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COLUMBUS BUSINESS FIRST

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New business-specific court expected to fast track commercial cases

Business First of Columbus - by John Brody

At the turn of the year, two judges for the **Franklin County Common Pleas Court** began specializing in commercial or business cases, called a "commercial docket." Courts in Cleveland, Cincinnati and Toledo also are participating in this pilot project of the **Ohio Supreme Court**.

Why create a specialized court? The Ohio Supreme Court expressed the purpose of benefiting business litigants and the business community by streamlining civil lawsuits involving business disputes. Generally speaking, businesses prefer a legal system that is efficient, timely and predictable. Often, business lawsuits can take long periods of time for resolution due to discovery disputes and motions relating to a host of issues.

It also has been said that when businesses seek what is supposed to be a speedier and less costly form of dispute resolution – arbitration – the cost and time savings have been disappointing. Plus, having a smaller set of judges well-versed in handling complex commercial disputes will enable greater consistency, provide a greater sense of predictability for decision-makers, enhance settlements and avoid cost.

Good for business, good for Ohio. By expediting commercial cases with consistent results, the new commercial docket should serve the goal of attracting new businesses and maintaining existing ones. Whether to do business in Ohio includes a consideration of the judicial system and its efficiency. Litigation is hardly attractive, but necessary for commerce. Real improvements can improve general perceptions and overall confidence.

Two judges for commercial cases

All new commercial cases will be assigned to two judges – John Bessey and Richard Frye. Both have extensive experience in commercial matters. A former business owner, Judge Bessey has been on the common pleas bench for 14 years. He was in private practice, and served as a lawyer for the government. Bessey serves as a co-chair of the Ohio Supreme Court's task force that is guiding this project.

Judge Frye has served as a judge for four years, and before that practiced law for 31 years, primarily representing clients in civil litigation.

Here are key provisions for the commercial docket and some considerations for businesses who will be facing this new court:

- Any type of "business entity" is covered, including corporations, limited liability companies, partnerships, non-profit entities, a joint venture, unincorporated association and business trust.
- The court will handle mostly all civil cases involving businesses such as disputes between two businesses, disputes among partners or shareholders, trade secrets, and more, but not personal injury, workers' compensation, environmental, consumer and similar claims. In these financially troubled times, litigation relating to receiverships, commercial foreclosures and collections will be heard by the two judges.
- If a new case fits under the new rules, then the attorney filing the complaint shall file a motion to transfer the case to a commercial docket judge. If not, the attorney for the defendant is required to do so. If neither attorney files a motion to transfer, the judge receiving the assignment is required to request the administrative judge to transfer the case.
- The court may appoint a special master for handling of any of a host of matters, to be paid for by the parties.
- The court is taking steps to establish standards for electronic discovery, often an expensive aspect of litigation.
- The court is to issue rulings on motions within 60 days of filing of the motion and render decisions on the case within 90 days after a case is submitted for determination. Lawyers and businesses will need to respond quickly.
- Decisions from commercial docket judges throughout the state will be posted on a Web site to improve consistency.
- Cases are expected to reach a final disposition by the commercial docket judge within 18 months, a relatively short period of time based on current experience.
- The lawyers will be asked to evaluate the court after each case.

Of course, more will be revealed about this court once cases filed in 2009 make their way through the new system. For now, a business that finds itself heading into litigation will likely confront this new court and one of its two judges.

Businesses and their lawyers will need to adapt to new features, such as the time frame for quick responses and speedy rulings on

motions.

The system is designed to push the participants in all phases of the litigation. The purpose is laudable, the judges are enthusiastic and committed, and the passage of time will reveal the benefits and how businesses react.

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