

STATE OF WISCONSIN
IN THE SUPREME COURT

RECEIVED
JAN 17 2020

CLERK OF SUPREME COURT
OF WISCONSIN

**In re Creation of a Pilot Project for
Dedicated Trial Court Judicial Dockets for
Large Claim Business and Commercial Cases**

**PETITION 16-05A
MEMORANDUM**

The Business Court Advisory Committee (Committee) submits this memorandum in support of its petition to amend the existing Pilot Program for Dedicated Circuit Court Judicial Dockets for Large Claim Business and Commercial Cases ("pilot program"). The petition proposes extending the pilot program for two additional years, until July 1, 2022, extending the court's scheduled review of the operation of this pilot program to accommodate the two-year extension of the program, expanding the pilot to include the circuit courts of the Second Judicial Administrative District and the Tenth Judicial Administrative District, directing the Committee to develop and implement a training program for judges and lawyers interested in participating in the commercial court docket, amending the existing Interim Rule to include certain additional case types, permitting the Chief Justice to approve the addition of additional Counties or Judicial Administrative Districts upon the recommendation of the Director of State Courts, allowing parties from counties that do not have a commercial court docket to have their cases administered within a commercial court docket, and amending the Interim Rule, as needed, to reflect these developments.

As background, by order dated April 11, 2017, the court approved this Committee's petition to create the pilot program.¹ The pilot program commenced effective July 1, 2017,

¹ S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017)

and is authorized for a period of three years. The pilot program commenced with Waukesha County and the circuit courts of the Eighth Judicial Administrative District. Based on its initial experience, the Committee continues to believe that a dedicated commercial court docket will benefit the citizens of Wisconsin, the bench, and the bar. It seeks to expand and extend the pilot program to gather additional empirical evidence to substantiate the usefulness of a dedicated business court docket and to identify improvements or necessary changes to the rules and statutes, before a commercial court docket achieves a permanent or statewide status.

Proposed Additional Locations: Second Judicial Administrative District and Tenth Judicial Administrative District

Overview

The Committee maintains that the success of the pilot program will depend on the identification, appointment, and location of circuit court judges who preside over areas representative of the state. It is important for the pilot program to be in districts with a higher population, where large commercial disputes are more regularly filed. It is also important, however, for areas that consist of smaller counties, which represent a great deal of the state, to have the opportunity to participate in the program, and for their experience to be taken into consideration when evaluating the program and any modifications that may need to be made. It is the experience in these contrasting areas of the state that will inform the pilot program and its goals.

The Committee seeks to expand the pilot program by adding two judicial administrative districts. The Committee proposes to expand the pilot to include the Second Judicial District and the Tenth Judicial District. The Committee carefully considered its options before proposing these locations.

Judicial Selection and Appointment

The Chief Justice of the Supreme Court will continue to designate and assign to the counties and districts chosen for the pilot plan, the initial circuit judges within them who will handle cases qualifying for the commercial court docket. Wis. Stat. §751.03(1). Selection of a judge for the commercial court docket will not disqualify the judge from continuing his or her work on any other then-assigned docket.

To address the issue of judicial substitutions, the Committee recommends that for the Tenth District, no fewer than three judges be named to handle the cases of the commercial court docket.

Proposed Temporary Rule; Case Eligibility

The proposed Temporary Rule is working well. The Committee proposes a few minor amendments to the Interim Rule to reflect the additional regions being added and to expand the type of cases eligible for the pilot program. Specifically, the Committee would like to include: cases involving receiverships in excess of \$250,000; cases involving confirmation of arbitration awards and compelling/enforcing arbitration awards; and cases involving commercial real estate construction disputes over \$250,000. Additionally, the Committee proposes to allow litigants who do not have commercial court dockets in their counties or districts, to be permitted to formally request that their case be administered within a commercial court docket. If the pilot program continues to be successful, permanent rules will be developed, informed by the practical experience and information gained during the pilot project.

Data Collection and Reporting

Attached to this petition is a progress report that address the following:

- A. Circuit court data that analyzes the number of cases and type of cases that have been assigned to the commercial court docket thus far;
- B. The number of cases assigned to each judge participating in the pilot program;

- C. The length of time cases have been pending;
- D. Responses from litigants or their counsel as to their experience and level of satisfaction with the commercial court docket;
- E. Views of judges concerning the effectiveness and benefits of the pilot commercial court docket; and
- F. Information concerning the procedures that have been developed to effectively assign and process commercial court docket cases.

Summary

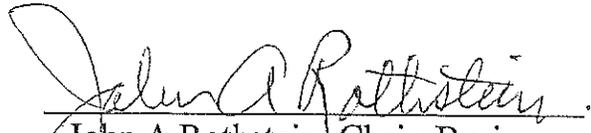
The Committee unanimously believes that the pilot commercial court docket should be expanded to include the Second Judicial Administrative District and the Tenth Judicial Administrative District. The Committee requests an extension of the project for a period of two years to afford the Committee sufficient time to implement the expansion and obtain sufficient data by which to evaluate the success of the project. The proposed amendments to the Temporary Rule⁵ and Guidelines for the pilot commercial court docket accompany this memorandum.

⁵ As you are undoubtedly aware, a Temporary Rule is precisely how the now mandatory eFiling program in the State commenced. That temporary order was also renewed for a period of several years until the Director's Office requested creation of the eFiling rule through a formal petition process. See Rule Petition 06-08, *In the matter of the Creation of a Court Rule Governing Electronic Filing in the Circuit Courts* (May, 1, 2008, eff. 7/1/08). See also S. Ct. Order 14-03, *In the Matter of the Petition to Create Wisconsin Statute s. 801.18, 2009 WI 4, 2016 WI 29* (issued Apr. 28, 2016, eff. July 1, 2016) (adopting and implementing mandatory eFiling rule).

The Interim Rule applies only in the regions undertaking a pilot project. It is intended to be flexible; amendments require the approval of the court, but typically do not require a public hearing. As a temporary rule, it is not published in the statute books, but is made publically available, on the Court's rules website. The Committee anticipates that if the pilot is successful, a subsequent rule petition asking the Court to expand the pilot project and adopt formal rules would follow, as occurred in the eFiling matter.

Respectfully submitted,

this 17th day of January, 2020



John A Rothstein, Chair, Business
Court Advisory Committee