

Indiana's Commercial Court Pilot Project – March 2016 Update

April 26, 2016 by [Hon. Craig J. Bobay](#)

By Order issued January 19, 2016, the Indiana Supreme Court created the Indiana Commercial Court Pilot Project. The term of this pilot project is for three (3) years, and begins June 1, 2016.

As described in the January 2016 order, the purposes of Indiana's pilot commercial courts are to (1) establish judicial practices that will help all court users by improving court efficiency; (2) allow commercial disputes to be resolved efficiently with expertise and technology; (3) enhance the accuracy, consistency, and predictability of judicial decisions in commercial cases; (4) enhance economic development in Indiana by furthering the efficient resolution of commercial law disputes; and (5) employ and encourage electronic information technologies, and early alternative ADR interventions.

The pilot courts will be located in six different counties, dispersed throughout Indiana. The pilot project judges are: Marion Superior Court Judge Heather Welch; Elkhart Superior Court Judge Stephen Bowers; Lake Superior Court Judge John Sedia; Floyd Superior Court Judge Maria Granger; Vanderburgh Superior Court Judge Richard D'Amour; and Allen Superior Court Judge Craig Bobay.



Marion Superior Court Judge Heather Welch speaks with Inside Indiana Business host Gerry Dick about Commercial Courts in June 2015.

A brief historical background to the January 2016 order is helpful to understand Indiana's venture into commercial courts.

In 2013, the Indiana Supreme Court assigned the Problem Solving Courts Committee of the Indiana Judicial Conference the task of evaluating whether Indiana should consider implementing business or commercial courts in Indiana. The task was assigned to a newly created Business Courts Subcommittee, consisting of Judge Bobay, Judge Welch, and staff attorney Julie McDonald.

Judges Welch and Bobay, along with Judges Granger and Bowers, then attended the Great Lakes States Complex Commercial/Business Court Seminar in Dearborn, Michigan in October 2013, which was co-sponsored by the National Judicial College and the Michigan Judicial Institute.

The Subcommittee learned and reported that commercial court dockets have been created in approximately half of the states across the country. Proponents claim the establishment of commercial courts is an embodiment of their state's efforts to attract corporations and other business entities to organize and operate in their states.

The main goals of commercial courts are to manage factually and/or legally complex commercial litigation as efficiently, competently, and predictably as possible, and to provide consistency in trial court commercial decisions. Another goal is to enable businesses involved in commercial disputes to continue operations with minimal interruption.

Commercial court cases are presided over by judges motivated to become involved, and who handle commercial cases with specific "hands on" case management tools.

Those commercial court case management tools include:

- Scheduling early case management conferences with parties to streamline issues and determine if early settlement conferences will be productive.
- Involving the parties and counsel in developing and implementing effective case management plans, including prompt completion of discovery.
- Jointly anticipating problems before they arise, rather than waiting until counsel present them to the court.
- Requiring parties to appear for periodic status conferences with joint status reports.
- Having courts available for hearings on short notice (i.e., within a few days).
- Employing commercial court masters to assist in resolving discovery disputes and providing other guidance to resolving the conflicts as appropriate for each case.
- Encouraging parties to consolidate trial on the merits with preliminary injunction evidentiary hearings when applicable.
- Using electronic filing Orders to facilitate efficient and organized case management and discovery.

In 2014, Judges Welch and Bobay recruited several Marion and Allen County commercial business litigation attorneys and other representatives of the local and state bars to gather input and refine the proposed route for possible pilot projects. This became known as the Commercial Courts Working Group. Justice Steven David and Indiana University Law Professor (former Justice) Frank Sullivan also joined the Working Group.

After several months of meetings and drafting, the Commercial Courts Working Group recommended that Indiana implement a pilot project of business courts. In that recommendation, the committee stated that the task of creating commercial courts for Indiana “requires very few essential resources: 1) an enabling rule or other authority; 2) a budget for law clerks to assist the judge in more quickly and efficiently researching and resolving the many issues that typically develop and consume the judge’s limited resource of time in these types of cases; 3) authorizing the special master role; and 4) dedicated judges who are committed to this process.”

After reviewing that recommendation, on June 2, 2015, the Indiana Supreme Court issued its “Order Establishing The Indiana Commercial Court Working Group.” The Order enlarged the membership of the Working Group, assigned the group seven specific tasks, and set an October 1, 2015 deadline for the group to submit an initial report on its activities.

The Order also directed the group to recommend guidelines for establishing and administering commercial court pilot projects, if appropriate.

The larger 2015 group included most of the original appointees, along with Notre Dame Law Professor Jay Tidmarsh, Indiana Chamber of Commerce President and CEO Kevin Brinegar, two additional judges and several more lawyers from across the state. The group then met throughout the summer, debating and crafting a proposed enabling rule, which defined the scope of the proposed project.

More specifically, the Working Group evaluated the governing commercial docket rules of other states; determined case eligibility criteria and case management procedures; collaborated with the Judicial Conference’s Judicial Education Committee to recommend related education programs; collaborated with the Division of State Court Administration to recommend procedures for posting commercial court rules and orders; considered how commercial court dockets may impact weighted caseload values; developed guidelines for appointing commercial court special masters; consulted with the Indiana State Bar Association and other local bar groups regarding best practices; began educating the community and local chambers of commerce on the commercial court model and its benefits; explored potential funding sources; recommended that participation on the commercial docket by the parties be voluntary; and began developing specific case management techniques and forms, tailored for Indiana.

The Working Group also addressed the absolute need for law clerks to assist the courts in issuing timely and reasoned orders. This process involved the hard work and valuable input from all the Working Group members. The process involved many lengthy discussions, debates, proposals, counterproposals, drafts, and redrafts, and reflects hundreds of hours of hard work of the exceptionally gifted men and women attorney members, as well as the efforts of the judicial members and staff who made up the Working Group. Just prior to the September Judicial Conference, the Group met its October 1, 2015 deadline for issuing a report to the Supreme Court.

On January 21, 2016, the Indiana Supreme Court issued its Order authorizing a commercial court pilot project beginning June 1, 2016. Since January, the six pilot court judges and the Working Group have been meeting to fine-tune case management procedures, determine how orders will

be made available to the public, how the pilot project will be evaluated, and how four law clerks will be assigned to the six judges.

Our pilot project judges have joined and collaborated with the American College of Business Court Judges. The Working Group will submit biannual status reports to the Supreme Court for the three-year period and provide recommendations to improve, enhance, or expand the pilot project.

Beginning June 1, 2016, parties may begin to file commercial cases in the pilot courts. The project promises to be an exciting and challenging adventure in transforming the way Indiana's courts address commercial and businesses litigation.

Thus far, this project has been a unique and fruitful collaboration of the Supreme Court, the trial bench, in house corporate counsel, commercial litigators who represent small businesses and large corporations, the Judicial Center, State Court Administration, the Indiana Chamber, Indiana's law schools, the Indiana legislature, the National Judicial College, and nationally renowned business court judges.

This process would not have happened without the support and insight of Indiana Judicial Center staff Mary Kay Hudson and Julie McDonald. Finally, the Working Group expresses its appreciation to the five justices of the Indiana Supreme Court for their willingness to initiate this potential enhancement to the Indiana civil justice system.

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