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Judiciary Committee Testimony

H-1 Substitute for H.B. No. 5128, Support

Andrew S. Doctoroff

My name is Andy Doctoroff. I am a partner at Honigman Miller Schwartz and Cohn. I address you today after serving as co-chairperson of the Business Impact Committee of the State Bar's Judicial Crossroads Task Force. Diane Akers also served as co-chairperson of the same committee.

The mission of the Judicial Crossroads Task Force was to identify how Michigan's justice system can meet the needs of the public in the face of transformational changes underway in the state's economy. The Business Impact Committee was one of the task force's four standing committees.

The goals of the Business Impact Committee were to: (1) methodically investigate and analyze how the structure and operations of our court system impact the financial viability of Michigan businesses; and (2) propose to the Judicial Crossroads Task Force reforms that, if implemented, would serve to improve the judiciary while strengthening those businesses and, in turn, our state's economy. The committee membership included leaders from all segments of the legal and business community, including members of the plaintiffs' and defense bars, the business and labor communities, transactional attorneys, and corporate general counsels.

In order to accomplish its mission, the Business Impact Committee met a total of seven times beginning in November 2009. The committee conducted a survey of corporate and business attorneys to obtain their feedback regarding issues concerning the interaction of their businesses or business clients within Michigan's court system. The committee also held discussions with a number of experts in business courts, court management and alternative dispute resolution issues.

After much deliberation, the Business Impact Committee forged a consensus and concluded that, by creating court dockets devoted to business disputes, the Michigan court system has a significant opportunity to reduce the time it takes for businesses to resolve legal disputes (especially in complex matters), improve the quality of the decisions rendered, reduce the cost incurred by businesses in getting legal disputes resolved, and improve the attractiveness of Michigan's court system to the business community.

On June 24, 2010, the Business Impact Committee presented to the Judicial Crossroads Task Force a report and recommendation for the implementation of a specialized business docket in Michigan. The Judicial Crossroads Task Force approved the Business Impact Committee's recommendation. In recent months, the Kent County Circuit Court and the Macomb County

Circuit Court have created business dockets modeled after the proposals made by the Business Impact Committee.

I have studied the H-1 Substitute for H.B. No. 5128 ("H-1 Substitute"), the legislation that, if enacted, would create business dockets in additional circuit courts throughout Michigan. I personally support, and am encouraged by, this legislation. It is largely consistent with the findings and recommendations of the Business Impact Committee. An attractive aspect of the legislation is that it gives individual circuit court administrators flexibility to design business dockets most suitable to specific jurisdictions.

I believe that the vast majority of judges and lawyers in Michigan are conscientious, ethical, and competent. However, a perception exists among businesses that Michigan's present system prevents the timely, cost-effective, and proper resolution of legal disputes – a perception shared by many judges and attorneys handling business litigation. The perception has developed because of, among other things: (1) judges who may lack familiarity with complicated or technical factual issues that often arise in business disputes; and (2) judges whose sizeable dockets often prevent them from proactively and efficiently resolving pending business litigation matters. These concerns have helped foster a perception among businesses that Michigan's court system needs to be changed. In a recent survey conducted by the State Bar, a full 81 percent of in-house counsel and commercial litigators believe that our court system is average or worse compared to other states' court systems.

The creation of specialized business dockets – referred to as "business courts" in some jurisdictions – materially improves the resolution of business litigation and disputes. Again, business dockets within circuit courts lay the groundwork to ensure that business cases are resolved more expeditiously and less expensively. Just as importantly, business dockets, comprised of judges who have both expertise and interest in commercial litigation, increase the likelihood that business disputes are resolved in accordance with applicable legal standards. Such a result makes litigation less unpredictable and allows businesses to more reliably plan for the future. Finally, the creation of specialized business dockets helps create an environment more attractive to large and small businesses. Passage of the H-1 Substitute would symbolize that Michigan is now committed to pursuing new strategies calculated to retain jobs and grow the state's economy.

There are several reasons why achieving these goals, particularly through establishing business dockets, is important. First, and most obviously, cost-effectiveness, timeliness, and principled dispute resolution are inherent goals that stand alone. If those goals can be achieved in any context, even a relatively narrow one, then they should be pursued – the legal profession's obligations to the citizens of this state so dictate. Second, by adopting reforms calculated to improve the manner in which business disputes are resolved, the existence of additional business dockets would indirectly benefit the entire court system. Specifically, they would serve as exemplars of reform; many of the policies successfully adopted by business docket judges could be exported to, and applied in, other cases that would not be part of business dockets.

Of course, parties who do not appear in cases pending on business dockets are every bit as important as businesses. Thus, an imperative of this committee should be ensuring that

reform does not diminish the quality, efficiency, and effectiveness of the rest of the court system. I believe the current the H-1 Substitute would likely achieve this goal. That said, the H-1 Substitute would place on business dockets several types of cases that are often not considered "business cases" by lawyers and other stakeholders in our court system. Including on business dockets overly broad subsets of filed cases may unnecessarily create opposition to the legislation in the legal community and may create other practical problems for circuit court administrators.

The creation of business dockets need not be viewed as a zero-sum endeavor. The reforms adopted with the creation of business dockets need not disadvantage other parts of Michigan's court system. On the contrary, reforms relating to business dockets ultimately could be embraced throughout the court system, thereby elevating the quality of justice for all. Further, judges who do not preside over business docket cases would preside over a less diverse docket, thereby gaining expertise in other areas of the law.

It is likely that, if additional specialized business dockets were established across Michigan, businesses would view Michigan's court system more favorably. The State Bar poll establishes that sizeable majorities of respondents agree with many core features of business dockets, including assigning cases involving business issues to designated judges who have an expertise and interest in commercial litigation. Of course, business dockets established on account of the H-1 Substitute should be methodically studied to ensure that the goals of the legislation are met.

I recognize that some participants in our court system have expressed skepticism about the need for or utility of specialized business dockets. However, such skepticism among members of the Business Impact Committee waned or was eliminated after thorough study. Moreover, jurisdictions in 17 states have adopted business courts in one form or another. To my knowledge, no state that has adopted a specialized business docket has subsequently discontinued it. Our investigation established that, in the states in which these have been created, business dockets are popular and have been embraced not only by the business community, but also by both plaintiff and defense attorneys. In Michigan, a specialized business docket would be part of a decades-long evolution that has increasingly seen the creation of specialized courts to address specific areas of law like workers' compensation, probate matters, and family law matters.

In summary, I believe that, if enacted, the H-1 Substitute could achieve the following goals: (1) reducing the time it takes for businesses to resolve their legal disputes, especially in complex matters; (2) improving the quality of the decisions rendered; (3) reducing the cost incurred by businesses in getting their legal disputes resolved; (4) improving the attractiveness of Michigan's court system to the business community, thereby encouraging current businesses to remain in, and new businesses to locate to, Michigan; and (5) developing a body of case law on business law issues at the trial court level that will be persuasive tools for other trial judges. Thank you for giving me the opportunity to present my views on this important subject.

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