

## Appendix A to Petition

# Proposed Interim Rule for Pilot Project for Dedicated Trial Court Dockets for Large Claim Business and Commercial Cases; Assignment and Management of 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 the 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 Court's rulemaking authority under §751.12, 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, CCR.
- d) This Rule is intended to supplement, not supplant, the rules adopted by the Supreme Court of Wisconsin and the Wisconsin Legislature. Should any conflict be deemed to exist between this Rule and the rules or statutes, the 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 by order of the Supreme Court upon the recommendation of the Director of State Courts. The approximate duration of the project will be from July 2017 to July 2020.
- c) Only commercial cases filed on or after the inception date of the pilot project will be considered for this project.
- d) The circuit courts of Waukesha County and the Eighth Judicial Administrative District are hereby designated as the initial locations for the Commercial Court dockets.
- e) 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, 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.** The Commercial Court has jurisdiction over the following 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 Wis. Stat. Chs. 178, 179, 180, 181, 183 & 185 (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 Wis. Stat. Ch. 133; claims under Wis. Stat. §100.30(5m) & (5r); claims under §134.01; 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 Wis. Stat. Ch. 551 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 Wis. Stat. §134.90; 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 Wis. Stat. Ch. 135 or any similar statute from another jurisdiction; claims arising from Wis. Stat. §134.93 or any similar statute from another jurisdiction; claims arising from Wis. Stat. Ch. 553 or any similar statute from another jurisdiction;
- g) Cases involving claims or disputes under Wis. Stat. Ch. 402, 403, 404, 405 and 409 (or any similar statute or law from another jurisdiction) when the

amount in controversy exceeds \$100,000, exclusive of interest, costs, and attorneys fees.

- 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 business organization 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:

  - a) Cases involving small claims under Wis. Stat. Ch. 799;
  - 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.**

  - a) Plaintiff's duties. At the time of the filing of the initial complaint, the plaintiff shall state on the face of the complaint whether the case qualifies for the Commercial Court under section 4.
  - b) Clerk of court duties. In Waukesha County, upon the filing of a business case qualifying for Commercial Court treatment, the clerk of courts of Waukesha shall randomly assign the case to one of the judges designated for the commercial court docket. In the event of a request for substitution, the case shall be transferred to the next Waukesha judge who is assigned to the commercial court docket in Waukesha. In the Eighth District, for cases filed in any county in which a circuit judge in that county has already been assigned a Commercial Court docket, the same procedures shall apply. For cases filed in counties of the Eighth District which have no circuit judges selected for the Commercial Court docket, upon the filing of a qualifying case, the clerk of

court of the affected county shall notify the chief judge of the Eighth District who shall assign one of the Commercial Court docket judges from the other counties in the Eighth District. The chief judge's selection shall be made pursuant to Wis. Stat. §751.03(3). In the event a request for substitution is filed against the judge chosen by the chief judge of the Eighth District, the Chief Judge shall then assign another judge from the Eighth District (who has been appointed for Commercial Court cases) to sit on the case.

- 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 section 7(a) are not met, the circuit court *sua sponte*, or upon a motion filed by the defendant or third party with his or her or its responsive pleading or responsive motion, a judge of a general civil court docket may order the transfer of a case to the Commercial Court docket if that judge determines that the matter meets the mandatory criteria of Section 4.
  - d) On assignment of any matter to the Commercial Court, the matter shall retain the civil action number assigned to it by the clerk of court.
- 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 assigned Commercial Court judge *sua sponte*, or upon motion of any party, may reconsider whether assignment of that case to the Commercial Court docket is appropriate per the requirements of the Section 4. Any party filing a reconsideration motion under this Section 8 must do so not later than 20 days after the case is assigned 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) above, 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 of the circuit court shall process the case, shall be final and non-appealable.
- 9. Processing of Remaining Civil Cases Not Qualifying for the Commercial Court Docket.** Civil cases not falling within the categories for the commercial court docket, or for which a joint motion for discretionary assignment has been denied, shall continue to be processed though the standard assignment and docket of the general civil court.