

As Amended 2/12/2020; 2/20/2020; 3/13/20

Interim Rule for Pilot Project for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases; Assignment and Management of Business and Commercial Cases

1. Purpose, authority.

- a) The purpose of this interim rule (Rule) is to authorize a pilot project to implement a specialized docket for commercial cases in Wisconsin circuit courts. The commercial court docket is designed to operate within the framework of the existing Wisconsin court system with minimal impact on the balance of court operations. It is intended to leverage judicial expertise in commercial law and disputes with commercial litigants' desire to tailor case management practices best suited for resolving substantial business disputes fairly and expeditiously.
- b) This Rule is adopted pursuant to the Supreme Court's rulemaking authority under s.751.12, stats., and the Court's superintending and administrative authority over all courts conferred by Article VII, §3 of the Wisconsin Constitution. This Rule is temporary and is subject to change as the needs of the pilot project dictate.
- c) This Rule shall be known and cited as the Commercial Court Rule, or CCR.
- d) This Rule is intended to supplement, not supplant, the rules of the Wisconsin Supreme Court and the Wisconsin statutes. Should any conflict be deemed to exist between this Rule and any other supreme court rules or statutes, the other rules or statutes shall control.

2. Scope, effective dates.

- a) This Rule applies in counties and judicial administrative districts that have established specialized dockets for commercial cases, which are referred to in this interim Rule as the "Commercial Court."
- b) The pilot project will begin and end as authorized by order of the Supreme Court. See S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017). The approximate duration of the project will be from July 2017 to July 2022.
- c) No case filed before the inception date of the pilot project will be included in this pilot project.
- d) The circuit courts for Waukesha County and in the Eighth Judicial Administrative District are hereby designated as the initial locations for the Commercial Court dockets. The circuit courts of Dane County, ~~The~~ the circuit courts of the Second Judicial Administrative District, and the circuit courts of the Tenth Judicial Administrative District are hereby designated as additional locations for the Commercial Court dockets. For the purposes of this pilot project, Iron County shall be considered part of the tenth Judicial Administrative District forthwith.¹
- e) The Chief Justice shall select the circuit court judges in the counties and judicial administrative districts participating in the pilot plan who will be assigned to the

¹ See S. Ct. Order 19-21, 2020 WI 17 (issued Feb. 13, 2020) (transferring Iron County to the Tenth Judicial Administrative District effective July 1, 2020).

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Commercial Court docket. Selection of a judge for the Commercial Court docket shall not preclude the judge from continuing work on any other assigned docket. The Chief Justice shall select no fewer than: three circuit court judges in Waukesha County; no fewer than three circuit court judges in Dane County; no fewer than four circuit court judges within the Eighth Judicial Administrative District; no fewer than four circuit court judges within the Second Judicial Administrative District; and no fewer than three circuit court judges within the Tenth Judicial Administrative District. The Chief Justice may also add additional counties and/or districts to the Commercial Court docket upon the recommendation of the Director of State Courts.

- f) The pilot project may be expanded or extended by order of the Supreme Court upon the recommendation of the Director of State Courts. This Rule is subject to revision by order of the Supreme Court as the pilot project progresses.

3. Application; definitions. For purposes of this Rule:

- a) "Business organization" includes a sole proprietorship, corporation, partnership, limited liability company, limited partnership, professional association, service corporation, joint venture, bank, savings bank, savings and loan association, or business trust. A "business organization" excludes an individual, a family trust, or a political subdivision or government entity.
- b) "Consumer contract or transaction" is a consumer contract or transaction that is primarily for personal, family, or household purposes.

4. Mandatory Assignment of Cases to the Commercial Court Docket. Any case that is one of the following types of cases that is filed in a circuit court in which a Commercial Court docket has been established shall be assigned to the Commercial Court docket as provided under section 7, and the Commercial Court shall have jurisdiction over any of the following types of cases:

- a) Cases involving the governance or internal affairs of business organizations, including claims between or among owners or constituents of a business organization; claims against officers, directors or managers of a business organization; claims involving the indemnity of owners, officers, directors, or managers of a business organization; claims involving the interpretation of the rights and obligations under the law governing the business organization, such as chs. 178, 179, 180, 181, 183, 185, 214, 215, 221, 222, & 223, stats., or any similar statute or law from another jurisdiction; claims involving the interpretation of the rights and obligations under the agreements governing the business organization, such as the articles of incorporation, bylaws, operating agreements, membership agreement, or partnership agreement of the business organization;
- b) Cases involving tortious or statutorily prohibited business activity, unfair competition or antitrust, including claims under ch. 133, stats.; claims under s.100.30(5m) or (5r), stats.; claims under s.134.01, stats.; claims of tortious interference with a business organization; claims involving restrictive covenants and agreements not to compete or solicit; claims involving confidentiality agreements;
- c) Cases involving the sale, consolidation, or merger of a business organization, conversion, share exchange or the sale of substantially all of the assets of a business organization;

- d) Cases involving the sale of securities, including claims for securities fraud under ch. 551, stats., or any similar statute or law from another jurisdiction;
- e) Cases involving intellectual property rights, including claims to determine the use, ownership, or status of trademarks, trade secrets, or copyrights; claims under s.134.90, stats.; claims involving any agreement relating to the licensing of any intellectual property right, including patent rights;
- f) Cases involving the relationship between a franchisor and franchisee or similar distribution relationship, including claims arising from ch. 135, stats., or any similar statute from another jurisdiction; claims arising from s.134.93, stats., or any similar statute from another jurisdiction; claims arising from ch. 553, stats., or any similar statute from another jurisdiction;
- g) Cases involving claims or disputes under chs. 402, 403, 404, 405, or 409, or any similar statute or law from another jurisdiction, when the amount in controversy exceeds \$100,000, exclusive of interest, costs, and attorney fees;
- h) Cases involving receiverships in excess of \$250,000;
- i) Cases involving confirmation of arbitration awards and compelling/enforcing arbitration awards;
- j) Cases involving commercial real estate construction disputes over \$250,000.

5. Discretionary Assignment of Cases to the Commercial Court Docket. In addition to the cases identified above in section 4 above, and which are not otherwise excluded under section 6, parties may jointly move the chief judge of the judicial administrative district in which the Commercial Court sits for discretionary assignment of a case to the Commercial Court docket. If the motion for discretionary assignment is granted, the case may be assigned to the Commercial Court docket. In deciding a motion for discretionary assignment of a case to the Commercial Court docket, the chief judge of the judicial district shall consider the 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. The decision granting or denying a motion for a discretionary assignment of a case to the Commercial Court docket is final and non-appealable.

6. Ineligible Case Types. The following cases will not be assigned to the Commercial Court docket:

- a) Cases involving small claims under ch. 799, stats.;
- b) Cases involving a governmental entity or political subdivision seeking to enforce a statutory or regulatory restriction or prohibition;
- c) Cases involving consumer contracts or transactions; landlord/tenant disputes; domestic relations claims; labor claims; receivership, insolvency, or liquidation cases; malpractice claims; personal injury claims; product liability claims; civil rights claims; tax disputes; cases seeking to compel arbitration or to affirm or disaffirm an arbitration award; construction claims; or environmental claims unless the claim or dispute identified in this section is ancillary and incidental to a case assigned to the Commercial Court under section 4.

7. Identification and Assignment of Cases to Commercial Court Docket.

- a) Plaintiff's duties. At the time of the filing of the complaint under s. 801.02(1) stats., the plaintiff in a civil action shall state on the face of the complaint whether the case qualifies for the Commercial Court docket under section 4.
- b) Clerk of court duties.
 - 1. In ~~Dane County and~~ Waukesha County, upon the filing of a case qualifying for the Commercial Court docket, the clerk of court shall assign the case to the Commercial Court docket and to one of the judges designated for the commercial court docket. In the event of a request for judicial substitution, the case shall be transferred to the next ~~Waukesha County~~ circuit court judge who is assigned to the ~~Waukesha County~~ Commercial Court docket in that county.
 - 2. In the Second Judicial Administrative District, Eighth Judicial Administrative District, and Tenth Judicial Administrative District, for cases filed in any county in which a circuit court judge in that county has already been assigned a Commercial Court docket, the same procedures shall apply. In counties of the Second, Eighth, or Tenth Judicial Administrative District in which no circuit judge has been assigned to the Commercial Court docket, upon the filing of a qualifying case, the clerk of court shall notify the chief judge of the Judicial Administrative District who shall assign one of the Commercial Court docket judges from the other counties in the Judicial Administrative District. The chief judge's selection shall be made pursuant to s.751.03(3), stats. In the event a request for substitution is filed against the judge chosen by the chief judge of the Judicial Administrative District, the chief judge shall then assign another judge from the Judicial Administrative District who has been appointed for Commercial Court cases.
- c) Omission by plaintiff; defendant's and third-party defendant's rights and prerogatives of the circuit court. In the event the duties set forth in subsection 7(a) are not met, the circuit court may, *sua sponte*, or upon a motion filed by the defendant or third party with his or her or its responsive pleading or responsive motion, order the transfer of a case to the Commercial Court docket if that judge determines that the case meets the mandatory criteria of section 4.
- d) On assignment of any matter to the Commercial Court docket, the matter shall retain the civil action number assigned to it by the clerk of court upon the filing of the complaint.

8. Disputes Regarding Assignments of Cases to the Commercial Court Docket.

- a) Contesting the assignment of a case to the Commercial Court docket. After assignment of a case to the Commercial Court docket, the judge assigned to the case may *sua sponte*, or upon motion of any party, reconsider whether assignment of that case to the Commercial Court docket is appropriate under the requirements of section 4. Any party filing a reconsideration motion under this section 8 shall file the motion not later than 20 days after the case is assigned to the Commercial Court docket. If the assigned Commercial Court judge concludes that the case does not qualify for assignment to the Commercial Court docket, the judge shall return the case to the general civil case docket.
- b) Review. Any party aggrieved on the outcome of a motion for reconsideration under subsection 8(a) may request the chief judge of the judicial administrative district in which the Commercial Court sits to review the reconsideration decision. A decision

by the chief judge of the judicial district resolving the question of which docket shall be assigned the case is final and non-appealable.

9. Processing of Remaining Civil Cases Not Qualifying for the Commercial Court Docket. Civil cases not qualifying for assignment to the Commercial Court docket under section 4, or for which a joint motion for discretionary assignment has been denied under section 5, shall be assigned to the docket of the general civil court.

10. Transferring a Case to the Commercial Court Docket. Parties from counties that do not have a dedicated Commercial Court docket may petition to have their cases administered within a Commercial Court docket.

- a) Such parties may jointly petition for transfer of the case to a Commercial Court docket if all of the following are true:
 1. The case is a type identified in Section 4 of the interim commercial court rule. The case is not ineligible for assignment to a Commercial Court docket under Section 6 of the interim commercial court rule.
 2. The parties agree to use the forms and procedures developed for use in the Commercial Court docket pilot project.
 3. The parties agree that all proceedings will be conducted in the county where the case is assigned under paragraph b) of this section, except that if the case proceeds to trial, the trial will be conducted in the county where the case was originally filed.
- b) The procedure for a joint petition for transfer shall be as follows:
 1. A joint petition for transfer of a case under this section shall be submitted to the District Court Administrator for the Eighth Judicial District. The District Eight Court Administrator shall refer the petition to the Chief Judges for the Second, Third, Fifth, Eighth, and Tenth Judicial Administrative Districts.
 2. The Chief Judges shall consider the caseload of the judges designated for the Commercial Court docket, the nature of the case, and the work requirements for cases already pending in the Commercial Court docket when determining whether to allow the transfer of a case under this paragraph.
 3. The Chief Judges shall, upon allowing a transfer, assign the cases to the Commercial Court docket and to one of the judges designated for the Commercial Court docket in Dane County, Waukesha County, or within the Second, Eighth, or Tenth Judicial Administrative District.
 4. In the event of a request for judicial substitution, the procedure set forth in Section 7 b) of the interim commercial court rule applies.
- c) No party may withdraw his or her request for transfer to the Commercial Court docket after a judicial assignment has been made under paragraph b) of this section.