

SUPREME COURT OF WISCONSIN

No. 16-05E

**In the matter of Creation of a Pilot Project
for Dedicated Trial Court Judicial Dockets for
Large Claim Business and Commercial Cases**

FILED

JULY 11, 2025

Samuel A. Christensen
Clerk of Supreme Court
Madison, WI

In the fall of 2016, then-Chief Justice Patience Drake Roggensack established the Business Court Advisory Committee ("Committee") to explore commercial court dockets in Wisconsin. On October 26, 2016, the Committee filed Rule Petition 16-05 requesting authorization for a three-year pilot project to create dedicated trial court judicial dockets for large claim business and commercial cases in Waukesha County and in the circuit courts of the Eighth Judicial Administrative District ("pilot project" or "commercial court docket").

The court discussed the petition at an open rules conference on November 7, 2016, and voted to approve the pilot project by a vote of 5-2 (then-Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley opposed, preferring to defer a decision until after a public hearing). The court also voted to solicit written comments and to hold a public hearing to obtain additional input regarding the pilot project. On December 19, 2016, a letter was sent to interested persons seeking input, and the court received several comments. The court held a public hearing on February 16, 2017. Following the public hearing, this court

again voted to approve the pilot project and issued S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017; eff. July 1, 2017), which formally created the requested pilot project, subject to certain amendments, and adopted related interim rules governing the project. The initial pilot project ran from July 2017 to July 2020. Id.

The pilot project was thereafter expanded to additional circuit courts and extended for an additional two years, until July 2022, and the interim rules were amended. See S. Ct. Order 16-05A (Feb. 12, 2020) (extending and expanding pilot project to the Second and Tenth Judicial Administrative Districts following the Committee's filing of Rule Petition 16-05A); S. Ct. Order 16-05B (Feb. 20, 2020) (extending pilot project to Third Judicial Administrative District); and S. Ct. Order 16-05C (Mar. 13, 2020) (adding Dane County and Iron County to the pilot project). On February 11, 2022, the Committee filed Rule Petition 16-05D, seeking an amendment to the interim rules to extend the pilot project by an additional two years. On June 29, 2022, after soliciting and receiving additional public comments, this court further extended the duration of the pilot project until July 30, 2024, and further amended the interim rules. S. Ct. Order 16-05D (June 29, 2022). No additional public hearings were held prior to any of these extension orders.

This court's June 29, 2022 Order directed that "on or before July 1, 2023, the Committee shall either file a formal rule petition asking the court to amend the rules to adopt a permanent business court or shall advise the court in writing that it recommends the court permit the pilot project to expire." Id. at 3. That Order also provided that "[t]he pilot project will begin and end as authorized by order of the

Supreme Court." Id. The Committee did not file a rule petition asking the court to amend the rules to adopt a permanent business court or to extend the pilot project by the July 1, 2023 deadline set by S. Ct. Order 16-05D.

On May 30, 2024, the Committee filed Rule Petition 16-05E, seeking an amendment to the interim rules governing the pilot project to extend the pilot project until July 1, 2026. On June 17, 2024, this court voted to solicit public comments concerning Rule Petition 16-05E and schedule the matter for a public hearing. On June 19, 2024, this court entered an order temporarily extending the pilot project "pending this court's disposition of Rule Petition 16-05E."

A letter soliciting comments from interested persons was sent on June 20, 2024. The court received comments from the following: Judge JoAnne F. Kloppenburg; Judge Richard G. Niess (ret.) and Judge John W. Markson (ret.); Judge Rhonda Lanford and Judge Stephen Ehlke; Judge Brian W. Blanchard; Attorney Paul G. Swanson, Swanson Sweet, LLP, et al.; Attorney Evan Umpir on behalf of Wisconsin Manufacturers and Commerce (WMC); Attorney Skylar Croy on behalf of the Wisconsin Institute for Law and Liberty (WILL); and Judge Lisa K. Stark.

On August 16, 2024, the court issued an order for a public hearing. The court held a public hearing on September 24, 2024. The petition was presented by Attorney Laura A. Brenner, Chair of the Wisconsin Business Court Advisory Committee and Attorney Nora E. Gierke of Gierke Law LLC, member of the Business Court Advisory Committee. The following individuals spoke in favor of the petition: Judge James Morrison; Attorney Paul G. Swanson; Attorney Skylar Croy, on behalf of WILL; and Attorney Matthew O'Neill of Fox, O'Neill & Shannon, S.C. The

following individuals spoke in opposition to the petition: Judge Richard G. Niess (ret.) and Judge Lisa Stark.

Following the public hearing, the court met in open administrative conference and voted 4-3 (then-Chief Justice Annette Kingsland Ziegler, Justice Rebecca Grassl Bradley, and Justice Brian Hagedorn dissenting) to deny the petition and terminate the pilot project. The court also voted to issue an interim order halting future assignment of cases to the pilot project pending issuance of a final order disposing of the petition. See S. Ct. Order 16-05E (Oct. 7, 2024).

Therefore,

IT IS ORDERED that the petition is denied;

IT IS FURTHER ORDERED that the pilot project and associated interim rules shall terminate effective the date of this order;

IT IS FURTHER ORDERED that notwithstanding the previous paragraph, any case currently assigned to the commercial court docket shall continue under the assigned judge and the existing interim rules until concluded; and

IT IS FURTHER ORDERED that this order shall be made available to the public on the Wisconsin court system's website. The State Bar of Wisconsin shall provide notice of this order.

Justice BRIAN HAGEDORN dissents.

Samuel A. Christensen
Clerk of Supreme Court

¶1 ANNETTE KINGSLAND ZIEGLER, J. (*dissenting*). A majority of this court has decided that the business court pilot project must be dismissed. The business court pilot project has been a feature of the Wisconsin court system for seven years. While business courts have not been implemented statewide, our court has repeatedly reaffirmed that this pilot project is worthy of continuation and exploration. This project does not impose additional expense as it utilizes already existing civil court dockets. In no way does it detract from criminal case processing. In fact, business court dockets exist in about 30 other states, including those surrounding Wisconsin.¹ Wisconsin, usually proud of being on the forefront of innovative programs, is now an outlier in dismissing the business court docket pilot project.

¶2 During the 2016 Annual Meeting of the Judicial Conference, then-Chief Justice Patience Drake Roggensack announced the proposed creation of a business court docket pilot project as one of her principal initiatives as chief justice, noting that "[b]usiness court dockets are employed in many states," and that

¹ It is worth noting that business court dockets exist in about 30 states, including every state bordering Wisconsin. The business court pilot "emulates similar processes" established in these other states and provides an efficient and consistent manner of resolving business disputes. See Paul G. Swanson, Far from being "shadowy," Wisconsin's business court is dispensing justice, serving the public, Milwaukee Journal Sentinel (Apr. 15, 2022), <https://www.jsonline.com/story/opinion/2022/04/15/wisconsin-business-court-dispensing-justice-serving-public/7316571001/>.

it was her hope that "such a docket [would] result in efficient resolutions of complex business-related controversies[.]"²

¶3 In 2017, upon the rule petition of the Business Court Advisory Committee ("Committee"), this court approved the rule which created the pilot project for dedicated trial court judicial dockets for large claim business and commercial cases in Waukesha County and the Eighth Judicial Administrative District ("pilot project"). S. Ct. Order 16-05, 2017 WI 33 (issued Apr. 11, 2017, eff. July 1, 2017). Thereafter, this court extended the pilot project multiple times, both in scope and duration.³ All of this occurred in compliance with the court's practices and procedures that were in place at the time.

¶4 Today, four members of this court terminate the pilot project even though the project has proven worthwhile and is the result of significant time and effort of the Committee members (all of whom volunteered their time and energy), as well as those involved in the project's development and implementation. The majority does this without any regard to the fact that former Chief Justice Roggensack viewed this initiative as of utmost importance. The majority, without scrutinizing the assertions made against the

² <https://www.wicourts.gov/news/thirdbranch/docs/fall16.pdf>, at 3.

³ See S. Ct. Order 16-05A (issued Feb. 12, 2020, eff. Feb. 12, 2020) (extending and expanding pilot project to the Second and Tenth Judicial Administrative Districts); S. Ct. Order 16-05B (issued Feb. 22, 2020, eff. Feb. 22, 2020) (extending pilot project to Third Judicial Administrative District); and S. Ct. Order 16-05C (issued Mar. 13, 2020, eff. Mar. 13, 2020) (adding Dane County and Iron County to the pilot project).

pilot project, uncritically echoes misinformation regardless of the fact that many view it as a worthwhile project. The majority also seems to misunderstand how pilot projects actually work because it is the pilot which does the vetting. And, when it comes to "process," this pilot project had a far more formal inception than most, as it started with a formal rule petition.

¶5 Nonetheless, at the court's open conference after the public hearing on September 24, 2024, then-Justice Jill Karofsky stated that a reason she was voting to dismiss the pilot project was that the project was created by a practice or procedure that had not been usually followed by the court. She said the process for the project was "defective" because there was a "failure to vet the project." Justices Ann Walsh Bradley, Dallet, and Protasiewicz agreed with those statements.⁴

¶6 I agree that process is important. However, these four justices embrace process when it is convenient and disregard process when it is not. For example, in early August 2023, virtually the moment they garnered their new majority, the same four justices upended over 40 years of process and precedent when they met in secret, without notice, and behind closed doors—even before the 2023-24 term began—and made changes that toppled the long-recognized administrative practices and procedures relating

⁴ Open Conference for Rule Petition 16-05E (Sept. 14, 2024) <https://wiseye.org/2024/09/24/wisconsin-supreme-court-open-administrative-rules-conference/>.

to the constitutional role of the chief justice.⁵ See, e.g., Press Release, Chief Justice Annette Kingsland Ziegler (Aug. 4, 2023), <https://www.wispolitics.com/wp-content/uploads/2023/08/230804SCOWIS.pdf>; see also, Clarke v. WEC, 2023 WI 79, ¶¶78-103, 410 Wis. 2d 1, 998 N.W.2d 370 (Ziegler, C.J., dissenting). These sweeping changes to the court's internal operating procedures (IOPs) and supreme court rules (SCRs) invented an "administrative committee," to supplant the constitutional power of the chief justice. The new procedures and rules actually replaced the words "chief justice" with "administrative committee." In other words, the new majority used a wrecking ball to crush any potential process and procedure that might get in its way. The "court of four," unlike any majority in history, ensured that it would completely control what had always been understood as the constitutional authority of the chief justice. So much for "process" or the long-recognized constitutional role of the chief justice, which for decades had been known and untouched regardless of who held the position of chief justice or which justices were in the court's majority.

⁵ For over four decades many different majorities and chief justices all agreed upon and left undisturbed the language in this court's administrative practices and procedures that recognizes the constitutional role of the chief justice. During these 40-plus years, there were five chief justices: Chief Justice Nathan S. Heffernan (1983-1995); Chief Justice Roland B. Day (1995-1996); Chief Justice Shirley S. Abrahamson (1996-2015); Chief Justice Patience Drake Roggensack (2015-2021); and Chief Justice Annette Kingsland Ziegler (2021-2025).

¶7 More recently, after my term as chief justice concluded, a majority of the court elected not one, but two chief justices to serve the next two-year chief justice term which began on May 1, 2025. They did so even though one of the two justices could not possibly serve two years as her judicial term concludes July 31, 2025.⁶ Almost immediately after that vote, the court switched gears again. The "administrative committee" dispensed with holding weekly meetings. And, very recently—again hidden behind closed doors and without notice—the nearly two-year-old changes to our administrative practices and procedures relating to the constitutional role of the chief justice were undone. The public will not know what occurred behind closed doors for this about-face to take place. So much for transparency. Regardless of process and just in time for a new chief justice, the court has now reverted to the original practices and procedures that had been in place for over four decades. How convenient. So much for process, practice, or procedure. The exercise of sheer will to undo the constitutional role of the chief justice, when convenient, and reinstate it, when opportune, exemplifies just one more power grab and complete disregard for process.

¶8 Now I turn more specifically to the general process and practice of pilot projects. Unlike the business court docket,

⁶ Jessie Opoien & Tamia Fowlkes, Who are the Wisconsin Supreme Court justices? Susan Crawford will replace retiring Ann Walsh Bradley, Milwaukee J. Sentinel (Apr. 2, 2025), <https://www.jsonline.com/story/news/politics/elections/2025/04/02/who-are-the-wisconsin-supreme-court-justices-susan-crawford/82769893007/>

pilot projects in Wisconsin courts have usually been created without a formal rule petition coming before the court. To suggest that there is an established process or practice for vetting and initiating pilot projects is a stretch. Understandably, pilot projects are often established without formal vetting of criteria or evidence, because the project itself is fashioned to "vet" what does and does not work. For all intents and purposes, pilot projects gather data to inform decisions before changes might be made statewide. Pilot projects allow for development, learning and adjustments to the project, based on actual performance in the test counties, before significant resources are committed to fully implement the program. Pilot projects, in fact, are established to "vet" the proposed innovation. Any criticism that the business court pilot project was "not properly vetted" or is somehow antithetical to process, is at odds with reality and practice. And, perhaps even worse, the majority applies an invented new standard, disparately, to the business court initiative alone.

¶19 But my experience with pilot projects is not limited to a bird's eye view from the supreme court. As a circuit court judge in Washington County nearly 30 years ago, I was personally involved in a few test projects. One such pilot project was e-filing, which was established in the fall of 2000 by a committee appointed by then-director of state courts J. Denis Moran.⁷ No rule supervised

⁷ Wisconsin Court System Electronic Filing Committee Report
 at 1 (Dec. 18, 2002), found at
<https://www.wistatedocuments.org/digital/collection/p267601coll4/id/192/rec/419>

the undertaking or continuation of that project. There was no specified need for, or vetting of, e-filing at the time, but it was perceived as an innovative idea—a way to possibly make the court system more efficient. I participated in that pilot as a Washington County judge. Because of several counties' participation, and the information and data collected from that pilot, e-filing is used throughout Wisconsin.

¶10 Another project I was involved in as a circuit court judge was in-court processing. Again, there is no indication that a rule authorized the in-court processing pilot. In-court processing proved to be a more efficient way to conduct court business; it was implemented around the state and created numerous efficiencies. Like e-filing, it seems there was no vetting or evidence presented to the court before that pilot began, but it resulted in a more efficient process.

¶11 Another innovative project I developed as a circuit court judge was a treatment and diversionary program ("TAD"), which remains in place today. That, and many other programs around the state, would not have been able to meet the rigorous standard the majority hand selects for the business court pilot. Requiring proof and evidence before starting such a program would have stopped it, and most treatment and problem-solving courts, before they could begin. Simply stated, the court has not traditionally engaged in much, if any, oversight of these types of programs, and they were not formally initiated by a rule. Pilot projects vet innovative ideas and have been transformative in our state. Our past practice and the reality of how pilot projects work more than

dispel the majority's claim that the business court pilot's vetting or process is flawed.

¶12 Our court system has been the beneficiary of many practices, rules, and procedures developed by pioneering people, who committed time, effort, and energy to find better ways to do things. Our court should continually be looking at ways to make our court system better as a whole. The business court pilot project has proven to be one such way to improve efficiency in the court system. It does not divert resources away from criminal or other cases; nor does it fast track certain cases to the front of the line or privilege "big business." Those are assertions that have no basis in fact. In addition, the judges who participated in this project volunteered their time and managed their existing caseloads, along with the cases they accepted as part of the project. Many of them support the project and believe it should continue. As chief justice, I did not require a judge to participate in the business court initiative. A judge's participation was voluntary and the judges who participated were already presiding over civil, not criminal, dockets. Judges who continue to wish to explore this groundbreaking idea should not be dissuaded.

¶13 Despite all this, then-Justice Karofsky voiced concern at the open conference on September 24, 2024, that the business court pilot gave the appearance that Wisconsin has a two-tiered system of justice—one for big business and one for everyone else. To be clear, we heard the opposite from some speakers at the public hearing, as well as from a number of written comments. As a

practical matter, civil dockets and criminal dockets are different and participation in the pilot did not detract from criminal cases being processed. Also, the reality is that big business may be best able to engage in protracted and expensive business litigation, but small businesses suffer when they get lost in the process. Small businesses, often owned by people who have fewer resources and whose entire livelihood might be at stake, can get lost in civil court. Those who cannot afford protracted litigation have benefited from the business court pilot project. Terminating the business court project negatively impacts those who can least afford to be in court the most. Perhaps this is a reason why other states have seen the wisdom of establishing business courts or at least a pilot project. Wisconsin steps backward in abolishing the voluntary pilot business courts as they have been working well. The majority's citing to "process" and "appearances" as reasons why the business court pilot must be eliminated, does not match reality.

¶14 Unfortunately, the majority terminates the business court pilot saying, in essence, "nothing can be done, there is nothing good to be learned from it, and if it is going to be resurrected, it must start anew." That makes no sense. Who would bring such a rule petition before this majority when it has expressed such disdain for the notion of a business court? In the past, pilot projects could be commenced without first requiring the court to adopt a rule, or worse, meeting unknown and movable standards.

¶15 I must admit, I am not overly surprised by the majority's decision to end the business court pilot project, but the reasons given, are unserious. Unfortunately, a perpetuation of false narratives has produced a desired result. If e-filing, in-court processing, and TAD programs or treatment courts would have been held to the same standard, the court system would look rather different today, and the people of this state would not be better served. The Wisconsin Circuit Court Access (WCCA)⁸ website or other notable accomplishments would likely not exist.

¶16 Sadly, my colleagues do not hold their preferred "causes" to the same standard they apply to the business court pilot. See, e.g., S. Ct. Order 24-04, In the Matter of the Petition of the State Bar of Wisconsin Regarding Cultural Competency and Reduction of Bias Training for Continuing Legal Education Under Chapter 31 of the Supreme Court Rules (issued July 11, 2025, eff. Jan. 1, 2026) (Rebecca Grassl Bradley, J., dissenting). Imposing one standard to upend a prior chief justice's well-respected project and not using the same for all other rule matters, reeks of disparate treatment. What a shame. I dissent.

¶17 I am authorized to state that Justice REBECCA GRASSL BRADLEY joins this dissent.

⁸ The website is commonly referred to as "CCAP," and is available at <https://wcca.wicourts.gov/>. It provides access to certain public records of the Wisconsin circuit courts.

