the key reforms the task force recommended was implementation of a business specialty court as a pilot program. In response, the supreme court initiated a three-year pilot program for a business specialty court in Iowa, which began accepting cases in May 2013. The supreme court also directed state court administration (SCA) staff to provide an annual evaluation report to monitor the progress and assess the effectiveness of this pilot program. Based on a positive evaluation at the end of the second year of the pilot program, the supreme court issued a supervisory order in February 2016 declaring its intention to continue the Iowa business court as a component of the Iowa court system.

This report is intended to provide information on the status of cases assigned to the business court, time spent by the three business court judges within and outside their judicial districts, attorneys' views about the business court, and suggestions for ways to improve the operation of the business court.

2. *General goals of the business court pilot program:* The primary goal of the business court is to move complex business litigation through the court system more expeditiously and with lower costs for the litigants and the court system. Other potential benefits include:

- Removal of complex and time-consuming business litigation from the regular district court dockets.
- Development of innovative court practices and uses of court technology that could be applicable across the justice system.
- Development of a published body of business court case law to provide guidance for the fair and cost-effective resolution of business litigation.

3. *Eligibility criteria for assignment to the business court pilot program:* A case is eligible for assignment to the business court pilot program if it involves a claim for least \$200,000 in compensatory damages or a party seeks primarily injunctive or declaratory relief, and the case involves one or more of the following claims:

- a. Technology licensing agreement
- b. Internal affairs of a business
- c. Breach of contract, fraud, or misrepresentation arising out of business transactions
- d. Shareholder derivative or commercial class action
- e. Commercial bank transactions
- f. Trade secrets, non-compete clause in a contract, or confidentiality
- g. Commercial real property
- h. Anti-trust or securities
- i. Business tort claims between or among two or more business entities

4. *Presiding judges and venue:* The supreme court appointed three district court judges to preside over cases assigned to the business court: Judge Michael Huppert (District 5), Judge Annette Scieszinski (District 8), and Judge John Telleen (District 7). Cases assigned to the business court are heard by one of these three judges in the county where the cases were originally filed. Current Iowa venue rules apply.

5. *Procedure for assigning a case to the Iowa business court:* All parties must agree to have the case assigned to the business court. They must file a Joint Consent for Assignment to the Business Court with the state court administrator (SCA) asserting that their case meets the criteria for assignment to the business court (see A.3, above).

If the SCA determines that the case meets the eligibility criteria, the SCA enters an administrative order in EDMS assigning the case to one of the three business court judges. Assignments to the three business court judges are generally random, though the SCA attempts to maintain a fair distribution of the business court cases among the three judges to prevent unduly burdening any one of the three districts where the three business court judges reside. For each business court case, the SCA assigns a primary judge to handle all litigation issues and assigns one of the other business court judges to handle settlement negotiations.

B. Eligibility Criteria to Qualify for Assignment to the Business Court

Cases must meet the established criteria shown in Table 1 for acceptance into the business court. Through the first three years of the business court program, a total of 33 cases qualified for assignment to the business court program. Table 1 shows the number of cases that met the various criteria for assignment to the business court.

Table 1

Eligibility Criteria Met by the 33 Cases Assigned to the Business Court Program

<i>Must meet at least one threshold criterion:</i>	<u>Number of cases meeting each criterion</u>			
	<u>1st year</u>	<u>2nd year</u>	<u>3rd year</u>	<u>Total</u>
• Damages > \$200,000	8	9	10	27
• Injunctive/declaratory relief	5	5	4	14
<i>AND must meet one or more of these criteria:</i>				
▪ Business tort claims	7	8	6	21
▪ Internal affairs of a business	6	6	8	20
▪ Business transactions—e.g., breach of contract	7	4	4	15
▪ Commercial bank transactions	1	2	0	3
▪ Trade secrets, non-compete, confidentiality	2	0	0	2
▪ Commercial real property	0	3	1	4
▪ Technology licensing agreement	1	1	0	2
▪ Shareholder derivative or commercial class action	1	0	1	2
▪ Anti-trust or securities	0	0	0	0

Of the 33 cases assigned to the business court in the first three years, 27 met the threshold criteria with claims for damages of more than \$200,000, while 14 cases met the threshold criteria by seeking injunctive or declaratory relief. Cases must also meet at least one of several additional criteria to qualify for assignment to the business court. Twenty-one involved a business tort claim, 20 involved a dispute regarding the internal affairs of a business, and 15 involved a disputed business transaction (e.g. breach of contract or fraud).

C. Characteristics and Current Status of Business Court Cases

1. *Details on case characteristics:* Tables 2 and 3 (below) show the 33 cases assigned to the business court during the first three years. In addition to showing the case title and county of venue, the tables show the following information for each case:
 - a. Judicial district where the case was originally filed
 - b. Primary business court judge assigned to the case
 - c. Settlement judge for the business court case
 - d. Number of plaintiffs
 - e. Number of defendants
 - f. Bench trial or jury demand
 - g. Date filed in district court
 - h. Date Joint Consent for Assignment to Business Court filed
 - i. Date set for trial
 - j. Date case closed and type of disposition (Table 2)
 - k. Number of months from assignment to business court to date of disposition (Table 2) – or – Number of months the case has been pending in the business court (Table 3)

2. *Characteristics of the 33 cases assigned to the business court in the first three years:*
 - *Case status:* 19 cases have already been resolved (settled or a judgment after trial entered) and 14 cases are still pending in the business court.
 - *Where cases originated:* 11 originated in District 5, nine in District 8, five in District 6, three in District 7, two each in Districts 1 and 3, and one in District 2.
 - *Number of cases by year:* Ten cases were assigned to the pilot program during the first year, 11 in the second year, and 12 during the third year.
 - *Types of trials:* Plaintiffs filed a jury demand in 23 cases and sought a bench trial in 10 cases. One case was concluded by a jury verdict and one via a written ruling after a bench trial.
 - *Primary judge assignments:* Judge Telleen had 13, Judge Scieszinski had 11, and Judge Huppert had 10:
 - *Settlement judge assignments:* Judges Huppert and Telleen had 12 each, while Judge Scieszinski had 6.

Table 2: 19 Cases Assigned to the Business Court and Concluded in First 3 Years*

		A	B	C	D	E	G	H	I	J	K	L
	Case title / County	Dist	Primary Judge*	Settle- ment Judge*	# of Pltfs	# of Defes	Trial type	Date filed in Dist Ct	Date assigned to Bus. Court	Date set for Trial	Date closed	Months: Assign to Bus Ct to Closing
1	World Food Intern v World Food Proc (Mahaska)	D8	Scies-zinski	Huppert	1	3	Bench	1.11.13	5.28.13	5.18.15	Settled 7.12.14	13.5
2	Bartling v LWBJ Financial (Polk)	D5	Huppert	Telleen	2	7	Jury	3.21.12	9.3.13	7.28.14	Settled 7.14.14	10.5
3	Gen Motors v Leep Cheverolet (Scott)	D7	Scies/Huppert	Huppert	1	1	Jury	9.17.13	9.27.13	10.20.14	Settled 10.10.14	13.0
4	Rothgeb/Meyers v Axis Group (Lee)	D8	Telleen	Scies-zinski	2	10	Jury	10.10.12	10.9.13	12.8.14	Settled 8.21.14	10.5
5	WDM School Dist v Weitz et al (Polk)	D5	Huppert	Scies-zinski	1	14	Jury	10.3.11	10.24.13	9.29.14	Settled 9.23.14	11.0
6	Flemmer v US Bank (Polk)	D5	Telleen	Huppert	2	2	Jury	7.10.13	11.7.13	9.15.14	Settled 7.7.14	8.0
7	Mettille et al v Caluzzi (Dallas)	D5	Huppert	Telleen	1	1	Bench	4.25.13	12.11.13	8.6.14	Settled 7.17.14	6.5
8	Desert Flour v Timberline (Linn)	D6	Telleen	Scies-zinski	2	3	Jury	4.1.13	1.3.14	6.17.14	Settled 4.11.14	3.5
9	Copy Systems Inc v Laser Res. (Polk)	D5	Scieszinski	Huppert	1	3	Jury	11.25.13	3.11.14	2.16.15	Settled 10.14.14	7.0
10	Goetsch v Circle G Farms (Ida)	D3	Telleen	NA	3	4	Bench	9.5.14	9.12.14	Trial on: 11.17.14	Ruling 1.29.15	4.5
11	Promat v. FLSmidth et al. (Woodbury)	D3	Telleen	NA	1	3	Jury	12.18.12	1.16.15	J. Verdict 6.12.15	8.31.15	7.5
12	Seaway Bank v LS Bank (Clinton)	D7	Huppert	Telleen	1	1	Jury	1.15.15	4.29.15	11-Jul-16	Settled 9.9.15	4.5
13	Carpenter v. NW Mutual (Louisa)	D8	Telleen	Huppert	1	5	Jury	9.16.13	4.29.15		Dismiss 11.24.15	7.0
14	Copple et al, v Copple et al (Polk)	D5	Telleen	Huppert	4	4	Jury	6.24.14	5.3.15	4.25.16	Dismiss 2.3.16	10.0
15	Matrixx v Highland Meadow (Dallas)	D5	Huppert	Telleen	1	1	Bench	12.9.14	1.16.15	11.30.15	Dismiss 2.19.16	13.0
16	Winburn v Hoks-bergen (Poweshiek)	D8	Scies-zinski	Huppert	12	3	Jury	5.16.14	5.2.15	5.31.16	Dismiss 3.30.16	9.0
17	Shredlage v Scheerer (Mahaska)	D8	Scies-zinski	Telleen	3	1	Jury	1.16.15	3.30.15	7.11.16	Settled 4.29.16	13.0
18	Tai Village v Baccam, et al (Polk)	D6	Huppert	<i>Spec. master</i>	3	12	Bench	2-Jun-14	12.10.14	NA	Settled 6.8.16	19.0
19	Meyer v Peoples Savings Bk (Grundy)	D1	Huppert	Telleen	1	3	Jury	5-Mar-15	4.10.15		Settled 6.15.16	15.0
Average # of months from assignment to business court to disposition:												9.8

*June 1, 2013 through June 30, 2016. Primary judge: handles motions & trial; settlement judge: handles settlement confs.

Table 3: 14 Cases Currently Pending in the Business Court (6.30.16)

		A	B	C	D	E	G	H	I	J	K	L
	Case title / County	Dist	Primary Judge*	Settle- ment Judge*	# of Pltfs	# of Defrs	Trial Type	Date filed in Dist Ct	Date assigned to Bus. Court	Date set for Trial	Other info	Months Pending in Bus Ct
1	Estate of Willenborg v Am Trust (DBQ)	D1	Scies-zinski	Huppert	5	3	Bench	3.14.12	12.5.13	Trial: <u>11.9 to 11.18.15</u>	Ruling: 4.13.16; motions pending	26.5
2	Dovico v Cargill, et al. (Wapello)	D8	Scies-zinski	Huppert	41	8	Jury	4.2.14	7.2.15	Pt 3: 2.1.16 Pt 1: 8.15.16		11.5
3	Busse et al., v Busse et al. (Linn) ¹	D6	Telleen	Scies-zinski	5	8	Jury	4.29.15	7.31.15	11.7.16		11.0
4	Busse et al., v Kenney et al. (Linn) ¹	D6	Telleen	Scies-zinski	2	5	Bench	4.29.15	6.20.16	11.29.16		12.0
5	LTB 2002 Irrevoc Trust (Linn) ¹	D6	Telleen	Scies-zinski	6	1	Bench	3.16.16	6.20.16			12.0
6	Merritt et al. v Cargill Pork, et al. (Adair) ²	D5	Huppert	Telleen	15	13	Jury	7.21.15	9.4.15	7.11.17 (20 days)		10.0
7	Merritt et al. v JBS Live Pork, et al. (Union) ²	D5	Huppert	Telleen	10	7	Jury	11.9.15	2.15.16	11.6.16 (20 days)		4.0
8	Arbogast et al. - consolidated w/Hopkins (Davis) ³	D8	Scies-zinski	Telleen	18	3	Jury	12.2.15	1.20.16			5.0
9	Basinger et al. consolidated w/Hopkins (Davis) ³	D8	Scies-zinski	Telleen	20	3	Jury	12.2.15	1.20.16			5.0
10	Hopkins et al., v Parks Finishing (Davis) ³	D8	Scies-zinski	Telleen	12	3	Jury	12.2.15	1.20.16			5.0
11	Winger v Conve & Avs Inc. (Monroe) ⁴	D5	Telleen	Huppert	1	2	Bench	6.24.15	4.25.16			2.0
12	Winger v Cargill (Monroe) ⁴	D5	Telleen	Huppert	1	7	Bench	9.8.15	4.15.16			2.5
13	Collis Inc. v Chamberlain Inc (Clinton)	D7	Huppert	Telleen	1	1	Jury	11.12.93	4.27.16			2.0
14	Hunter & Hunter v Hunter (Greene)	D2	Telleen	Huppert	2	1	Jury	1.6.16	6.14.16	1.10.17		.25
1, 2, 3, 4. These cases are consolidated with the other business court cases that show the same note number.								Average age from assignment to business court to 6.20.16				8.1

3. *Case processing times among the 19 cases resolved by the business court (see Table 2):*
 - Case processing time from the date of assignment to the business court to the date of disposition ranged from 3.5 months (Desert Flour) to 19 months (Tai Village).
 - The average case processing time in the business court was a relatively expeditious 9.8 months.

4. *Age of the 14 cases currently pending in the business court June 30, 2016 (see Table3):*
 - The age of pending cases ranges from under one month (*Hunter*) to more than 26 months (*Willenborg*) since the cases were assigned to the business court.
 - The *Willenborg* case (Dubuque County) is the oldest case on the business court docket. This estate case was filed in district court in March 2012 -- 20 months before it was assigned to the business court in December 2013. A bench trial was conducted in in November 2015 – 44 months after it was initially filed in district court and 23 months after it was assigned to the business court. The judge entered a written ruling after the trial in April 2016. Post-ruling motions are still pending in the case.
 - The average age of the 14 pending cases since their assignment to the business court is 8.1 months. The average age is 6.2 months if the *Willenborg* case is excluded as an outlier.

D. Judges' Time Spent on Business Court Cases

Prior to the start of the business court pilot program, some chief judges and district court administrators expressed concern that the business court pilot project could impose an undue burden on the three judicial districts where a business court judge resides. To obtain data to address this concern, the three business court judges provided weekly reports on the time they spent on each business court case to which they were assigned.

1. *Total time spent by each business court judge:* Table 4 (below) shows the number of hours the three business court judges spent on each of the 33 business court cases during the first three years of the program. It shows the three judges spent a total of 1,937 hours on all the business court cases in the first three years (see bottom row, last column). Judge Scieszinski, who has been assigned to handle multiple complex hog lot nuisance cases in multiple counties over the past year, spent a total of 939 hours on business court cases. Judges Huppert (493 hours) and Telleen (506 hours) spent only about half as much time as Judge Scieszinski.

Table 4 - Judges' Time on Business Court Cases During First Three Years

	<i>Case Title (County)*</i>	District where filed	Primary Judge - J's Dist	Settlement Judge - J's Dist	Closed / Pending on 6.30.16	Total Hrs (1st 3 Yrs of Bus. Ct)			
						Huppert	Scieszinski	Telleen	Total Hours
1	Meyers (Grundy)	D1	Hupp-D5	Tell-D7	P	43	0	20	63
2	Estate of Willenborg (DBQ)	D1	Scies-D8	Hupp-D5	P	24	267	0	291
3	Hunter v Hunter (Greene)	D2	Tell-D7	Hupp-D5	P	0	0	0	0
4	Goetsch (Ida)	D3	Tell-D7	NA	C	0	0	113	113
5	Promat (Woodbury)	D3	Tell-D7	NA	C	0	0	40	40
6	Bartling (Polk)	D5	Hupp-D5	Tell-D7	C	14	0	0	14
7	WDM School Dist (Polk)	D5	Hupp-D5	Scies-D8	C	33	0	0	33
8	Mettille et al (Dallas)	D5	Hupp-D5	Tell-D7	C	15	0	46	61
9	Tai Village (Polk)	D5	Hupp-D5	NA	C	37	0	0	37
10	Matrixx Mgmt (Dallas)	D5	Hupp-D5	Tell-D7	P	44	0	38	82
11	<i>Merrit v Cargill (Adair)</i>	D5	Hupp-D5	Tell-D7	P	10	25	0	35
12	<i>Merrit v JBS Pork (Union)</i>	D5	Hupp-D5	Tell-D7	P	0	0	0	0
13	Copy Systems Inc (Polk)	D5	Scies-D8	Hupp-D5	C	46	10	0	56
14	Flemmer (Polk)	D5	Tell-D7	Hupp-D5	C	0	0	27	27
15	Copple et al (Polk)	D5	Tell-D7	Hupp-D5	C	0	0	24	24
16	<i>Winger v Conve (Monroe)</i>	D5	Tell-D7	Hupp-D5	P	0	0	2	2
17	<i>Winger v Cargill (Monroe)</i>	D5	Tell-D7	Hupp-D5	P	0	0	2	2
18	Desert Flour (Linn)	D6	Tell-D7	Scies-D8	C	0	0	14	14
19	<i>Busse v Busse (Linn)</i>	D6	Tell-D7	Scies-D8	P	0	0	38	38
20	<i>Busse v Kenney (Linn)</i>	D6	Tell-D7	Scies-D8	P	0	0	0	0
21	<i>LTB 2002 Irrevocable Trust</i>	D6	Tell-D7	Scies-D8	P	0	0	0	0
22	Seaway Bank (Clinton)	D7	Hupp-D5	Tell-D7	P	3	0	24	27
23	Collis (Clinton)	D7	Hupp-D5	Tell-D7	P	7	0	0	7
24	Gen Motors (Scott)	D7	Scies/Hupp	Hupp-D5	C	170	69	0	239
25	World Food (Mahaska)	D8	Scies-D8	Hupp-D5	C	28	68	0	96
26	Shredlage (Mahaska)	D8	Scies-D8	Tell-D7	C	0	28	34	62
27	Dovico et al. (Wapello)	D8	Scies-D8	Hupp-D5	P	20	335	0	355
28	Winburn et al (Poweshiek)	D8	Scies-D8	Hupp-D5	P	0	47	0	47
29	<i>Hopkins et al v Parks (Davis)</i>	D8	Scies-D8	Tell-D7	P	1	30	0	31
30	<i>Arbogast v Parks (Davis)</i>	D8	Scies-D8	Tell-D7	P	0	0	0	0
31	<i>Basinger v Parks (Davis)</i>	D8	Scies-D8	Tell-D7	P	0	0	0	0
32	Rothgeb/Meyers (Lee)	D8	Tell-D7	Scies-D8	C	0	63	39	102
33	Carpenter (Louisa)	D8	Tell-D7	Hupp-D5	C	2	0	46	48
(1) Total judge hours on business court cases:						496	941	506	1,942
(2) # of judge's Bus. Ct. hours spent <u>outside</u> the judge's own dist:						298	483	371	1,152
(3) # of judge's Bus. Ct. hours spent <u>within</u> the judge's own district:						198	458	135	790
(4) % of Bus. Ct. time spent <u>outside</u> judge's own dist (Row 2/Row 1):						60%	51%	73%	59%
(5) % of an FTE judge time spent <u>outside</u> the judge's own district*						5%	8.4%	6.4%	20%
(6) % of an FTE judge time spent on <u>all</u> business court cases*						8.6%	16.3%	8.8%	34%

*FTE judge: = 40 hrs/wk for 48 weeks for 3 years = 5,760 work hours. Calculations: Huppert: 298 hrs outside district – divided by 5760 hrs = 5% of an FTE judge; Scieszinski.: 483 hrs/5760 hrs = 8.4% FTE; Telleen: 371/5760 = 6.4% FTE.

2. *Percentage of judge time spent within and outside their own districts:* The bottom section of Table 4 (above) shows an analysis of the number of hours each of the three business court judges spent on cases *within* and *outside* their own districts and the percentage of their business court time spent outside their own districts. Row 4 at the bottom of the table shows that Judge Huppert spent 60% of his business court time on cases outside his own district (D5), Judge Scieszinski spent 51% of her business court time outside of her own district (D8), and Judge Telleen spent 73% of his business court time on cases outside his district (D7). Overall, they spent 59% of their business court time outside their own districts.

3. *Full-time equivalent (FTE) judicial time spent on business court cases outside the judges' own judicial districts:* For the purpose of this analysis, a full-time judge is assumed to work 40 hours per week for 48 weeks per year – or 1,920 hours per year. Over the first three years of the business court program, an FTE judge would have worked approximately 5,760 hours (1,920 X 3 years). The bottom section of Table 4 (above) shows that the total time spent by the three judges on business court cases over the three year period (1,942 hours, shown in row 1) equals **34%** of one FTE judge (1,942/5,760). The 1,152 hours (in row 2) spent by the three business court judges on cases outside their own judicial district equaled about **20%** of an FTE judge (1,152/5,760; see row 5). Row 6 of Table 4 shows the 941 total hours contributed to business court cases by Judge Scieszinski equaled about 16.3% of an FTE judge. Judge Tellen spent a total of 506 hours on business court cases, which equaled 8.8% of an FTE judge. Judge Huppert's 496 hours on business court cases equaled about 8.6% of an FTE judge.

Table 5 - Business Court Judge Time Over Three Years: Net Gain or Loss to Each District*

		A	B	C	D	E	F	G	H
<i>Bus Ct judge hours contributed by these judges to other districts:</i>		D1	D2*	D3	D5	D6	D7	D8	Total judge hours contributed to other districts (Sum of A to G)
1	Huppert (D5)	67	0	0		0	180	51	298
2	Telleen (D7)	20	0	153	139	52		119	483
3	Scieszinski (D8)	267	0	0	35	0	69		371
4	Bus Ct judge hours <u>received from judges outside the district</u> (Sum of rows 1 to 3)	354	0	153	174	52	249	170	1,152
5	Bus Ct judge hours <u>contributed to districts outside their own district</u> (From column H, rows 1 to 3)	NA	NA	NA	H1: 298	NA	H2: 483	H3: 371	1,152
6	NET judge hours gained or lost due to business court (Row 4 minus row 5)	354	0	153	-124	52	-234	-201	0

*District 4 is not included in this table because it was the only district without a business court case. District 2 is included in this table because a case from D2 was assigned to the business court on 6.14.16, but business court judges had not spent any time on it by 6.30.16.

4. *Net gain or loss of judicial time among the judicial districts:* Table 5 (above) addresses the question: Which districts gained or lost judicial work time during the first three years of the business court program? Row 4 shows the total number of judicial work hours each district *received* from business court judges from other districts. Row 5 shows the number of work hours each business court judge contributed to cases outside the judge’s own district. Row 6 shows the *net* hours of judge work time gained or lost due to the work of the three judges on business court cases during the three year period:

- Districts 1, 3, and 6 realized a gain of 354, 153, and 52 judge hours respectively from the business court judges – because those districts do not have a resident business court judge.
- All three districts that contributed a judge to the business court showed a net loss of judicial work time. District 7 experienced a net loss of 234 judge hours, District 8 lost 201 judge hours, and District 5 lost 124 hours of judge time to other districts.

E. Attorney Evaluation of the Business Court Program

Feedback from attorneys who have handled cases that have been assigned to the business court is an essential component of this evaluation. By June 30, 2016, the end of the third year of the business court program, 19 business cases had been resolved by the business court. Shortly after the resolution of each case, state court administration emailed a three page questionnaire to each named attorney in the case and asked the attorneys to complete the survey and return it to SCA staff by email. A total of 38 attorneys submitted completed surveys.

1. *Questionnaire content:* The attorney questionnaire includes four sections:
 - A. Factors that led the Attorney to Seek Assignment to the Business Court
 - 11 questions that ask about attorneys’ expectations for the business court
 - Response ratings: 3= High expectations, 2 = Moderate expectations, 1 = Low expectations, 0 = No expectations
 - B. Evaluation of Business Court Performance
 - 11 questions on business court performance pertaining to the business court objectives
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree
 - C. Evaluation of Other Judicial Qualities
 - 4 questions on the fairness and civility of the primary and settlement judges.
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree
 - D. Overall Evaluation
 - 2 questions regarding their overall approval of the business court
 - Response ratings: 3= Strongly agree, 2 = Agree, 1=Disagree, 0=Strongly disagree

Table 6 (below) shows the questions in each of the four sections, the number of responses received on each question, and the *average rating*. A higher average rating (one that is close to 3.0) indicates a predominance of “strongly agree” ratings. A low average rating (close to 1.0) indicates a predominance of “disagree” responses.

Table 6 - Attorneys' Evaluation of the Business Court Pilot Project (7-1-16)

A. FACTORS THAT LED ME TO SEEK ASSIGNMENT TO THE BUSINESS COURT		
3 = High expectation, 2 = Moderate expectation, 1 = Low expectation, 0 = No expect.	# of responses	Avg Rating
<i>I expected that the business court would be more likely than the regular district court to:</i>		
1. Assign one judge to handle all aspects of the case (except settlement negotiations).	38	2.8
2. Provide a judge with experience in managing complex cases.	38	2.8
3. Provide a judge with expertise in relevant business law issues.	38	2.7
4. Be flexible in developing a case management plan.	38	2.6
5. Effectively manage discovery-related issues.	38	2.5
6. Limit the number of continuances.	38	1.9
7. Employ an effective strategy for settling the case.	38	1.4
8. Employ video or telephone conferencing to reduce attorney time and costs.	38	1.7
9. Effectively manage the trial.	38	2.6
10. Reduce delays in bringing our case to trial or settlement.	38	2.3
11. Achieve a resolution of our case at a lower overall cost (work time and expenses).	38	1.7
B. EVALUATION OF BUSINESS COURT PERFORMANCE		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree, NA = Not applicable		
<i>The business court achieved the goal of:</i>		
13. Assigning a single judge to manage all aspects of the case (except settlement negotiations).	36	2.9
14. Providing a judge with experience in managing complex business cases.	34	2.8
15. Providing a judge with expertise in relevant business law issues.	33	2.7
16. Providing a judge who was flexible in developing a case management plan.	34	2.7
17. Providing a judge who effectively handled discovery-related issues.	24	2.8
18. Providing a judge who effectively limited the number of continuances.	16	2.6
19. Providing a judge who employed an effective strategy for settling the case.	19	2.5
20. Providing a judge who effectively used tele-video conferencing to reduce attorney time and costs	19	2.6
21. Providing a judge who effectively managed the trial.	12	2.7
22. Bringing our case to trial or settlement in less time <u>than it probably would have required through the regular district court process.</u>	31	2.5
23. Bringing the case to a resolution at a lower overall cost (work time and expenses) <u>than it probably would have cost through the regular district court process.</u>	31	2.3
C. EVALUATION OF OTHER JUDICIAL QUALITIES		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree, NA = Not applicable		
25. The primary judge displayed <i>civility</i> toward all parties in this case.	36	3.0
26. The primary judge displayed <i>fairness</i> toward all parties in this case.	36	3.0
27. The settlement judge displayed <i>civility</i> toward all parties in this case.	21	2.9
28. The settlement judge displayed <i>fairness</i> toward all parties in the case.	21	2.9
D. OVERALL EVALUATION		
3 = Strongly agree, 2= Agree, 1 = Disagree, 0 = Strongly disagree		
29. The business court should become a permanent component of the Iowa court system.	37	2.9
30. I will seek assignment of qualifying cases to the business court in the future.	36	2.8

Note: All 38 respondents did not provide a rating or response to each question because some questions might not have been applicable for each attorney or case. For example, only 12 attorneys responded to question B.21 – regarding a judge effectively managing the trial – because few of the cases went to a jury or nonjury trial.

2. Attorneys' Expectations for the Business Court

Section A in Table 6 provides an assessment of what attorneys expected from the business court. They generally expressed high expectations (average rating of 2.5 or higher) that the business court would offer:

- One judge to handle all aspects of the case, excluding settlement negotiations.
- A judge with experience in managing complex cases.
- A judge with expertise in relevant business law issues.
- A judge who would be flexible in developing a case management plan.
- A judge who would effectively manage discovery-related issues.
- A judge who would effectively manage the trial.

Attorneys generally had lower expectations (average rating of less than 2.0) regarding the likelihood that the business court would:

- Employ an effective strategy for settling the case.
- Limit the number of continuances.
- Achieve a resolution of the case at a lower overall cost in work time and expenses.
- Employ video or telephone conferencing to reduce attorney time or cost.

3. Attorneys' Evaluation of Business Court Performance

Overall, attorneys who have litigated cases in the business court program offer very positive evaluations of the business court's performance. The responding attorneys *strongly agreed* (average rating of 2.5 or higher) that the business court achieved *ten* of the eleven performance goals:

- Assigning one judge to handle almost all aspects of the case.
- Providing a judge with experience in managing complex cases.
- Providing a judge with expertise in relevant business law issues.
- Providing a judge who was flexible in developing a case management plan for the case.
- Providing a judge who effectively handled discovery-related issues.
- Providing a judge who effectively limited the number of continuances.
- Providing a judge who employed an effective strategy for settling the case.
- Providing a judge who effectively managed the trial.
- Bringing their case to a resolution at an overall lower cost than would have occurred in the regular district court.
- Effectively used tele-video conferencing to reduce attorney time and costs.

Attorneys also tended to agree (average rating of 2.3) that the business court:

- o Brought their case to a resolution at an overall lower cost than would have occurred in the regular district court process.

4. *Attorneys' Evaluation of the Fairness and Civility of the Business Court Judges*

Thirty-six attorneys *strongly agreed* that the *primary* judge in their case displayed civility (average rating = 3.0) and fairness (average rating = 3.0) toward all parties. Twenty-one attorneys also gave the *settlement* judge very positive ratings on civility and fairness (average score = 2.9 on both).

5. *Attorneys' Overall Evaluation of the Business Court*

Ratings from 37 attorneys show that they strongly agree (average score = 2.9) that the business court should become a permanent component of the Iowa court system, and 36 attorneys strongly agreed (average rating = 2.8) that they would seek assignment of qualifying cases to the business court in the future.

F. Views of the Chief Judges of the Districts Where Business Court Judges Reside

The three business court judges reside in judicial districts 5, 7, and 8. One of the concerns from the beginning of the business court program has been that these three districts might suffer an undue loss of district court judge time devoted to cases on the regular district court docket in their respective districts. State court administration staff recently contacted the chief judge for each of these three districts to obtain their views on this issue and their suggestions for improving the business court.

The three chief judges believe that assigning one of their district court judges to the business court has had a modest negative impact on their own district's ability to process district court cases in a timely manner. Nevertheless, the chief judges agree that the judge from their own districts should continue to serve as business court judges if they choose to do so. Two of the three chief judges also agree, and one is neutral, that adding a fourth district court judge to the business court would help reduce the workload burden currently being borne by districts 5, 7, and 8, assuming the additional business court judge resides in a different judicial district.

Written comments from the chief judges include the following:

"Since we have eight districts, it may make sense to have four business court judges. We have been able to manage coverage fairly well when [the business court judge from our district] has business court assignments; however, I am concerned that may be a little more difficult as the popularity of the program increases given the cuts we are making due to the budget crisis. "

"We are taking some court days away from our smaller counties, which will mean those cases will be delayed and/or when a judge is there, the schedule will be very heavy. I anticipate our judges

will have to continue to work harder and harder to keep up and in trying to keep cases on track. This workload will certainly be impacted if the business court workload remains as is or increases.”

“This is a worthwhile program and I know [the business court judge from our district] really enjoys the work on these cases. I also believe the litigants and attorneys are very happy with the program, and I, for one, would be pleased to see the program continue to grow. Having one judge for these very complex cases certainly is a benefit to our entire bench, especially those who have little or no experience in some of these areas of law.”

“I agree that there should be more than three business court judges, if possible. This is particularly true since they often use one of the judges to do settlement conferences. With only three judges there is very little flexibility in which judge can be assigned to the case and do the settlement conference.”

“It has helped us to have some very time consuming cases handled in the business court. I wish there was some way we could require certain cases to be in the business court. “

G. Views of the Business Court Judges on How to Improve the Business Court

On June 15, 2016, Justice Daryl Hecht convened a meeting of the three business court judges, the state court administrator, and the assistant counsel to the chief justice to discuss the status of the business court and consider ways to improve its operation. In general, the judges believe that the business court operates very well. They point out that attorneys appear to be pleased and appreciate the individual judge assignment and having access to a separate settlement judge, if needed.

The business court judges offered the following suggestions for improving the business court program:

- Provide one law clerk, possibly a long-term staff attorney, who is dedicated to the business court. Having one dedicated business court law clerk could also assist in the effort to expand and develop an online collection or library of rulings entered and jury instructions used by the business court judges.
- Change the requirement that all parties must consent to assignment to the business court. One suggestion was to allow a party to file a motion to assign a case to business court and authorize the chief judge of the district to consider and rule on that motion.
- Add a fourth business court judge to reduce the burden on the current districts that have contributed a judge to the business court docket. No district should contribute more than one judge. If possible, the four business court judges should reside in different regions of the state.
- End the practice of requiring the business court judges to regularly submit business court time reports. The supreme court has already determined that the business court will be a permanent feature of the district courts. If demands of the business court docket become a burden on a district where a business court judge resides, the chief judge of the district should raise the issue with the state court administrator and possibly the Judicial Council.
- Increase the use of CourtCall tele/video conferencing to reduce attorney time and costs.

- Continue to promote the business court through the state and local attorney and business organizations and other news sources.

H. Observations on Achievement of Business Court Program Objectives

Section A of this report stated four general objectives of the business court pilot program. There is evidence to suggest that the business court program has been accomplishing two of those objectives, but has made only small steps toward accomplishing the other two.

Objective 1: Move complex business litigation through the court system more expeditiously and with lower costs for the litigants and the court system.

Table 6, question 22, shows attorneys agree (average rating = 2.5) that the business court brought their case to a trial or settlement “in less time than it probably would have required through the regular district court process.” The average time of 9.8 months from assignment to business court to disposition of the case (see Table 2) seems relatively expeditious.

In addition, responses to question 24 show attorneys also tend to agree (average rating = 2.3) the business court brought their cases to a resolution “at a lower overall cost (work time and expenses) than it probably would have cost through the regular district court process.”

Objective 2: Removal of complex and time-consuming business litigation from the regular district court dockets.

The business court appears to be accomplishing this objective. Many of the cases assigned to the business court are clearly complex and time consuming and would have been a burden on the regular district court docket in the district.

Objective 3: Development of innovative court practices and uses of court technology that could be applicable across the justice system.

There are two components to this objective. First, the primary innovative practice in the business court is assigning a single judge to handle all litigation matters and a separate dedicated settlement judge. This appears to be an effective strategy for managing complex litigation. It is not uncommon for Iowa district courts to assign one judge to handle complex cases, so that is not especially innovative, but also assigning a dedicated settlement judge is strategy that could be adopted for managing complex litigation that might not meet the criteria for the business court.

Second, regarding the development of innovative uses of technology, the business court has served as a pilot test of the CourtCall audio-video conferencing service in Iowa. All the business court judges received the software and training required to use the service, and all have used CourtCall for some cases. The judges report that the service works well and has been effective in reducing attorney and expert witness costs. Based on early positive reviews from the three business court judges, in the fall of 2015 state court administration expanded the pilot test of the CourtCall service by implementing the service in a total of nine additional district court courtrooms in four judicial districts. State court administration should conduct a review of the use of CourtCall in the business

court and the nine other district courts to determine whether the CourtCall service, or other similar service, should be expanded statewide.

Objective 4: Development of a published body of business court case law to provide guidance for the fair and cost-effective resolution of business litigation.

At this point, there are only two cases in which a nonjury trial was conducted: the *Goetsch* case (Ida County), which has been resolved, and the case *Willenborg* (Dubuque County), which remains pending. One case involved a jury verdict (*Promat*, Woodbury County), and the jury instructions for that case could be instructive for judges managing similar types of jury trials in the future. As the business court moves forward, there will be more opportunities to further develop a library of district court rulings, jury instructions, and other orders that might be useful for the management of complex litigation in the future.