

**STATE BAR OF MICHIGAN  
BUSINESS LAW SECTION**

**BUSINESS COURT AD HOC COMMITTEE  
June 2002**

**BUSINESS COURT FAQs**

The Business Court Ad Hoc Committee (“Committee”) is presently exploring the possibility of establishing some form of business court in Michigan. Following are some frequently asked questions about a possible business court:

**1. Why do we need a business court?** Business courts generally provide a number of advantages for businesses involved in litigation: (a) assignment of business cases to judges with particular interest and expertise in business litigation to enhance the consistency, predictability and accuracy of decisions on business law issues; (b) some form of publication of at least some business court opinions to assist parties in determining how various principles of business law may be applied to specific issues in their cases; (c) early, pro-active case management; (d) early exploration of various forms of business-oriented ADR; (e) use of technology to enhance efficiency. States with business courts report that assigning business cases to business court judges also promotes more efficient resolution of all cases because it alleviates the sometimes significant burdens large, commercial cases can create for circuit or other trial court judges. Those states also report that they have successfully used the existence of a business court to help persuade businesses to locate and/or remain in those states.

**2. Which states have business courts?** Most of the major industrial states have a business court or are presently considering whether to establish one. States that now have some form of a business court include California, Delaware, Illinois, Maryland, Massachusetts, Nevada, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island and Wisconsin. States now considering whether to establish a business court include Arizona, Colorado, Georgia, Maine, Ohio and Minnesota.

**3. How would a business court relate to the new Cyber Court?** If all parties agree, litigants will soon be able to elect to have business and commercial litigation resolved in the new Cyber Court, which will focus on filing and serving court papers electronically as well as conducting all conferences, hearings and other proceedings electronically. A business court would allow business litigants to have their cases decided by judges who focus on business and commercial litigation without imposing the requirements of the Cyber Court statute, thereby allowing the court and the parties to make selective use of technology as they deem appropriate for the case while preserving their ability to use more traditional forms of court proceedings, conferences, hearings and filings. Business courts also frequently focus on some features that are not part of the Cyber Court statute, including the publication of written decisions on business issues and very early, pro-active case management. The Committee has been working with legislators and others involved in the Cyber Court initiative to ensure that a business court and the Cyber Court would complement each other and would not be redundant.

**4. Would a business court divert resources away from other areas of the court system?**

Generally, no. Business courts focus on assigning business cases to business court judges, which involves reallocation of case loads. Business courts do not generally require new or additional resources. Some jurisdictions, particularly those that require business court judges to publish written opinions, provide business court judges with additional help from law clerks to assist with the increased work load.

**5. Would a business court require new legislation?** Not necessarily. While some business courts in other states have been established by legislation, it is more common for courts to assign business cases to business court judges utilizing the existing administrative power of chief judges, court administrators or other similar individuals. The Committee is exploring this issue with circuit courts that have a significant amount of business litigation and others to determine whether one or more circuit courts would be interested in establishing a pilot business court division or docket.

**6. What other features would a Michigan business court have?** No decisions have been made yet. The Committee is exploring with various constituencies what would best meet the needs of businesses in Michigan. Questions include how to define a business or commercial case; whether a business court should be established legislatively or through administrative assignment; whether a business court would preserve the right to a jury trial; whether business court judges should be encouraged or compelled to issue written opinions and, if so, on what matters; how the Michigan Court Rules would apply to cases in a business court; whether assignment to a business court would be voluntary and, if not, who would make that decision based on what criteria. The Committee encourages people to raise additional issues of concern to them and welcomes input on a possible business court in Michigan.

**7. How can I get more involved with the business court project?** If you would like to become more involved in the business court project, contact Committee Chairman Diane L. Akers at Bodman, Longley & Dahling LLP, 100 Renaissance Center, 34th Floor, Detroit, Michigan 48243, 313-259-7777, dakers@bodmanlongley.com, or Committee Administrator Thomas P. Bruetsch at Bodman, Longley & Dahling LLP, 100 Renaissance Center, 34th Floor, Detroit, Michigan 48243, 313-259-7777, tbruetsch@bodmanlongley.com.