

BUSINESS COURT AD HOC COMMITTEE
REPORT PREPARED FOR THE DECEMBER 1, 2012 COUNCIL MEETING

1. 2012-2013 Budget Request and Anticipated Use of Funds.

No budget request.

2. Use of Budgeted Funds During 2011-2012.

None.

3. Next Scheduled Meeting of the Committee.

No meetings scheduled.

4. Council Approval.

None.

5. Membership.

None.

6. Accomplishments Toward Committee Objectives.

The Business Court Ad Hoc Committee was reactivated at the Council's December 2011 meeting for the purpose of assisting the Council in responding to a request from Governor Snyder's office that the Council formally support a draft bill creating a statewide business court. The Council reviewed the draft in some detail and authorized Ad Hoc Committee Chair Diane Akers to convey certain concerns about the draft bill, as it existed at the time, and work with the governor's office and the legislature to address those concerns.

The Committee worked closely with governor's office to develop a revised bill, which the Council unanimously voted to support. The Council followed the bill closely as it made its way through the House and Senate, where it received overwhelming support. On October 16, 2012, Governor Snyder signed 2012 PA 333. <http://www.legislature.mi.gov/documents/2011-2012/publicact/pdf/2012-PA-0333.pdf>.

Under the new act, all circuits with 3 or more judges (there are 17, all in the Lower Peninsula) must have a special business docket. Any case that has a business or commercial dispute as defined in the act, whether in the initial pleading or added later, must be placed on the business docket, even if the case also contains non-business claims. The general \$25,000 circuit court jurisdictional minimum and ordinary venue provisions apply. The Supreme Court

will appoint the business court judges, whose terms will last for 6 years ending in 2019. The Supreme Court Administrative Office (SCAO) will set minimum standards for the business dockets.

Ultimately, of course, neither the legislative nor executive branch can tell the judicial branch how to run its operation. The business court statute is, perhaps necessarily, vague about exactly what it means to be placed on a business docket, what a business court judge is going to do, what will be the qualifications for business court judge, and other fundamental issues. All of that is left to the Supreme Court, SCAO and individual circuit courts to decide and implement.

This lack of specificity has benefits because circuits can tailor their programs to their local circumstances. However, it is a very long road between this sort of legislative outline or skeleton and 17 (or more) fully populated and functioning business dockets. Other states have enacted legislation calling for creation of business courts which has not led to operational change.

In Michigan, the Supreme Court appears to have made fully and quickly implementing business dockets a high priority. SCAO expects that all 17 business courts will be accepting cases by July 1, 2013. <http://www.courts.michigan.gov/Administration/SCAO/Documents/General-Administrative/BusinessCourts.pdf>. Because of their caseloads, Wayne and Oakland Circuits may have more than one business court judge. For other circuits, the business docket will not be a full time assignment. SCAO has asked the circuits to consider judges' "expertise and interest in business law" in making recommendations for assignment to the business docket.

SCAO will be publishing model forms and a model business docket plan, which circuits can use in designing their business dockets. SCAO has been working with the business court judges from Kent and Macomb and it is likely that the model SCAO proposes will follow the Kent/Macomb approach, which was based on the recommendations of the Judicial Crossroads Task Force Business Impact Committee.

Judges Foster and Yates, the business court judges from Macomb and Kent, respectively, frequently make presentations on business courts around the state and will likely be involved in training newly appointed business court judges. They post opinions and business court statistics on their court web sites and are energetic educators.

So, the mandate for statewide business dockets is in place through the legislation. It is being infused with urgency, specificity and practicality by the Supreme Court. Judges Foster and Yates and presumably others in the future are bringing experience and momentum. This new legislation is being very quickly implemented and institutionalized.

7. Meetings and Programs.

None.

8. Publications.

None.

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

Further legislative developments are not anticipated at this time. The Committee Chair recommends that the Council explore additional ways of monitoring developments as the business dockets are developed and implemented.

10. Miscellaneous.

Respectfully Submitted,

Diane L. Akers, Chair
Bodman PLC
November 19, 2012