



The Commercial Docket

Judge Richard McMonagle, Cleveland, OH

**AMENDMENTS TO THE
RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

Amendments to the Rules of Superintendence for the Courts of Ohio were adopted by the Court and become effective July 1, 2008. The history of these amendments is as follows:

May 6, 2008	Final adoption by conference
July 1, 2008	Effective date of amendments

TEMPORARY RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

Temp. Sup. R. 1.01. Definitions

As used in Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio, "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.

Temp. Sup. R. 1.02. Designation and Organization

(A) Designation of pilot project courts

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 of the Rules of Superintendence for the Courts of Ohio. Such courts shall be styled "pilot project courts." The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice courts for designation as pilot project courts. 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.

(B) Establishment of commercial docket

Notwithstanding any rule of the Rules of Superintendence for the Courts of Ohio or local rule of court to the contrary, each pilot project court is authorized to establish and maintain a commercial docket pursuant to the requirements of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio.

(C) Designation and training of commercial docket judges

(1) The Chief Justice of the Supreme Court shall designate one or more sitting judges of each pilot project court to hear all cases assigned to the commercial docket. 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. The Chief Justice shall not designate a judge as a commercial docket judge unless the judge agrees to participate in the commercial docket pilot project.

(2) Each commercial docket judge shall complete an orientation and training seminar on the administration of commercial dockets to be offered or approved by the Supreme Court of Ohio Judicial College.

Temp. Sup. R. 1.03. Scope of the Commercial Docket

(A) Cases accepted into the commercial docket

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) The formation, governance, dissolution, or liquidation of a business entity, as that term is defined in Temporary Rule 1.01 of the Rules of Superintendence for the Courts of Ohio;
- (2) The 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) The 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 described in division (B)(2) of this rule;
- (b) The 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) The purchase or sale of a business entity or the assets of a business entity;
- (d) The 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) The 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, such as claims of unfair competition, false advertising, unfair trade practices, fraud, or interference with contractual relations or prospective contractual relations;
- (j) Cases relating to or arising under state or federal 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.

(B) Cases not accepted into the commercial docket

A commercial docket judge shall not accept a civil case into the commercial docket of the pilot project court if the gravamen of the case relates to any of the following:

- (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) Matters involving occupational health or safety, wages or hours, workers' compensation, or unemployment compensation;
- (4) Environmental claims, except those arising from a breach of contractual or legal obligations or indemnities between business entities;
- (5) Matters in eminent domain;
- (6) Employment law cases, except those involving owners described in division (A)(3) of this rule;
- (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) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate division of the court;
- (14) Any matter subject to the 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.

Temp. Sup. R. 1.04. Transfer of Case to the Commercial Docket**(A) Random assignment**

A case filed with a pilot project court shall be randomly assigned to a judge in accordance with the individual assignment system adopted by the court pursuant to division (B)(2) of Rule 36 of the Rules of Superintendence for the Courts of Ohio.

(B) Transfer procedure

(1) If the gravamen of a case filed with a pilot project court relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, 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 gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, 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 the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, 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 if the gravamen of the case does not relate to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, 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 of a case to the commercial docket filed pursuant to division (B)(1) or (2) of this rule shall be delivered to the administrative judge.

(C) Ruling or decision on transfer

(1) A non-commercial docket judge shall rule on a party's motion for transfer of a case filed under divisions (B)(1) or (2) of this rule no later than two days after the filing of the motion. A party to the case may appeal the non-commercial docket judge's decision to the administrative judge within three days of the non-

commercial docket judge's decision. The administrative judge shall decide the appeal within two 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 of a case made under division (B)(3) of this rule no later than two days after the request is made.

(D) Review of transfer

(1) The factors set forth in Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio shall be dispositive in determining whether a case shall be transferred to or removed from the commercial docket pursuant to division (B) of this rule.

(2) The decision of the administrative judge as to the transfer of a case under division (C) of this rule is final and not appealable.

(E) Adjustment of other case assignments

To guarantee a fair and equal distribution of cases, 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 by lot to another judge in the pilot project court.

Temp. Sup. R. 1.05. Special Masters

(A) Appointment

(1) 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:

- (a) Perform duties consented to by the parties;
- (b) Hold trial proceedings and make or recommend findings of fact on issues to be decided by the judge without a jury if appointment is warranted by some exceptional condition or the need to perform an accounting or resolve a difficult computation of damages;
- (c) Address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.

(2) A special master shall not have a relationship to the parties, counsel, the case, or the commercial docket judge that would require disqualification of a judge under division (E) of Canon 3 of the Code of Judicial Conduct unless the parties consent with the judge's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) In appointing a special master, the commercial docket judge shall consider the fairness of imposing the likely expenses on the parties and shall protect against unreasonable expense or delay.

(B) Order appointing a special master

(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 direct the special master to proceed with all reasonable diligence and shall include each of the following:

(a) The special master's duties, including any investigation or enforcement duties, and any limits on the special master's authority under division (C) of this rule;

(b) The circumstances, if any, 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, and an opportunity to be heard.

(C) Special master's authority

Unless the appointing order expressly directs otherwise, 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 and may recommend a contempt sanction against a party and sanctions against a nonparty.

(D) Evidentiary hearings

Unless the appointing order expressly directs otherwise, a special master conducting an evidentiary hearing may exercise the power of the commercial docket judge to compel, take, and record evidence.

(E) 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. The clerk shall enter the order on the docket.

(F) Special master's reports

A special master shall report to the commercial docket judge as required by the order of appointment. 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.

(G) Action on special master's order, report, or recommendations

(1) In acting on a special master's order, report, or recommendations, the commercial docket judge shall afford the parties an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the special master with instructions.

(2) A party may file an objection to or a motion to adopt or modify the special master's order, report, or recommendations no later than fourteen days after a copy is served, unless the court sets a different time.

(3) The court shall decide all objections to findings of fact made or recommended by the special master in accordance with the same standards as a ruling of a magistrate under paragraph (D)(3) of Rule 53 of the Rules of Civil Procedure, unless the parties, with the commercial docket judge's approval, stipulate either of the following:

- (a) The findings will be reviewed for clear error;
- (b) The findings of a special master appointed under division (A)(1)(a) or (b) of this rule will be final.

(4) The commercial docket judge shall decide de novo all objections to conclusions of law made or recommended by a special master.

(5) Unless the order of appointment establishes a different standard of review, the commercial docket judge may set aside a special master's ruling on a procedural matter only for an abuse of discretion.

(H) Compensation

(1) The commercial docket judge shall fix the special master's compensation before or after judgment 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 either by a party or parties or from a fund or subject matter of the case within the commercial docket judge's control.

(3) The commercial docket 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 than other parties for the reference to a special master. An interim allocation may be amended to reflect a decision on the merits.

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 provide for the issuance of a commercial docket case management plan tailored to the requirements of the commercial docket. A commercial docket judge may use the model commercial docket case management pretrial order. Notwithstanding any contrary provision of a case management plan adopted by a pilot project court pursuant to division (B)(1) of Rule 5 of the Rules of Superintendence for Courts of Ohio, 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.

Temp. Sup. R. 1.07. Rulings on Motions and Submitted Cases

(A) 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 in a commercial docket case within sixty days of the date on which the motion was filed, 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.

(B) Submitted cases

(1) A commercial docket judge shall issue a decision in all commercial docket cases submitted for determination after a court trial within ninety days of the date on which the case was submitted.

(2) If a commercial docket judge fails to issue a decision in a commercial docket case submitted for determination after a court trial within ninety days of the date on which the case was submitted, 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.

Temp. Sup. R. 1.08. Commercial Docket Case Disposition Time Guideline**(A) Time guideline**

Except for a case designated as complex litigation pursuant to Rule 42 of the Rules of Superintendence for the Courts of Ohio, 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 serve as a benchmark and assist pilot project courts and commercial docket judges in measuring the effectiveness of their case management.

(B) Notification of delay

If a commercial docket judge has not disposed of a commercial docket case assigned to the judge within eighteen months of the date on which the case was filed, the judge shall notify the Court Statistical Reporting Section of the Supreme Court as to the cause for delay for the purpose of providing the information to the Supreme Court Task Force on Commercial Dockets.

Temp. Sup. R. 1.09. Publication of Opinions and Orders

Opinions and dispositive orders of the commercial docket judges shall be promptly posted on the website of the Supreme Court.

Temp. Sup. R. 1.10. Pilot Project Evaluation

The Supreme Court Task Force on Commercial Dockets shall collect, analyze, correlate, and interpret information and data concerning the commercial docket of each pilot project court. The Task Force may request the assistance of the Court Statistical Reporting Section at the Supreme Court and collect additional information from pilot project courts as needed.

Temp. Sup. R. 1.11. Term of Temporary Rules 1.01 through 1.11

Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio adopted by the Supreme Court on May 6, 2008 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.