

Clerk of Supreme Court  
Attention: Deputy Clerk-Rules  
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**FILED**

AUG 29 2024

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CLERK OF SUPREME COURT  
OF WISCONSIN

August 29, 2024

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 Wisconsin Supreme Court Justices,

I write in strong opposition to continuing the Pilot Project for Dedicated Trial Court Judicial Dockets for Large Claim Business and Commercial Cases (the “business court”), and in strong support of the points made by others who have questioned the concept behind and premise of a separate court for business and commercial cases, including Judge Niess in his Wisconsin Lawyer essay (Feb. 2022) and Judge Stark in her letter to the Supreme Court several years ago when the separate business court was first proposed.

Among the most prominent comments that resonate with me are the following. First, our judiciary is premised on, strengthened by, and gains its respect in the eyes of the bar and the public from the demonstrated ability of our judges, from the circuit courts to the supreme court, to handle with understanding, common sense, and skill the many different kinds of disputes that parties bring to be resolved. The preferential treatment of business and commercial disputes compromises that respect.

Second, no evidence has been presented showing any deficiency in the handling by the judiciary, at all levels, of any of the many different kinds of cases of varying levels of complexity that come before the courts. In particular, no evidence has been presented that shows the courts, again from the circuit courts to the supreme court, have been deficient in terms of either efficiency or acumen in dealing with business and commercial disputes.

The 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.

Third, a separate business court that prioritizes business and commercial disputes shares no similarity to the various diversion courts that have been developed, based on evidence, to address the debilitating societal and individual effects of mental illness and substance use in the context of criminal conduct. There is no evidence of any societal or individual benefit to prioritizing business and commercial disputes over all other disputes, many if not most of which are no less consequential to the parties involved.

Fourth, the supreme court has crossed over to the legislative lane in deciding which kinds of cases are to be prioritized by the circuit courts. The legislature has itself specified certain kinds of cases that the courts are to prioritize. *See, e.g.*, as to circuit courts:

WIS. STAT. §§ 32.05(5) (providing that a trial in an action to contest the right of condemnation “shall be given precedence over all other actions in [the circuit] court then not on trial”);  
66.0413(1)(g) (providing that a hearing on an action to enforce a raze order “shall be given preference” by the circuit court);  
66.02162(6) (providing that “[a]n action contesting an incorporation [of a town] shall be given preference in the circuit court”);  
66.0217(11)(b) (providing that “[a]n action contesting an annexation shall be given preference in the circuit court”);  
87.16 (requiring that circuit court “give preference to” any action relating to flood control projects);  
157.06(15)(e) (providing that circuit “shall give priority on its docket and expedited review” to an action alleging discrimination regarding use of anatomical gifts);  
767.235(1) (providing that “[c]ustody proceedings have priority in being set for hearing”);  
767.82(7m) (providing that “[t]he court shall give priority to an action under s. 767.80 [determination of paternity]”);  
806.05(1) (requiring that circuit “make a summary examination” of a complaint alleging the distribution of obscene matter).

*See also, e.g.,* as to appellate courts:

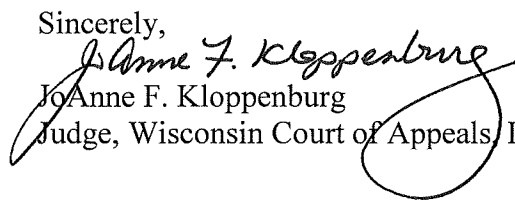
WIS. STAT. §§ 809.104(2)(f)4. and 5. (requiring that court of appeals certify within three days of filing of reply brief in appeal of decisions relating to electronics and information technology manufacturing zone, and that supreme court “give preference to” the certification);  
809.105(8) (requiring that court of appeals decide appeal in proceedings related to parental consent prior to performance of abortion “within 4 calendar days after the appeal has been filed in the court of appeals”);  
809.1076(e) (providing that appeals in proceedings related to termination of parental rights “shall be given preference and shall be taken in an order that ensures that a decision is issued within 30 days after the filling of the appellant’s reply brief”);  
809.107(6)(f) (providing that supreme court “shall give preference to a petition for review of an appeal” related to termination of parental rights).

Notably, in none of these statutes has the legislature designated special courts to address these cases to be prioritized. If the legislature sees fit to direct that the circuit courts are to prioritize business and commercial disputes, or to create special business courts, then such proposed legislation can be fully vetted in the public eye.

Fifth, and returning to the first comment above, the business court pilot project compromises the authority of the court system as a neutral arbiter of all disputes, without fear of or favor to the persons or interests involved. To elevate business and commercial disputes above other cases that may involve less moneyed and powerful interests sends a dangerous message that, regardless of the constitutional, personal, or societal issues at stake, disputes that are not between businesses matter less than those that are. It is important that circuit court judges, who face the full range of legal issues in real time (as well as the appellate judges who review an equally wide range of cases), display to the lawyers, the parties, and the public, that everyone and every dispute matters equally. There is no evidence that circuit court judges have not met this challenge with admirable efficiency and effectiveness.

I appreciate the opportunity to offer these thoughts for the consideration of the good folks who are working on these issues.

Sincerely,

  
JoAnne F. Kloppenburg  
Judge, Wisconsin Court of Appeals, District IV