

**BUSINESS COURT AD HOC COMMITTEE
REPORT PREPARED FOR THE MARCH 8, 2012 COUNCIL MEETING**

1. Next Scheduled Meeting of the Committee

None scheduled/anticipated at this time.

2. Council Approval

Governor Snyder's office has sought the Council's support for a bill to create a business court. See Substitute for House Bill No. 5128, attached.

3. Membership

N/A. See No. 4.

4. Accomplishments Toward Committee Objectives

The Committee was reactivated at the Council's meeting on December 3, 2011 for the principal purpose of assisting the Council in responding to the Governor's request for formal support for HB 5128. The bill, as originally introduced, would have created a state-wide business court by dividing the state into 4 regions, with all commercial litigation being assigned to a business court judge somewhere within each region. Among other things, the Council was concerned that this system would create unnecessary expense and delay for business litigants and asked the Committee Chair to contact the Governor's Director of Legal Affairs, Mike Gadola, to express the Council's general desire to cooperate with the Governor and review the Council's concerns about the bill.

As originally proposed, the bill would have allowed circuits with a business docket (such as Macomb, Kent and Oakland) to opt out of the regional system. As a practical matter, the larger, urban areas would therefore probably not be part of the state-wide business court. After the Dec. 3 Council meeting, Chair Diane Akers and Committee members Doug Toering and Matt Allen contacted various practitioners in outstate and UP areas to get their views on HB 5128 to assist in evaluating the impact of the bill on those most likely to practice in courts that would not opt out.

Mr. Gadola was very receptive to the Council's views. On January 19, 2012, he met with the bill's primary sponsor, Rep. John Walsh, Committee Chair Diane Akers, Supreme Court Administrator Chad Schmucker, Supreme Court Counsel Matt Schneider and SBM Executive Director Janet Welch to review the bill. Messrs. Gadola, Schneider and Schmucker proposed eliminating the regional concept and, instead, requiring each circuit of some determined size to establish

a business docket. This would eliminate entirely the Council's concerns about expense and delay associated with the initial bill.

On March 2, 2012, Mr. Gadola provided Draft 2, Substitute for HB 5128, attached. In general, the bill requires every circuit with 3 or more judges to have a business docket and to submit a plan for the operation of the business docket to SCAO and the Supreme Court for approval as part of its concurrent jurisdiction plan. § 1086(1). The bill does not address the content of the plan, so each circuit will design its own.

Cases must be assigned to the business court "if all or part of the action includes a business or commercial dispute", as defined in the bill. § 1087(3). Generally, those are cases between business entities involving IT, internal organization, contracts, commercial transactions, business insurance and commercial property. They exclude personal injury, product liability, family, probate, EPIC, criminal, condemnation, administrative and district court appeals, proceedings to enforce judgments, residential real estate, auto insurance (except between insurers), consumer insurance coverage, employment discrimination, civil rights, "collections of less than \$100,000," and wrongful discharge (except officers and directors). § 1085. A general civil case can be reassigned to the business court if a business claim is raised in a cross-claim, third party claim, counterclaim, amendment, etc. § 1087(6).

If a case ceases to include a business dispute, the business judge has discretion whether to have it reassigned. § 1087(5).

Fees are the same as for other circuit court actions. § 1092.

Aside from the definition of business or commercial dispute and the exclusion for "collections of less than \$100,000" (§ 1085(3)(P)), jurisdiction and venue are the same as for other circuit court actions. §§ 1087(1),(2).

To summarize the effect of this bill:

A. Most circuits in the state will have a business court of some kind, although each design will be local. Only circuits with 1 or 2 judges are not required to have a business court.

B. Jurisdiction of the business courts will be uniform state-wide. Currently, the circuits with business dockets define business cases differently.

5. Meetings and Programs

None scheduled.

6. Publications

N/A.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action

The Committee recommends that the Council support HB 5128, as revised, with one caveat. The Committee Chair is attempting to reach Mr. Gadola before the Council meeting to understand further the exclusion in § 1085(3)(P).

The Committee will continue to work with Mr. Gadola, who expects this bill to be presented for the Governor's signature by the fall of 2012.

8. Miscellaneous

Respectfully Submitted,

Diane L. Akers, Chair
Business Court Ad Hoc Committee
Bodman PLC
1901 St. Antoine St.
6th Floor at Ford Field
Detroit, Michigan 48243
dakers@bodmanlaw.com
313.393.7516

March 5, 2012