



January 4 , 2017

Clerk of Supreme Court
Attn: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

RE: Rule Petition 16-05, In re Creation of a Pilot Program for Dedicated Circuit Court Judicial Dockets for Large Claim Business and Commercial Cases

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 270 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. The WBA appreciates the opportunity to submit the following comments regarding Rule Petition 16-05 proposing the establishment of a three-year pilot project to create dedicated trial court judicial dockets for certain business and commercial cases. The WBA believes the establishment of dedicated commercial civil litigation dockets in Wisconsin circuit courts pursuant to the proposed pilot program will demonstrate that dedicated and specialized business and commercial courts are an acceptable structure for more efficient and predictable handling of complex business and commercial litigation in Wisconsin. The WBA believes that a more efficient and predictable resolution of certain business and commercial cases will prove to be in the best interests of all constituents.

The WBA supports the establishment of a three-year pilot project to create dedicated trial court judicial dockets for certain business and commercial cases, subject to the following proposed modifications to the proposed pilot project.

1. Locations of Courts for Pilot Program.

The WBA suggests the addition of Dane County to the proposed selection of Waukesha County and the 8th Judicial Administrative District for purposes of the assignment of business and commercial cases to specialized courts during the three-year project. Dane County is likely to produce a substantial and diverse selection of cases for the pilot commercial court docket and produce results helpful to the establishment of a final rule for judicial dockets for business and commercial cases if that is the final decision of the Court.

2. Cases Involving Business Organizations.

a. The proposed interim rule qualifies certain cases for the commercial case docket, including cases involving governance or internal affairs of "business organizations", cases involving the sale, consolidation or merger of a "business organization" and certain other cases

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involving "business organizations." The proposed interim rule defines a "business organization" to be a sole proprietorship, corporation, partnership, limited liability company, limited partnership, professional association, service corporation, joint venture or business trust. The WBA suggests that the definition of "business organization" in proposed interim rule section 3(a) specifically include banks, savings banks and savings and loan associations. By definition, these financial institutions are not sole proprietorships, corporations, partnerships, limited liability companies, professional associations, service corporations, joint ventures or business trusts. They are a completely different organizational entity organized under certain Wisconsin statutes, including chapters 214 governing savings banks, 215 governing savings and loan associations, 221 governing state banks, 222 governing universal banks and 223 governing trust company banks. The WBA suggests that the definition of "business organization" be broadened to include these additional business entities.

b. The WBA also suggests the list of statutes regarding cases involving the governance or internal affairs of business organizations in proposed interim rule section 4(a) include the additional chapters described above governing state chartered financial institutions. Without these changes it appears that state and federal chartered banks and certain other financial institutions may not have the opportunity to participate in this pilot program for dedicated circuit court judicial dockets committed to litigating certain business and commercial cases.

c. Section 4(a) of the proposed interim rule states that the commercial court will have jurisdiction over "cases involving the governance or internal affairs of business organizations", and specifically includes claims between or among owners, officers, directors or managers of the business organization. The WBA suggests that "employees" be added to this list since the entire section is subject to the qualification that the case involve the governance or internal affairs of the business organization.

In conclusion, the Wisconsin Bankers Association supports the establishment of the proposed pilot program by the Court as described in Rule Petition 16-05, subject to the modifications described above, and accepts the premise that such courts will promote more predictable outcomes and lessen delays in the court system given the expected involvement of judges with more concentrated experience in handling business disputes.

Respectfully submitted,

Rose Oswald Poels
President/CEO

cc: Atty. John A. Rothstein, Chair, Business Court Advisory Committee