

Indiana's Commercial Court *Beyond a Pilot Program*



Indianapolis Bar Association
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Hon. Heather Welch, Marion Superior Court

Indiana's Commercial Court *Beyond a Pilot Program- An Overview*

- ▶ Past and Present of the Commercial Court
 - Six specialized dockets established in counties around the State
 - 3 North (Lake, Elkhart, Allen)
 - 3 South (Vanderburgh, Floyd, Marion)
 - Pilot period lasted from June 1, 2016-May 31, 2019
 - Made permanent by Supreme Court order dated May 16, 2019.
- ▶ Future of the Commercial Court
 - Next steps for the Court's permanent period

Indiana Commercial Court



Judge Bobay - Allen Co.



Judge D'Amour - Vanderburgh Co.



Judge Sedla - Lake Co.



Judge Welch - Marion Co.



Judge Bowers - Elkhart Co.



Judge Granger - Floyd Co.

Summary of Cases on the CC Docket

- Disputes between/among two or more businesses or individuals relating to contracts, transactions, or relationships between or among them.
- Trade secret, non-disclosure, non-compete, non-solicitation, or employment agreements involving businesses, employees, owners, shareholders, officers, etc.
- The rights, obligations, liability, or indemnity of owners, shareholders, officers, etc. owed to or from the business.



Summary: Cases NOT on the CC Docket

- Personal injury
- Consumer claims against businesses or business insurers, including product liability
- Routine collections cases
- Most environmental claims
- Most employment law cases
- Federal or state law based discrimination cases
- Administrative agency, tax, zoning, other appeals
- Individual **residential** real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes
- Cases involving only wages or hours, occupational health or safety, workers' / unemployment comp



Why bring your case to the Commercial Court?

The Five Goals of the Commercial Court

1. *Improving court efficiency*
2. *Resolve commercial disputes efficiently with expertise*
3. *Enhance accuracy, consistency, and predictability of judicial decisions*
4. *Enhance economic development in Indiana, and*
5. *Employ and encourage new technologies and early ADR interventions.*

Goal One: Efficiency

- ▶ *CC promptly sets initial case management conferences in all cases.*
- ▶ *CC sets court expectations early to focus the parties' substantive claims.*
- ▶ *CC makes the court promptly available for emergency hearings, TROs, and Preliminary Injunctions.*
- ▶ *CC expeditiously issues substantive & thoroughly researched orders.*

Goal Two: Expertise & Technology

- ▶ *Six judges statewide who focus on business litigation*
- ▶ *Lead local e-filing efforts*
- ▶ *Encourage counsel to agree to anticipate and promptly address discovery disputes via eDiscovery, claw back provisions, etc.*

Goal Three: Accuracy, Consistency, and Predictability

- ▶ *Commercial Courts study Indiana appellate cases on commercial matters:*
 - When a business is entitled to injunctive relief
 - Personal jurisdiction
 - Summary judgment as it applies to commercial disagreements
- ▶ *The Commercial Court provides detailed orders explaining how the Court reached its decisions*
 - No responding to 90 pages of summary judgment briefing with a simple "DENY"

Goal Four: Efficient Commercial Case Resolution

- ▶ *Commercial Court judges make themselves available to litigants in time-sensitive matters*
- ▶ *Courts have been able to produce orders in as little as a day in emergency circumstances.*

Goal Five: Expansive Use of Technologies and Early ADR

- ▶ At early case management conferences the Commercial Courts, with input from counsel, thoughtfully explore early ADR, and the *optimal timing for cost-effective ADR* that will likely benefit the parties and enhance the likelihood of successful mediation.



Pilot Project CC Docket Growth

- ▶ Year One (June 1, 2016, to May 31, 2017) – **120 new cases**
- ▶ Year Two (June 1, 2017, to May 31, 2018) – **151 new cases**
 - The second year of the pilot project saw a 26% increase in filings
- ▶ Year Three (June 1, 2018– May 28, 2019) – **204 new cases**
 - **35% increase in new filings in the third year of the pilot program**



Frequently Asked Questions about the Commercial Courts

“How do I get my case on the Commercial Court docket?”

Transferring Cases to a Commercial Court Docket

- File a Commercial Court Identifying Notice
 - Indicate that the case meets the requirements for the Commercial Court and identify which of the six CC counties you would like your case transferred.
 - Can be submitted by any party at any point in litigation, even after the Complaint has been filed, as long as the case was initiated after June 1, 2016
 - All sides may stipulate to the jurisdiction of the Commercial Court by providing a Stipulated Identifying Notice
- Opposing parties have 30 days to reject assignment to the Commercial Court.
 - Once the 30 days have passed, the case becomes permanently assigned
 - Parties cannot change venue or dismiss the case over personal jurisdiction objections once the 30 days has passed

“Discovery is so expensive, especially on complex civil cases. Does the Commercial Court have any procedures in place to address that?”

Commercial Court Rule 6 Discovery Guidelines

- Commercial Court discovery must be “proportional to the needs of the case.”
- The “Discovery Guidelines” were incorporated into the Permanent Rules via Rule 6 (effective June 1, 2019):
 - Rule 6 (A): Scope.**
 - Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case....
 - Rule 6(B): Initial Discovery/ Required Initial Disclosures.**
 - Rule 6(C): General Discovery Requests.**
 - If a party provides a partial or incomplete answer or response to a discovery request, the responding party must state specifically the reason that the answer or response is partial or incomplete.
 - Rule 6(D): Limitations on Discovery.**
 - No more than 25 Interrogatories, No more than ten depositions with seven-hour limits for each deposition.
 - Rule 6(E): Electronically Stored Information Preservation.**
 - Rule 6(F): Resolving Discovery Disputes.**
 - Strict requirements to meet, and confer; Parties must work together to create a stipulated protective order before seeking relief from the Court.

Practically Resolving Discovery Disputes

- ▶ Require parties to attempt informally resolving disputes before Court intervention
- ▶ Quick resolutions of Motions to Compel/ Protective Order
- ▶ Use in-camera reviews and attorney's eyes-only labels to protect against disclosure of sensitive material

“Where can I send my associates go to look up the Commercial Court Rules and Handbook to answer my case management questions?”

Commercial Courts Handbook

www.in.gov/judiciary/iocs/files/comm-ct-handbook.pdf

- ▶ **Chapter One:** General Considerations
 - **Commercial Court Rules AND FORMS**
- ▶ **Chapter Two:** Case Management Conferences
- ▶ **Chapter Three:** Discovery
- ▶ **Chapter Four:** Final Pretrial Conference / Preparation for Trial
- ▶ **Chapter Five:** Trial
- ▶ **Appendix** contains a number of helpful documents (**forms!**) for Judges and Counsel

Looking ahead toward the future of the Commercial Court

- ▶ Expansion
 - Currently evaluating whether to expand out of the current six counties
- ▶ Voluntary/Mandatory
 - Court continues to be voluntary, but would mandatory jurisdiction in the Commercial Court for business cases lead to better outcomes?
- ▶ Amount in Controversy
 - Should there be a minimum damages threshold to meet before a case can be considered for the Commercial Court?

Ultimately, the future depends in part on you

- ▶ The Commercial Court was created to be a tool for practitioners to better serve their clients on complex business cases.
- ▶ Your input and involvement helps shape the direction of the Court.
- ▶ If there are practices you would like to see implemented from other jurisdictions or changes you think would improve the overall operation of the Court, we appreciate any and all feedback.

Electronic Searchable Database

- ▶ The Indiana Supreme Court sees great value in creating a searchable database of Indiana Commercial Court cases at the trial court level
- ▶ This creates value to attorneys in advising their clients
- ▶ It is quite beneficial to the judges of the Commercial Court and all judge in Indiana

Questions



Indiana's Commercial Courts



Thank You
