

**COMMERCIAL LITIGATION COMMITTEE'S REPORT
REPORT PREPARED FOR THE DECEMBER 3, 2011 COUNCIL MEETING**

1. Budget Request.

\$3,000

2. Next Scheduled Meeting of the Committee

The next scheduled meeting of the Committee is:
Tuesday, January 24, 2012, 5:30 p.m.
Brooks Wilkins Sharkey & Turco PLLC
401 S. Old Woodward, Suite 400
Birmingham, MI 48009
Call-in info: 866-906-0123, pass code 5942092

3. Council Approval

None.

4. Membership

As reported in our last report, approximately six months ago, to increase manageability, we culled our members down from 50-60 who were on our official list to get to those who are were participating at all. By doing so, we got down to about 20 who voiced a continued interest. Over the past quarter, we have had the following join our Committee: 1. Ian Williamson; 2. Melinda Valena Sheets; 3. Alan Broad; 4. Jerome F. Rock; and 5. Robert P. Anderson.

5. Accomplishments Toward Committee Objectives

See below.

6. Meetings and Programs

The main focus of our activity over the past few months has been the Business Court legislation. Diane Akers, former Chair of both this Committee and the Section, has come out of retirement to lead up the charge on that with Doug Toering, Chair of the Small Business Forum, and member of our Committee. On October 20, we jointly sponsored (with the Small Business Forum) a program regarding a Business Court, proposed legislation, and Governor Snyder's support for it. It was a great success with 50-60 lawyers, and 5-6 judges in attendance. Doug has planned a follow-up seminar to discuss the business dockets from Macomb, Kent, Oakland, and has enlisted several judges to participate.

Ed Lukas as Chair requested that our Committee designate representatives for the Ad Hoc Committee. We naturally selected our subject matter experts, Doug and Diane. I regret that I will not be able to attend the December 3 Council meeting due to a longstanding family commitment out of town, but have delegated the Committee's mantle to Doug and Diane for the purposes of the meeting.

Beyond that, Doug and I agreed that he would take the lead on report the details in the Small Business Forum's report for more details.

7. Publications

We are responsible for the Michigan Business Law Journal theme issue for commercial litigation scheduled to be published on March 31, 2012. Committee Member T.L. Summerville has stepped up to be the lead for that, and has been working with Dan Kopka. T.L. is actively working this issue, as the deadline for article is November 30. As of my last contact with him, it appeared that he had enough articles for the issue. Additionally, we are working with Gerard Mantese regarding articles for the business litigation theme issue of the Michigan Bar Journal to be published in February 2012.

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

A. Service of Process Rules, MCR 2.105 and MCR 2.103

We recently provided input to the State Bar Civil Procedure and Courts Committee (via its former chair, Frank Greco) regarding proposed amendments to the court rule governing service of process (MCR 2.105) to reflect how service upon LLCs can be effectuated. In short, we believe that the Section take the position of supporting that the proposed changes be passed.

On a related point re service of process, the State Bar Civil Procedure and Courts Committee (this time via its new chair, Dan Quick of Dickinson Wright) also proposed that several subparagraphs of MCR 2.103 be changed to clarify rules re service on business entities. Dan pointed out that in a recent Court of Appeals case, the court read MCR 2.103(D)(1) as requiring personal service on an officer or registered agent of a corporation despite the fact that the rule does not say personal service is required. As Dan observed, given that there is a court rule, MCR 2.105(A)(2), that allows one to serve an individual via certified mail as long as delivery is restricted, there is no reason why that same rule shouldn't apply to a corporation's resident agent.

Thus, Dan recommended adding the following language as MCR 2.105(D)(5): "sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the designated individual described in MCR 2.105(D)(1)-(3). Service is made when the individual acknowledges receipt of the mail. A copy of the return receipt signed by the individual must be attached to proof showing service under this subrule."

We discussed this at our last meeting in November, and agreed that it made sense and saw no reason to oppose, so we recommend that the Section take a position of supporting this change.

B. Uniform Interstate Depositions and Discovery Act, Senate Bill 0707

Last, Ed advised that the Section has been invited by the State Bar of Michigan to take a position on Senate Bill 0707, which would add Chapter 22, the "Uniform Interstate Depositions and Discovery Act," to the Revised Judicature Act (RJA), to take effect on July 1, 2012. The Bill would: (1) Allow a party to submit a foreign subpoena to a circuit court clerk in Michigan, and request that court to issue a subpoena in Michigan; (2) establish requirements for the issuance and enforcement of a subpoena, including requiring compliance with Michigan Court Rules and statutes; and (3) Amend Chapter 18 (Process and Arrests) of the RJA to delete provisions allowing a Michigan court to order a person domiciled or found within Michigan to give testimony or to produce documents or other things for use in a proceeding outside of Michigan.

We discussed the Bill at our last meeting, in November. No member had any reason to object, and thought that the Uniform Act made a lot of sense. We therefore recommend that the Section take the position of supporting the bill.

C. Business Courts, House Bill 5128

See discussion above in Meetings and Programs, and see the Small Business Forum Report. As Diane Akers will report at the December 3 Council meeting, she and Dough will report on behalf of our Committee, and will recommend that the Section support this legislation with proposed changes.

9. Miscellaneous

None.

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