Berrien County Trial Court

Thomas E. Nelson, Chief Judge - Brian E. Ray, Administrator
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Administrative Order 2015-02

This administrative order replaces and rescinds prior Berrien County Trial Court Administrative Order 2014-03, and establishes the Plan for the Creation of a Specialized Business Court, effective January 21, 2015:

PLAN FOR THE CREATION OF A SPECIALIZED BUSINESS COURT

IT IS ORDERED:

This local administrative order is issued in accordance with MCL 600.8031 *et seq.* It establishes a plan for a specialized business court in the Berrien County Trial Court for the purposes outlined in MCL 600.8033(3). The business court has jurisdiction over business and commercial disputes as defined in MCL 600.8031(1)(c) in which the amount in controversy exceeds $25,000.

1. Judicial Resources/Services:

Judge John M. Donahue has been appointed by the Michigan Supreme Court as a business court judge. His term expires April 1, 2019.

2. Cases Eligible for Assignment to the Business Court:

A. Cases eligible for assignment to the business court are business or commercial disputes meaning any of the following:

1) Cases in which all of the parties are business enterprises.

2) Cases in which one or more of the parties is a business enterprise and the other parties are its or their present or former owners, managers, shareholders, members, directors, officers, agents, employees, suppliers, or competitors, and the claims arise out of those relationships.

3) Cases in which one of the parties is a nonprofit organization and the claims arise out of that party's organizational structure, governance, or finances.

4) Cases involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

B. As identified in MCL 600.8031(2), business or commercial disputes include, but are not limited to, the following types of cases:

1) Cases involving information technology, software, or website development, maintenance, or hosting.

2) Cases involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.

3) Cases arising out of contractual agreements or other business dealings, including licensing, trade secret, intellectual property, antitrust, securities, noncompete, nonsolicitation, and confidentiality agreements if all available administrative remedies are completely exhausted, including, but not limited to, alternative dispute resolution processes prescribed in the agreements.

4) Cases arising out of commercial transactions, including commercial bank transactions.

5) Cases arising out of business or commercial insurance policies.

6) Cases involving commercial real property.

3. Judicial Review of Pleadings:

A. As provided by MCR 2.112(O)(1), a party shall verify on the face of the party's initial pleading and on the face of any subsequent pleading that modifies the action to include a such a dispute, that the case meets the statutory requirements to be assigned to the business court.

B. As provided in MCR 2.112(O)(2), if a party fails to verify as required by MCR 2.112(O)(1), any party may file a motion for determination, or the court on its own initiative may determine, that the case is eligible for assignment to the business court.

C. If the court determines that the case meets the statutory requirements of MCL 600.8031, the court shall assign the case to the business court.

D. The business court judge shall promptly review all pleadings in a case assigned to the business court and shall determine whether to implement the docket management procedures set forth ¶ 5, or to otherwise manage the case.

E. As provided in MCR 2.112(O)(4), a party may file a motion requesting the chief judge review a decision made to assign a case to the business court. The chief judge's ruling is not an order that may be appealed.

4. Case Assignment to Judges in the Business Court

A. If the business court judge is recused or disqualified from hearing a case, that case will be reassigned by blind draw to a judge of the civil division, pursuant to MCR 8.111(C). If no civil division judge is able to serve, that case shall be reassigned to a criminal or family division judge by blind draw.

B. A case assigned to the business court judge may be reassigned by blind draw to another judge if the action ceases to include a business or commercial dispute.

C. A case that does not initially include a business or commercial dispute but that subsequently includes a business or commercial dispute as a result of a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action, shall be reassigned to the business court judge.

D. The chief judge of the Berrien County Trial Court shall monitor the workload of the business court judge and shall take steps necessary to balance the workload of the business court judge with those of the other judges of the court.

5. Docket Management:

A. Early Scheduling Conference.

Upon filing an Answer or other response permitted by law or court rule, the Clerk shall promptly inform the business court judge who, pursuant to MCR 2.401(B)(1), will direct that an early scheduling conference be held approximately thirty five (35) days after the Answer or response was filed or at such other time as the judge deems appropriate. Counsel[1] shall attend the early scheduling conference, and the judge may order the attendance of the parties, their representatives, agents, lienholders, insurance carriers and such other persons as the judge determines will facilitate the scheduling of events. An attendee may request in writing (including fax and email) addressed to the judge's assignment clerk to attend by telephone. Any matters that will facilitate the fair and expeditious disposition of the case will be considered, including:

[1] References to "counsel" in this Order shall apply to (i) counsel for represented parties, and (ii) the parties themselves if unrepresented.

1) Whether the case is properly assigned to the business court.

2) Amendments of pleadings and addition of parties.

3) Issues ripe for resolution by motion.

4) Method and timing of ADR.

5) Whether a meeting with the judge attended by the parties would be appropriate.

6) Scheduling of events.

7) Witnesses, including experts, and exhibits.

8) Discovery issues including the date for initial disclosures, time for completion, protective orders and compliance with MCR 8.119(I) if an order sealing court records is sought.

9) Use of technology: service and judge's copies by email, and court conferences, motion hearings and witness testimony by conference call or video conference.

10) When counsel will report to the Court progress on resolving the case.

11) Whether the parties will consent to expedited motion hearings which the court may order for good cause under MCR 2.116(G)(1)(a) and MCR 2.119(C)(1).

12) Relevant business court decisions available on the SCAO indexed website established under MCL 600.8039(3).

13) Any party or witness needing accommodation due to disability or limited English proficiency should consult the Court's Accommodation Policy (see Appendix 1).

B. Initial Pretrial Disclosures.

At the early scheduling conference the judge will set a date by which the parties shall serve initial pretrial disclosures which shall include all of the following, unless protected from disclosure by privilege or otherwise. If copies of disclosed evidentiary materials (books, documents, electronically stored information and other tangible things) are not served, the disclosing party shall make the materials available for inspection and copying in accordance with MCR 2.310.

1) The name and, if known, address and telephone number for each person, including the disclosing party and employees of the disclosing party, likely to have discoverable information, with a general description of the information, that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. Records custodians whose information is limited to the foundation required under MRE 803(6) and MRE 902(11) for admission of records may be identified generally.

2) The name, address and area of expertise and subject matter of the expected testimony for each person the disclosing party has retained or specifically employed to give expert testimony who the disclosing party expects to call as an expert witness at trial. The disclosing party shall disclose the same information for the party and any employee of the party if expected to be called as an expert witness.

3) The name and a brief description of the information contained in all evidentiary materials that the disclosing party has in its possession, custody or control which the disclosing party may use to support its claims or defenses, including claims for and defenses to damages, unless the use would be solely for impeachment. If a copy is served, reference may be made to the copy and the description may be omitted.

4) An itemized statement of damages claimed or conceded by the disclosing party with reference to the evidentiary materials disclosed pursuant ¶ B.3. which support the statement.

5) The name, address and policy number any insurer which may be liable to satisfy all or part of a judgment which may be entered or to indemnify or reimburse for payments made to satisfy the judgment.

C. Case Management Scheduling Order.

Following the Initial Court Conference, the assigned business court judge will issue a Case Management Scheduling Order. The CMSO will include requirements for interim pretrial reports by counsel and status conferences with the judge.

6. Technology:

When appropriate, the assigned business court judge will authorize use of telephone and video conferencing as authorized by MCR 2.402, MCL 600.2164a or any other applicable Michigan Court Rule or statute. Arrangements must be made through the judge's assignment clerk.

7. Opinions:

All written opinions shall be e-mailed to the State Court Administrative Office for publication on an indexed website.

8. Local Administrative Staff:

The court has provided the State Court Administrative Office with the name of a local staff person who has been designated as the primary contact for the business court.

Effective Date: January 21, 2015

1/28/15
Date

Thomas E. Nelson, Trial Court Chief Judge