

SUMMARY
of
TEMPORARY RULES OF SUPERINTENDENCE OF THE COURTS OF OHIO
REGARDING ESTABLISHMENT OF COMMERCIAL DOCKETS

By Carolyn Kobus

1. Rules of Superintendence for the Courts of Ohio
 - a. Temp. Sup R. 101. **Definitions.** “business entity” means a for profit or nonprofit corporation, partnership, limited liability company, limited liability partnership, professional association, business trust, joint venture, unincorporated association, or sole proprietorship.
 - b. Temp. Sup. R. 1.02 **Designation and Organization.**
 - i. (A) **Designation.** The Chief Justice of the Supreme Court shall designate up to five courts of common pleas to participate in the commercial docket pilot project pursuant to Temporary Rules 1.01 through 1.11. The Chief Justice shall not designate a court as a pilot project court unless the court agrees to participate in the commercial docket pilot project.
 - ii. (B) **Establishment of commercial docket.** each pilot project court is authorized to establish and maintain a commercial docket
 - iii. (C) **Training of judges.** (1) Such judges shall be styled “commercial docket judges.” In the event of the death, resignation, or removal from or forfeiture of office of a commercial docket judge, the Chief Justice may designate another sitting judge of that pilot project court to serve as a commercial docket judge. The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice candidates for designation as commercial docket judges. (2) Each commercial docket judge shall complete an orientation and training seminar on the administration of commercial dockets
 - c. Temp. Sup. R. 1.03. **Scope.**
 - i. (A) **Cases accepted:** A commercial docket judge shall accept a civil case, including any jury; non-jury; injunction, including any temporary restraining order; class action; declaratory judgment; or derivative action, into the commercial docket of the pilot project court if the case is within the statutory jurisdiction of the court and the gravamen of the case relates to any of the following
 1. formation, governance, dissolution, or liquidation of a business entity
 2. rights or obligations between or among the owners, shareholders, partners, or members of a business entity, or rights and obligations between or among any of them and the entity

3. Trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner, or member thereof
 4. rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity
 5. Disputes between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them, including without limitation the following:
 - a. Transactions governed by the uniform commercial code, except for consumer product liability claims
 - b. purchase, sale, lease, or license of, or a security interest in, or the infringement or misappropriation of, patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
 - c. purchase or sale of a business entity or the assets of a business entity;
 - d. sale of goods or services by a business entity to a business entity
 - e. Non-consumer bank or brokerage accounts, including loan, deposit, cash management, and investment accounts
 - f. Surety bonds and suretyship or guarantee obligations of individuals given in connection with business transactions;
 - g. purchase, sale, lease, or license of, or a security interest in, commercial property, whether tangible, intangible personal, or real property
 - h. Franchise or dealer relationships
 - i. Business related torts
 - j. Cases under antitrust laws;
 - k. Cases relating to securities, or relating to or arising under federal or state securities laws
 - l. Commercial insurance contracts, including coverage disputes.
- ii. (B) **Cases not accepted in the commercial docket.**
1. Personal injury, survivor, or wrongful death matters
 2. Consumer claims against business entities or insurers of business entities, including product liability and personal injury cases, and cases arising under federal or state consumer protection laws;
 3. occupational health or safety, wages or hours, workers' compensation, or unemployment compensation
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5. Matters in eminent domain;
 6. Employment law cases
 7. Cases in which a labor organization is a party
 8. Cases in which a governmental entity is a party
 9. Discrimination cases based upon the United States constitution, the Ohio constitution, or the applicable statutes, rules, regulations, or ordinances of the United States, the state, or a political subdivision of the state;
 10. Administrative agency, tax, zoning, and other appeals;
 11. Petition actions in the nature of a change of name of an individual, mental health act, guardianship, or government election matters
 12. Individual residential real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes
 13. domestic relations, juvenile, or probate division of the court
 14. jurisdiction of a municipal court, county court, mayor's court, small claims division of a municipal court or county court, or any matter required by statute or other law to be heard in some other court or division of a court
 15. Any criminal matter, other than criminal contempt in connection with a matter pending on the commercial docket of the court
- d. Temp. Sup. R. 104 **Transfer of Case to the Commercial Docket**
- i. (A) Random Assignment: A case filed with a pilot project court shall be randomly assigned to a judge
 - ii. (B) Transfer Procedure:
 1. the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket.
 2. if the attorney filing the case does not file a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, an attorney representing any other party shall file such a motion with that party's first responsive pleading or upon that party's initial appearance, whichever occurs first
 3. if no attorney representing a party in the case files a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, the judge shall sua sponte request the administrative judge to transfer the case to the commercial docket
 4. If the case is assigned to the commercial docket and it does not relate to any of the topics set forth in division (A) of 1.03, upon motion of any party or sua sponte at any time during the course of the litigation, the commercial docket judge shall remove the case from the commercial docket.

5. Copies of a party's motion for transfer to the commercial docket shall be delivered to the administrative judge.
- iii. (C) **Ruling or decision on transfer.**
 1. a non-commercial judge shall rule on a party's motion to transfer no later than 2 days after the filing of the motion. A party may appeal the decision to the administrative judge within three days of the decision. The administrative judge shall decide the appeal within 2 days of the filing of the appeal.
 2. An administrative judge shall decide the sua sponte request of a non-commercial docket judge for transfer no later than two days after the request is made
 - iv. (D) **Review of transfer.** The decision of the administrative judge as to the transfer of a case under division (C) of this rule is final and not appealable.
 - v. (E) **Adjustment of other case assignments.** a commercial docket judge who is assigned a commercial docket case pursuant to division (B) of this rule may request the administrative judge to reassign a similar civil case to another judge in the pilot project court.
- e. Temp Sup. R. 1.05 **Special Matters**
- i. **Appointment.** With the consent of all parties in a commercial docket case, a commercial docket judge may appoint a special master to do any of the following with regard to the case:
 1. Perform duties consented to by the parties
 2. Hold trial proceedings and make or recommend findings of fact
 3. Address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.
 - ii. **Order appointing a special matter**
 1. A commercial docket judge shall give the parties notice and an opportunity to be heard before appointing a special master. Any party may suggest candidates for appointment.
 2. An order appointing a special master shall include the following:
 - a. The special master's duties;
 - b. The circumstances, under which the special master may communicate ex parte with the commercial docket judge or a party;
 - c. The basis, terms, and procedure for fixing the special master's compensation.
 3. A commercial docket judge may amend an order appointing a special master at any time after notice to the parties
 - iii. **Special Master's authority.** A special master shall have authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. The special

master may impose appropriate sanctions for contempt committed in the presence of the special master.

- iv. **Evidentiary Hearings.** a special master conducting an evidentiary hearing may exercise the power of the commercial docket judge to compel, take, and record evidence.
- v. **Special Master's orders.** A special master who makes an order shall file the order with the clerk of the court of common pleas and promptly serve a copy on each party.
- vi. **Special Master's reports.** The special master shall file the report and promptly serve a copy of the report on each party unless the commercial docket judge directs otherwise.
- vii. **Compensation.**
 - 1. The judge shall fix the special master's compensation on the basis and terms stated in the order of appointment, but the judge may set a new basis and terms after notice and an opportunity to be heard.
 - 2. The compensation of the special master shall be paid by a party or parties or from a fund or subject matter of the case within the commercial docket judge's control.
 - 3. The judge shall allocate payment of the special master's compensation among the parties after considering the nature and amount of the controversy and the extent to which any party is more responsible.
- f. Temp Sup R. 1.06, **Commercial Docket Case Management Plan:** The Supreme Court Task Force on Commercial Dockets shall establish a model commercial docket case management pretrial order to ensure the commercial docket case management plan is tailored to the requirements of the commercial docket. A commercial docket judge may use the model commercial docket case management pretrial order. A commercial docket case management plan issued by a commercial docket judge shall govern the litigation of each commercial docket case assigned to that judge.
- g. Temp. Sup. R. 1.07, **Rulings on Motions and Submitted Cases**
 - i. **Rulings on motions:** (1) A commercial docket judge shall rule upon all motions in a commercial docket case within sixty days of the date on which the motion was filed. (2) If a commercial docket judge fails to rule upon a motion within sixty days, an attorney representing the movant shall provide the judge with written notification alerting the judge of this fact. The attorney shall provide a copy of the notification to all other parties to the case.
 - ii. **Submitted cases** (1) A commercial docket judge shall issue a decision in all commercial docket cases submitted after a court trial within ninety days of the date the case was submitted. (2) If a judge fails to issue a decision within ninety days, an attorney representing a party to the case shall provide the judge with written notification alerting the judge of this fact. The attorney shall provide a copy of the notification to all other parties to the case.

- h. Temp. Sup. R. 1.08, **Commercial Docket Case Disposition Time Guideline**
 - i. **Time guideline:** Except for a case designated as complex litigation, a pilot project court shall aspire to have each case assigned to a commercial docket judge to disposition within eighteen months of the date on which the case was filed. This time guideline is not mandatory, but rather is intended to assist the pilot project courts and commercial docket judges in measuring the effectiveness of their case management.
 - ii. **Notification of delay:** If a judge has not disposed of a commercial docket case assigned to the judge within eighteen months, the judge shall notify the Court Statistical Reporting Section of the Supreme Court as to the cause for delay to provide the information to the Supreme Court Task Force on Commercial Dockets.
- i. Temp. Sup. R. 1.09. **Publication of Opinions and Orders.** Opinions and orders of the commercial docket judges shall be posted on the website of the Supreme Court.
- j. Temp. Sup. R. 1.11. **Term of Temporary Rules 1.01 through 1.11.** Temporary Rules 1.01 through 1.11 shall take effect on July 1, 2008 and shall remain in effect through July 1, 2012, unless extended, modified, or withdrawn by the Supreme Court prior to that date. Any commercial docket case pending after the term of these temporary rules shall continue pursuant to the requirements of the rules until final disposition thereof.