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In re Amendment of Pilot Project for Dedicated  
Judicial Dockets for Large Claim Business  
and Commercial Cases

Rules Petition 16-05E

Proposed Amendment to Pilot Project  
And Interim Rule

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The Business Court Advisory Committee (“Committee”) requests the Court approve an amendment to the existing interim rule for commercial court dockets for large claim business and commercial cases currently set out in Interim Rule 16-05D.

Section 2.b. of Interim Rule 16-05D relates that the “approximate duration” of the pilot project. This amendment requests continuation of the Interim Rule to July 31, 2026. It does not request state-wide application at this time.

On July 1, 2017, Wisconsin began to develop dedicated circuit courts for large claim business and commercial cases as a pilot project in Waukesha County Circuit Court and in circuit courts of the Eighth Judicial Administrative District. By amendment to the initial rule, commercial dockets now are operational in the circuit courts of the Second and the Tenth Judicial Administrative Districts. Dane County Circuit Courts were subsequently added to the pilot project in 2020.

The requested extension of Interim Rule 16-05D is consistent with past court practices of extending interim rules that address court administration. For example, the current mandatory efilng began as a Temporary Rule. 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. July 1, 2008). It was extended several times as the court worked through the challenges in starting a program like this one, considering the needs of the court, attorneys, and litigants.

Interim Rule 16-05D applies only to courts that have participated in maintaining commercial dockets. Wisconsin does not have a state-wide requirement for commercial dockets, and this amendment does not request state-wide application.

The Committee plans to provide a detailed report at the conclusion of the Pilot Project. It had planned to do so on or before July 1, 2024, and to request a hearing at that time.<sup>1</sup> But for the reasons set forth below, it respectfully requests a final two-year period for the Project.

There is good cause to permit the Project to continue for at least a final two-year period. The Project is finally at a stage where it is fully developed, but it took time to overcome numerous challenges to get the Project off the ground. First, providing good direction for judges who agreed to handle commercial court cases as part of the Project took time and effort. There were the initial technological challenges, including those related to adopting case coding methods to designate commercial cases, implementing those codes, and providing information about the codes and the Project itself on the Wisconsin Court System website. Then came the surprisingly immense challenge of informing practitioners and litigants about the Project and battling some misperceptions about it. Replacing retiring commercial court judges also took time. Determining methods for collecting data about the Project has also proved to be a difficult but not insurmountable challenge. And last but not least – the impediments posed by COVID-19 and its effect on the entire system, including this Project.

Certainly, not all of those challenges have been met even now. But finally, with lessons learned from experience, many of them have been addressed, all with the aid of this Court, the commercial court judges, thoughtful and hard-working administrators, and a volunteer Committee of judges and lawyers, and without any allocation of funds toward it. Law firms are

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<sup>1</sup> The Committee appears to have misread the report date – the Order No. 16-05D sought a formal rule petition or written report from the Committee on July 1, 2023 – more than a year before the conclusion of the Project term. The Committee apologizes for this oversight and respectfully requests that the Court consider this petition for further amendment, notwithstanding.

finally now using the Project Codes to file commercial court cases. The Wisconsin Court System website provides good information about the Program. Many more practitioners and litigants know about the Project and are open to using it. With the assistance of the Wisconsin State Bar, a multitude of lawyers and judges volunteered to participate in a program concerning commercial court matters, which included discussions about the Project. There have been no complaints from litigants that the Project has had negative effects on other dockets. The only complaints the Committee has received about the actual performance of the Project is from practitioners who would like it expanded to include other types of commercial cases. Indeed, the Project has been expanded to include a few more types of cases, and now include additional jurisdictions in other districts in Wisconsin, the most recent being the Second and Tenth Districts, which were added in 2020.

Approximately twenty-five states maintain commercial dockets of some form (and others have dedicated complex litigation programs encompassing commercial cases). All states that surround Wisconsin have a type of commercial docket. Most have found great success with them. See e.g., *Recent Developments in Business & Corporate Litigation* ch. 2 Business Courts, Business Law Today (ABA Mar. 7, 2024), <https://businesslawtoday.org/2024/03/recent-developments-in-business-courts-2024/>.

More importantly, there is already good evidence that Wisconsin's commercial docket will likewise be successful in serving those who seek access to Wisconsin courts and on the maintenance of commercial dockets as foundational to effective dispute resolution. The State Bar's Business Law Section's Board of Directors has been supportive of the Pilot Project, and appreciative of the Supreme Court's attention in this regard. The Project has been repeatedly reviewed for effective judicial resolution of disputes. The lawyers who have employed Wisconsin's commercial dockets have expressed appreciation for the effective dispute resolution that has been provided.

But much more can be done in a final two-year period. The Committee proposes the following:

- Expansion of the Committee to replace departing members to include new members, especially those from jurisdictions who more recently adopted the program;
- Development of additional ways to gather data about the Project and measure success/failure without cost;
- Solicitation of information directly from judges who are participating in the Program;
- Solicitation of additional information from litigants and lawyers who have participated in the Program;
- Review of other similar commercial court programs in other states;
- Presentation of another CLE Program, which would include not only information about commercial court cases, but also solicitation of opinions about the Project, both good and bad;
- Provision of a final and complete report to this Court on or shortly before the end of the two-year period.

It has admittedly taken longer to establish a functioning commercial court docket than originally anticipated. But due to the substantial investments (all non-monetary) of many people (a number of whom are volunteers), the Project is finally moving ahead well. We have learned from the prior challenges, and still have more to learn. It may be that this Project will lead to a successful and thriving commercial court docket similar to those in other states like Delaware. It may be that the Project will lead to the conclusion that a separate docket is not necessary in order to meet the needs of litigants in Wisconsin. But in either case, based on the investments made to date, and for all of the reasons stated above, a final term for the Project is warranted.

Accordingly, the Committee respectfully requests continuation of the Interim Rule to July 31, 2026, with a final written Report with recommendations about ending the Project or making it permanent from the Committee to be due by July 1, 2026.

The Committee respectfully requests a hearing on this proposed amendment.

Respectfully submitted this 30th day of May, 2024.

A handwritten signature in black ink that reads "Laura A. Brenner". The signature is fluid and cursive, with "Laura" on the top line and "A. Brenner" on the bottom line.

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Laura A. Brenner, Chair, on behalf of the Wisconsin Business Court Advisory Committee