

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

In re: Plan for Creation of a Specialized
Business Court

Local Administrative Order # 2013-02

(Rescinds Local Administrative Order #2011-5)

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 Macomb County Circuit 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 C. Foster 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:**

The jurisdiction of the Business Court is defined by MCL 600.8031 *et seq.*, which takes precedence in the event of any contradiction with the following.

- a. Cases eligible to be assigned to the Business Court are identified in MCL 600.8031(2). They are defined as business or commercial disputes, and include any of the following:
 - i. Cases in which all of the parties are business enterprises.
 - ii. 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.
 - iii. 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.
 - iv. Cases involving the sale, merger, purchase, combination, dissolution, liquidation, organizational structure, governance, or finances of a business enterprise.

- b. Business or commercial disputes also include, but are not limited to, the following types of cases:
 - i. Cases involving information technology, software, or website development, maintenance, or hosting.
 - ii. Cases involving the internal organization of business entities and the rights or obligations of shareholders, partners, members, owners, officers, directors, or managers.
 - iii. 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.
 - iv. Cases arising out of commercial transactions, including commercial bank transactions.
 - v. Cases arising out of business or commercial insurance policies.
 - vi. Cases involving commercial real property.

- c. Business or commercial disputes expressly exclude the following types of actions:
 - i. Personal injury actions including, but not limited to, wrongful death and malpractice actions.
 - ii. Product liability actions in which any claimant is an individual.
 - iii. Matters within the jurisdiction of the family division of circuit court.
 - iv. Proceedings under the probate code of 1939, 1939 PA 288, MCL 710.21 to 712A.32.
 - v. Proceedings under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.
 - vi. Criminal matters.
 - vii. Condemnation matters.
 - viii. Appeals from lower courts or any administrative agency.
 - ix. Proceedings to enforce judgments of any kind.
 - x. Landlord-tenant matters involving only residential property.
 - xi. Land contract or mortgage foreclosure matters involving residential property.
 - xii. Motor vehicle insurance coverage under the insurance code of 1956, 1956 PA 218, MCL 500.100 to 500.8302, except where 2 or more parties to the action are insurers as that term is defined under section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106.
 - xiii. Insurance coverage disputes in which an insured or an alleged insured is an individual consumer.
 - xiv. Employment discrimination.
 - xv. Civil rights including, but not limited to, an action brought under any of the following:

- 1) The Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2101 to 37.2804.
 - 2) The persons with disabilities civil rights act, 1976 PA 220, MCL 37.1101 to 37.1607.
 - 3) Chapter XXI of the Michigan penal code, 1931 PA 328, MCL 750.146 to 750.148.
- xvi. Wrongful discharge, except for actions involving corporate officers or directors.
- xvii. Worker's compensation claims under the worker's disability compensation act, 1969 PA 317, MCL 418.101 to 418.941.

3. Judicial Review of Pleadings:

- a. A judge assigned to the Business Court shall review all pleadings in which a party has verified that the case is eligible for assignment to the Business Court under section 8(a) and MCR 2.112(O). Cases that are excluded by MCL 600.8031(3) may be assigned to the Business Court if the assigned judge determines that it meets the statutory requirements of MCL 600.8035(3). Upon motion of a party, the Chief Judge of the Judicial Circuit may review and determine assignments under MCL 600.8035(7) to the business court docket. The ruling of the Chief Judge under this section is not appealable.
- b. Any party in a case not assigned to the Business Court who believes in good faith that the case falls within the jurisdiction of the Business Court may make a motion to the judge to whom the case is assigned to have it reassigned to the Business Court.
- c. Any judge of this Court may *sua sponte* determine that, or request briefing from the parties on whether, a case before the judge should be transferred to the Business Court.

4. Case Assignment to Judges in the Business Court

- a. In the event that more than one business court judge is appointed, cases shall be assigned to a business court judge by blind draw, pursuant to the Court's case assignment local administrative order.
- b. A case assigned to a 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 a business court judge.

5. **Docket Management:**

The Court will issue a scheduling order pursuant to MCR 2.401(B)(2) when a case is assigned to the Business Court. Unless otherwise directed by the Court, the scheduling order will contain the following provisions:

- a. Initial Court Conference. The Business Court Judge will issue notice of an initial conference with counsel (clients attending upon request) and unrepresented parties, to address the following matters:
 - i. Whether the case is properly assigned to the Business Court.
 - ii. Whether ADR is suitable and, if so, when and what type(s) should be employed.
 - iii. Issues that are ready for resolution by the Court.
 - iv. Whether a meeting with the judge attended by the attorneys' clients would be appropriate.
 - v. Schedule for the litigation.
 - vi. Discovery issues, including the staging of discovery as appropriate, and the necessity for any protective orders.
 - vii. When counsel will report back to the Court regarding progress on resolving or litigating the case, including the development of any ADR strategies.
 - viii. Whether parties will consent to an expedited motion hearing schedule (which the Court may order on its own initiative pursuant to MCR 2.119).
 - ix. Prior Business Court decisions relevant to the case.
 - x. In the event a litigant is in pro per, the Business Court Judge will discuss with the party his/her ability to proceed in the Business Court unrepresented.

- b. Joint Pretrial Report. The parties are jointly responsible for preparing and submitting a pretrial report no later than seven days before the Initial Court Conference unless otherwise directed by the Business Court Judge. Contents include:
 - i. Description of claims and defenses, including the facts that constitute them, not just the labels.
 - ii. Anticipated discovery and timetable for completion.
 - iii. Issues with initial disclosures (if any).
 - iv. Case law the parties would like the judge to consider.
 - v. Issues the parties believe are ready for resolution and issues the disclosing party believes are likely to be resolved by motion.
 - vi. Prior settlement discussions and current status; existence of arbitration and mediation agreements, if any; ADR possibilities considered and proposed; and barriers to resolution, financial or otherwise.

- vii. Technological capabilities of counsel to eFile, ability to participate in teleconferences or other electronic communications with the Court, and the location of clients and their ability to appear for court conferences.
 - viii. Whether a court-appointed expert would assist resolution.
- c. Initial Pretrial Disclosures. The parties will make initial pretrial disclosures as directed by the Business Court Judge. These disclosures must include all of the following, to the extent applicable:
- i. The name and, if known, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.
 - ii. A copy, or description by category and location, of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control, and may use to support its claims or defenses, unless the use would be solely for impeachment.
 - iii. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying under MCR 2.310 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of damages suffered.
 - iv. For inspection and copying under MCR 2.310, any insurance agreement under which an insurer may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
 - v. All other documents or disclosures, including current standard protocols, as required by the Business Court Judge at the Initial Court Conference.
- d. Case Management Plan. The Business Court Judge will prepare a detailed case management plan based on the Initial Court Conference. The plan will include requirements for interim pretrial reports by counsel and unrepresented parties, and status conferences with the Court.

6. **Technology:**

Electronic filing and service pursuant the 16th Circuit Court's eFiling Pilot Project, Administrative Order No. 2010-6, will be required by all parties in the Business Court. Parties unable to appear for court proceedings, or as otherwise directed by the Court, will be permitted to participate from remote locations through technological means, including the use of telephone and video conferencing. Prior to filing of motions or otherwise seeking relief, the Business Court will endeavor to be available for informal personal meetings, electronic or telephonic conferences with counsel and unrepresented parties to determine if the issues can be expeditiously and cost effectively addressed pending further Order of the Court.

7. **Alternative Dispute Resolution**

The parties are encouraged to explore any and all ADR options that will assist in the early resolution of the dispute. The parties are also encouraged to mutually agree on the ADR neutral(s). To assist the parties in mutually selecting appropriate neutral(s), the ADR clerk will make available a roster of ADR neutrals. The roster may include biographical information that sets forth the experience, subject matter expertise, and the rates of each neutral, and shall be maintained as a public document available to all counsel in business court cases. The parties are free to select mutually agreed upon neutral(s) who may not be listed in this roster. If the parties are unable to mutually agree on an ADR neutral mediator, and the Business Court orders mediation, the neutral will be selected from the roster as set forth in MCR 2.411(B)(3).

8. **Initial Pleadings**

- a. As required by MCR 2.112(O), a party shall verify on the face of the party's initial pleading that the case meets the statutory requirements to be assigned to the business court. If a cross-claim, counterclaim, third-party complaint, amendment, or any other modification of the action includes a business or commercial dispute, a party shall verify on the face of the party's pleading that the case meets the statutory requirements to be assigned to the business court.
- b. Parties filing emergency motions with their initial pleadings in cases falling within the jurisdiction of the Business Court have a duty to inform the Chief Judge's chambers if the case is not automatically assigned to the Business Court Judge.

9. **Opinions:**

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

10. **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.

This Order shall take effect immediately upon approval by the State Court Administrative Office.

Effective Date:

Date:

August 13, 2013

Chief Judge Signature:

John C. Foster