



WISCONSIN COURT OF APPEALS

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September 7, 2024

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CLERK OF SUPREME COURT
OF WISCONSIN

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, Wisconsin 53701-1600
(Sent electronically to clerk@wicourts.gov)

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

Dear Honorable Chief Justice Ziegler and Honorable Justices of the Wisconsin Supreme Court:

This letter is written in response to the Supreme Court's request for comment on the referenced Rule Petition. This is the third letter I have written to provide the Court with input on the commercial court docket (CCD) pilot project. The first was filed with the Court on January 19, 2017, and the second was filed on April 8, 2022. Both letters are available for review on the Court's website. I encourage you to review them, as I believe they will provide valuable information to assist you in reviewing the current Petition.

In my first submission, I recommended that the Supreme Court consider three significant issues if it determined to implement the CCD pilot project: (1) the lack of an evidentiary basis for creation of CCDs in Wisconsin; (2) the inability to evaluate their effectiveness; and (3) their likely negative impact upon the credibility of the remaining justice system and morale of the other judges serving in the remainder of the circuit court dockets in our state. I suggested that timely and appropriate action taken in response to these issues, preferably prior to the implementation of the pilot project, would help determine whether the CCDs were necessary, and if so, would enhance the viability, effectiveness and perception of the proposed CCDs.

Unfortunately, as noted in my 2022 submission, my recommendations regarding the CCD pilot project were ignored. Despite the passage of seven years and the expansion of the pilot project without any evidentiary support, the concerns I expressed in 2017 remain unaddressed. The Business Advisory Committee (Committee) again requests an extension of time to accomplish what it had planned to do in 2017—determine whether the CCDs are necessary and viable. I strongly recommend the Supreme Court deny the petition for all of the reasons stated in my earlier submissions, and as discussed below.

The Committee states that it had planned to provide the Supreme Court with a detailed report in support of the pilot project by July 2024. It, however, requests a two-year extension to do so based upon a hope that the current courts will further develop, and a number of vague challenges that the CCDs are claimed to have encountered.

The Committee first states that it has found it difficult to provide good direction in handling business and commercial litigation cases to those judges who have agreed to preside over CCDs. But as is well stated by my colleague, Judge JoAnne Kloppenburg, in her August 2024 submission in response to the Petition, “[t]he court system and the state bar have both excelled at providing judicial education in all of the varied, and often complicated, areas of procedural and substantive issues that arise across the board spectrum of judicial decision-making. No evidence has been presented that a dearth of judicial education has compromised in any way the circuit courts’ handling of the business and commercial disputes that come before them.” In other words, circuit court judges are well equipped to handle these cases. To the extent some additional case management education is deemed necessary, I have previously suggested that all circuit court judges would benefit from that education.

Further, the Committee has had many years to educate CCD judges. The Petition does not specify what education is lacking, nor does it state how and where that education will be provided over the next two years. Several persons responding to prior petitions regarding the CCDs have expressed concerns that the education provided to CCD judges to date has been biased toward business interests, which, of course, diminishes the reputation of the court system.

The Committee next states that CCDs have encountered technological challenges in adopting and implementing case coding methods related to the business courts. I am highly skeptical of such a claim, as I personally recall that immediately after the creation of the CCDs, planning took place to create and implement the use of case codes in the pilot jurisdictions. I question that it would take CCAP seven years to create and implement these codes. To the extent any coding delay occurred through a lack of funding, or that that has somehow impeded the ability to evaluate the CCDs, that lack of funding and methods of evaluation were discussed in my 2017 submission, and these issues should have been addressed years ago.

The Committee next notes that it has found it challenging to inform practitioners and litigants about the project and to respond to various unspecified misconceptions about the CCDs. Apparently, the Committee is concerned about the lack of interest in the courts despite repeated efforts by the bench and bar in “marketing” the CCDs at various judicial and State Bar conferences. In my 2022 submission, I noted that the total number of cases handled by the CCDs at that time was less than 35 cases per year, and the number of cases served by the CCDs during the prior five years was infinitesimal as compared to the number of civil cases filed in the circuit courts overall. When the CCDs were implemented, we were told that there was a great need for these courts and that the courts were needed to attract business to Wisconsin, as they also exist in other states in the country. However, after seven years, we see that those claims are patently false. There is absolutely no reason for the CCDs to exist given the minimal number of parties to be served and cases to be heard. The pilot project and its extension are not wise or reasonable uses of public resources.

Without discussing numbers or jurisdictions, the Committee complains that it has taken time to replace retiring CCD judges. In response, I again note that the method for selecting CCD judges is flawed. There is no established application process, and the only known criteria to serve as a CCD judge are familiarity with commercial disputes, possession of a strong business law background and knowledge of commercial transactions. While all of the CCD judges who have served to date should be commended for stepping up and accepting this added responsibility, as noted in my 2022 submission, some of them, nevertheless, did not meet the minimal selection criteria, leaving others to question the basis for their selection. Other judges who would relish the challenge and experience of participating in the CCDs have not been considered. Still others have had the pilot project foisted upon their jurisdictions without their knowledge and consent. All of this creates dissension among the judiciary and negatively affects morale. In light of all of the above, it is not surprising that the Committee is having a difficult time replacing any retiring CCD judges.

Finally, the Committee states that “[d]etermining methods for collecting data about the Project has also proved to be a difficult but not insurmountable challenge.” This should hardly come as a surprise, for a number of reasons. First, as I stated in my 2017 submission, “I am concerned we are embarking upon this pilot project without any Wisconsin-based research evidencing a delay in handling of complex commercial litigation cases, a lack of predictable results, or any unfair handling of such cases. In fact, the memorandum accompanying the petition acknowledges the Committee was unable to even determine the number of cases likely to be handled in the CCDs created by the pilot project. Given my anecdotal analysis based upon my experience on the circuit court and court of appeals, I expect the number to be small.” My off-the-cuff analysis was correct. In addition, I am unaware of any valid and viable evidence-based specialty court that was created without data to support the need for its existence.

Further, the original pilot project proposed that the Wisconsin Supreme Court Office of Court Operations was to monitor the pilot program and submit an annual progress report to the Supreme Court addressing five topics. To my knowledge, this never occurred. And, as noted in 2017, “[w]ithout initial data to use as a benchmark, the Office of Court Operations will be unable to: compare the number of cases heard in the CCDs to the number brought prior to their creation, thus determining if the CCDs have helped to achieve the goal of decreasing repeat litigation; compare the time to completion of cases before and after the implementation of the pilot project, thereby determining whether the CCDs more expeditiously handle business cases and reduce litigation costs; and compare the number of cases appealed and reversed prior to and after the creation of the pilot project, thereby helping to determine if complex commercial cases are handled more predictably and fairly.”

As noted in my 2022 submission, the minimal—and what I consider flawed—data presented at that time fully supported my recommendation to deny the extension of the pilot project and to terminate it. Apparently, no additional data has been kept regarding the efficacy and efficiency of the CCDs since 2022, or I would expect that it would have been provided to the Supreme Court with this Petition. The Committee provides no information on what evaluative criteria have been developed or who will review and evaluate the CCDs, and no resources have been requested to assist in data collection.

The Committee asks for just two more years to provide the Supreme Court with a final written report with recommendations from the Committee about ending the CCD pilot project or

making it permanent, with the report to be due by July 1, 2026. I submit that no more time is needed for the Court to make a decision. The stated purposes for the CCD pilot project included a desire to make Wisconsin a more favorable forum for resolving business disputes by improving access to justice, expeditiously resolving business cases and reducing litigation costs, improving the quality and predictability of justice in connection with business disputes, and decreasing the likelihood of repeat litigation. After seven years, the CCDs have failed to show that they have accomplished any of these goals. I respectfully assert that it is time for the Supreme Court to deny the Petition to further extend the life of the CCDs.

Sincerely yours,



Lisa K. Stark

Cc: Chief Justice Annette Kingsland Ziegler
Justice Ann Walsh Bradley
Justice Rebecca Grassl Bradley
Justice Rebecca Frank Dallet
Justice Brian K. Hagedorn
Justice Jill J. Karofsky
Justice Janet Protasiewicz
Attorney Laura A. Brenner, Chair, Business Court Advisory Committee