

Effective December 26, 2016

PLAN FOR THE CREATION OF A SPECIALIZED BUSINESS COURT

IT IS ORDERED:

This local administrative order is issued in accordance with MCL 600.8031 *et seq.* It establishes a plan for a specialized business court in the Washtenaw County Trial Court (“WBC”) for the purposes outlined in MCL 600.8033(3). The WBC has jurisdiction over business and commercial disputes as defined in MCL 600.8031(1)(c) in which the amount in controversy exceeds \$25,000. This LAO replaces and rescinds LAO 2013-01J

1. Judicial Resources/Services:

Judge Archie C. Brown has been appointed by the Michigan Supreme Court as a WBC judge. His term expires April 1, 2019. Judge Carol Kuhnke will serve as the back-up WBC Judge

2. Cases Eligible for Assignment to the Business Court:

- a. Cases eligible to be assigned to the WBC are identified in MCL 600.8031(2). They are defined as business or commercial disputes, and include any of the following:
 - i. Cases in which all of the parties are business enterprises.
 - ii. Cases in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.
 - iii. Cases in which one of the parties is a nonprofit organization and the claims arise out of that party’s organizational structure, governance, or finances.
 - iv. Cases involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.
- b. Business or commercial disputes also include, but are not limited to, the following types of cases:
 - i. Cases involving information technology, software, or website development, maintenance, or hosting.

- ii. Cases involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
 - iii. Cases arising out of contractual agreements or other business dealings, including licensing, trade secret, intellectual property, antitrust, securities, noncompete, nonsolicitation, and confidentiality agreements if all available administrative remedies are completely exhausted, including, but not limited to, alternative dispute resolution processes prescribed in the agreements.
 - iv. Cases arising out of commercial transactions, including commercial bank transactions.
 - v. Cases arising out of business or commercial insurance policies.
 - vi. Cases involving commercial real property.
- c. Discretionary Eligibility Criteria. Any case not statutorily eligible to be assigned to the WBC but that substantially complies with the eligibility criteria and for which good cause exists shall be assigned to the WBC (for example, a highly complex commercial case otherwise eligible for the WBC involving requests for injunctive relief/specific performance).

3. Judicial Review of Pleadings:

A judge assigned to the WBC shall review all pleadings that identify a case as a Business Court Case. Cases that are excluded by MCL 600.8031(3) may be assigned to the WBC if the assigned judge determines that it meets the statutory requirements of MCL 600.8035(3). Upon motion of a party, the chief judge of the judicial circuit may review assignments under MCL 600.8035(7) to the WBC docket. The ruling of the chief judge under this section is not appealable

- a. When a case is filed:
 - i. Pleadings shall clearly identify on the first page that a case is to be designated as a Business Court case in accordance with MCR 2.112 (o).
 - ii. Responsive Pleading. If the WBC Case designation is not set forth on the complaint, and any other party filing a responsive pleading (including answers, counterclaims, cross-claims, and answers thereto, and summary dispositions in lieu of the same) believes the case meets the eligibility criteria, such party shall file a responsive pleading that clearly identifies the case as a Business Court Case on the first page of the pleading. .
 - iii. Judicial. A Civil Division judge may determine that a case, meeting the eligibility criteria set forth above is eligible for assignment to the WBC.
- b. Mechanisms of Assignment to the WBC. WBC cases identified as eligible for assignment to the WBC shall be assigned to the WBC by the following methods:

- i. Motion. A Civil Division judge may refer a case to the WBC upon a motion made and heard by any party in the matter within 21 days of the first responsive pleading.
 - ii. Stipulation. A Civil Division judge shall refer an eligible case to the WBC upon the stipulation of the parties within 21 days of the first responsive pleading.
 - iii. Judicial. A Civil Division judge may refer a case from the Civil Docket to the WBC following a status/pretrial conference or after notifying the parties that the case will be assigned to the WBC, unless any party objects within 14 days of service of the notice (in the event of an objection, the Court may assign the case to the WBC following a hearing on the objection).
- c. Mechanisms for Removal from the WBC.
- i. Motion by Parties. A WBC judge may remove a case from the WBC to the Civil Docket following a hearing on a motion filed by a party on the ground that the case does not meet the eligibility criteria.
 - ii. Order to Show Cause by Court. A WBC judge may remove a case from the WBC to the Civil Docket following a hearing on an order to show cause issued by the court on why a case should not be removed from the WBC to the Civil Docket on the ground that the case does not meet the eligibility criteria.

4. **Case Assignment to Judges in the Business Court**

- a. Cases shall be assigned to a WBC judge pursuant to the court's local case assignment administrative order.
- b. A case assigned to a WBC judge may be reassigned by blind draw to another judge if the action ceases to include a business or commercial dispute.
- c. A case that does not initially include a business or commercial dispute but that subsequently includes a business or commercial dispute as a result of a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action, shall be reassigned to a WBC judge.

5. **Docket Management:**

In lieu of a standard Civil Division scheduling order, when a case is assigned to the WBC, the Court will issue a WBC scheduling order pursuant to MCR 2.401(B)(2). The WBC scheduling order may contain requirements in the following areas:

- a. Initial Pretrial Disclosures are due at the initial Court Conference, and shall include:
 - i. The name and, if known, address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its

claims or defenses, unless the use would be solely for impeachment. Such disclosure shall include a general description of the subject of that information.

- ii. A copy, or description by category and location, of all documents, electronically stored information and tangible things reasonably known that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
 - iii. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under MCR 2.310 the documents or other evidentiary material on which each computation is based, unless privileged or protected from disclosure, including materials bearing on the nature and extent of damages suffered.
 - iv. Any insurance agreement, for inspection and copying under MCR 2.310, under which an insurer may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
 - v. Issues that the disclosing party believes are likely to be resolved by motion.
 - vi. Issues that the disclosing party believes are presently ready for resolution.
 - vii. A list of citations to case law that the disclosing party believes represents the most significant cases relevant to the resolution of each issue in the case.
 - viii. Prior decisions from WBC or other business courts cases applicable to the instant case.
- b. Initial Court Conference, including:
- i. The WBC shall order the parties to complete an initial facilitation through ADR in the form and type as set forth by the court within 90 days of the Initial Court Conference.
 - ii. Issues ready for resolution by the Court.
 - iii. Schedule for the litigation up to the Trial Scheduling Conference.
 - iv. Discovery issues and necessity for any protective orders (involving matters such as discovery, confidential information, etc.)
 - v. Counsel shall report to the Court regarding progress on resolving or litigating the case by the Trial Scheduling Conference.
 - vi. Discuss expedited motion hearing time (which the court may order on its own initiative pursuant to MCR 2.119).

- vii. Use of technology, service by email, and motion hearings and court conferences via conference call or video conference.
 - viii. Prior WBC or other business court decisions relevant to this instant case.
 - ix. For a pro per litigant, discussion with the litigant regarding his/her ability to proceed on the WBC unrepresented by counsel.
- c. Case Management Plan. Following the Pre-Trial Conference, the WBC judge shall prepare a final scheduling order based on the Pre-Trial Conference discussions. The plan will include requirements for interim pretrial reports by counsel and status conferences with the Court if appropriate.
- d. Trial Scheduling Conference. If the parties do not resolve the case through facilitation, then approximately ninety (90) days after the Initial Court Conference, the WBC will hold a Trial Scheduling Conference (“Scheduling Conference”. The Scheduling Conference shall be attended by counsel or a party without counsel (attendance of the parties represented by counsel is optional) to address the following matters:
- i. Witness and Expert Witness lists exchange date
 - ii. Discovery cut-off dates
 - iii. Non-dispositive Motion cut –off date
 - iv. Dispositive Motion cut-off date
 - v. Case Evaluation date: On stipulation of the parties and entry of a corresponding court order pursuant to MCR 2.403(H), the matter may be referred to a Business Court Case Evaluation Panel with an extended duration and concomitant increased fee of \$500.
 - vi. Final Settlement Conference date
 - vii. Trial Date
 - viii: Technology issues with trial
- e. Case Progress. Unless otherwise ordered by the Court, the requirements and preparation of the parties in connection with the Initial Pretrial Disclosures, Joint Pretrial Report, Initial Court Conference, and Case Management Plan shall not stay, extend, or adjourn the progress of the case, including, but not limited to, discovery and motion practice.

6. **Technology:**

The court requires that all counsel, including their clients, subject to the WBC have the ability and technological capabilities to appear for court conferences and participate in teleconferences or videoconferences with the court.

7. **Opinions:**

All opinions shall be e-mailed to the State Court Administrative Office for publication on an indexed website.

8. **Local Administrative Staff:**

The court has provided the State Court Administrative Office with the name of a local staff person who has been designated as the primary contact for the WBC.

Date:

12/14/16



Honorable David S Swartz
Chief Judge
Washtenaw County Trial Court