



## JUDICIAL CROSSROADS TASK FORCE BUSINESS IMPACT COMMITTEE

### Findings:

- There is a perception among businesses and many judges and business litigators that Michigan's current court system thwarts the timely, cost-effective, and proper resolution of legal disputes. 81% of in-house counsel and commercial litigators surveyed for the committee believe that our court system is average or worse compared to other state court systems.
- A business court format of some sort has been adopted by 17 states, and the business court model in general has proven to be a durable and successful in practice.
- Most states, including Michigan, have not comprehensively addressed the full potential for promoting national and international business development within their jurisdictions through modernization and streamlining of their attorney licensing rules. The red tape for licensure needs to be reduced to allow easier entry for out-of-state and out-of-country attorneys with significant experience who are seeking to practice law in Michigan on behalf of their business employers.

### Recommendations:

#### Business Court

- Establish pilot business dockets in Wayne and Oakland Circuit Courts, and in any other circuits at the Supreme Court's discretion, with the following characteristics:
  - 2-3 judges assigned to each business docket
  - Three year initial pilot
  - Evaluation based on number of cases and time of resolution compared to the general civil division
  - Surveys of satisfaction of litigants, counsel, and judges 
  - Oversight body appointed from members of bench and bar to prepare written protocols for evaluation and present annual written report of progress.
- Minority position: create a standalone business court, piloted initially in 3-5 circuits.
- SCAO to provide case type codes for cases eligible for assignment as finely drawn as possible to accommodate the need for useful statistical analysis 
- Assignment by lot to a business docket judge
- Plaintiff chooses business court case code to begin eligibility process. Defendant either confirms in answer, or, eligibility issue is jurisdictional.
- Initial status conference determines suitability for business court resolution.
- Either party could file motion for removal from business docket asserting noneligibility.
- Cases would either be categorically eligible by virtue of subject matter (categorically assigned) or because the parties have agreed (assigned by agreement). No other cases would be eligible. Categorical assignment subject matter includes:
  - Business governance/internal affairs, including shareholder derivative and oppression suits.
  - Business torts (with business plaintiff and business defendants).
  - Antitrust law
  - Intellectual property.
  - Trade secrets between businesses.
  - Securities laws.
  - Commercial real estate cases between businesses.

- Business-to-business disputes (including contracts, construction disputes, and employment matters).
- State tax commission appeals.
- Environmental law (with business plaintiff or business defendant).
- Environmental insurance.
- Assignment by agreement subject matter includes:
  - Collection of professional fees.
  - Commercial insurance indemnification claims.
  - Malpractice claims brought by businesses against attorneys, accountants, architects, or other nonmedical professionals.
  - Commercial insurance coverage disputes.
  - Commercial insurance declaratory judgments.
  - Employment law matters, including employer/employee noncompetition, nondisclosure, nonsolicitation agreements, discrimination claims, and wrongful termination.
  - Nonviolent business-related felony matters on petition of either party.
  - Individual business owner versus non individual-owned business.
- Pilot business docket judges selected by Michigan Supreme Court from among current judges willing to serve. The number selected should be small enough to ensure predictability and uniformity but large enough to allow assignment by lot.
- Criteria for selection should include level of interest, case management skills, and knowledge and expertise in business issues.
- The chief judge of a pilot business docket circuit court should be given the authority to reassign cases to correct docket control issues caused by the pilot, to ensure all judges in the circuit have fair share of the caseload. 📄
- Pilot business docket judges should have discretion to tailor procedures to each case. The committee suggests a number of procedural mechanisms to expedite the business docket, including initial pretrial disclosures, joint pretrial reports, initial court conference, detailed case management plans, electronic filing and remote participation.
- No change in jury trial rights or appellate rights.
- Fees and costs same as other civil cases.

### **Rules for Licensing Attorneys From Other States and Countries**

- Allow attorneys licensed to practice law in Michigan under a special certificate to change employers without significant additional paperwork. Implementation must also facilitate the issuance of special certificates to non-Michigan attorneys who transfer to Michigan to hold in-house positions, while preserving the character and fitness verification necessary. Alternatively, and more dramatically, broadly open admission to the Bar to any lawyer working in Michigan for a corporation, provided the lawyer is already properly licensed in any other state of the United States and so long as the lawyer's practice is limited to work as an attorney on behalf of his or her employer. There could also be consideration of a requirement that the attorney and the attorney's employer maintain an appropriate level of liability insurance. 📄
- Streamline the "special legal consultant" process and create a pro hac vice rule for lawyers licensed in countries other than the United States who are working for firms doing business in Michigan. 📄

Technology 