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In this issue, we interview Wayne County Business Court Judge David A. Groner. We will then look back and salute two courts (Macomb County and Kent County Circuit Courts) for the tenth anniversaries of their specialized business dockets, get a refresher on a business court protocol and briefly discuss the amendments to the case evaluation rule, provide an update on new judges in the business courts, remind you of the redesigned business court website, and briefly mention the “Lessons Learned” findings and recommendations.

Wayne County Business Court Judge David A. Groner

Background

Judge Groner was appointed to the Wayne County Circuit Court in 2003 by then-Governor Jennifer Granholm. Judge Groner earned his juris doctor from the University of Detroit Mercy Law School. He went to law school as an evening student while still working full-time for Oakland County Circuit Court Judge James Thorburn. Prior to being appointed to the bench, Judge Groner was a sole practitioner for about 17 years. He focused primarily on criminal defense, probate, and juvenile delinquency and neglect matters.

After being appointed to the bench, Judge Groner served in the Criminal Division for 14 years. In the Criminal Division, Judge Groner spent time in the Arraignment Court, handling pleas and sentences in non-capital cases. For the next four years, he served in the Civil Division, where he handled specialty dockets, such as structured settlements, in addition to the traditional docket. On March 18, 2021, the Michigan Supreme Court announced that it had appointed Judge Groner to the Wayne County Business Court. His term will expire April 1, 2025. One of the reasons Judge Groner was interested in becoming a business court judge was to expand his exposure to more complex litigation. He replaced Judge Lita Masini Popke, who retired and is doing ADR work. His staff includes judicial

attorney Scott Taylor and court clerk Marciana Lawrence. Judge Groner is married to former Wayne County Circuit Judge Amy Hathaway, who is retired and handling ADR matters. Chat with Judge Groner for any length of time and you will appreciate his sense of humor.

Experience with the Business Court

Although he has been on the business court bench for less than a year at the time of this writing, Judge Groner already enjoys the business cases and the lawyers. He recognizes business litigators are a “different breed. It’s unending what I learn from the lawyers.” The quality of lawyers and pleadings is generally very high for the business cases, and business lawyers are intense. Why? “There is a lot at stake in business cases; companies expect to win,” notes Judge Groner. Not only do business cases involve money, but they often involve important relationships. The relationships, when they deteriorate, can sometimes result in the need (perceived or actual) for temporary restraining orders and preliminary injunctions. When businesses are involved in litigation, the welfare of their owners and employees is also at stake.

Like most civil cases, few business cases result in trial. The business cases that are tried are typically bench trials. In that vein, Judge Groner mentions that parties can get a trial sooner with a bench trial. Thus, counsel should make sure their clients really want a jury trial, when they could get a quicker trial with a judge.

Discovery

Judge Groner realizes the importance of discovery, particularly in business cases that are often discovery-intensive. Thus, for complex cases with heavy discovery, Judge Groner may order a discovery facilitator. Of course, the discovery facilitator only makes recommendations; Judge Groner makes the final call. One benefit of a discovery facilitator, Judge Groner observes, is that a discovery facilitation can result in settlement discussions.

Mediation; Settlement Conferences

Like many business court judges, Judge Groner typically orders early mediation. He prefers that counsel agree to it, and he will take into consideration counsel’s thoughts, concerns, and timing on the matter. The issue for counsel regarding early mediation is typically the amount of discovery needed for an effective mediation. In that regard, Judge Groner is flexible as to the amount of discovery counsel request before going to early mediation.

Judge Groner notes that ADR (particularly mediation) is how many cases get resolved. But he adds, “I’m always here to help.” To that end, Judge Groner is willing to convene settlement conferences on request. He recalls that in one case, he presided over a 9½ hour settlement conference that occurred at a private attorney’s office (the courthouse was closed that day due to weather). The case settled.

Motions

Judge Groner still grants oral argument on most non-dispositive motions. Hearings on those motions begin at 8:30 a.m. on Fridays. Business court motions start later in the morning. For the most part, hearings occur over Zoom.¹ (Make sure to check Judge Groner’s webpage on the court’s website for specific information.²) All lawyers will appear in the main Zoom “courtroom;” he does not place attorneys in waiting rooms during arguments. Summary disposition motions are scheduled at other times throughout the week.

Judge Groner decides some dispositive motions on the briefs, but he holds hearings on others. Generally, he errs on the side of hearings on dispositive motions. If counsel want a hearing on a summary disposition motion, he is typically open to granting the same. If, during a motion call, counsel needs to be in another court, counsel should send a note to Marciana Lawrence in the Zoom chat box.

As for motions seeking a temporary restraining order (“TRO”) or a preliminary injunction, he schedules a hearing as quickly as possible. These

are “top priority.” Whether he grants a motion for a TRO or a preliminary injunction or denies it, he will make sure that, “I give the party his or her day in court.” If he denies a TRO motion, he will schedule a hearing on the preliminary injunction quickly.

Status of Zoom

Judge Groner agrees with what many judges have stated: “Zoom is here to stay.” Or, as Judge Groner remarks, “courtrooms are now Zoom rooms.” Although trials and evidentiary hearings may still be done in person going forward, Zoom is efficient for lawyers and their clients—it saves travel and waiting time, and it allows lawyers to appear in multiple courts throughout the state during one morning or one afternoon. That being said, courts and court staff must remain accessible to the public, which they have been with Zoom.

Judge Groner recommends that courts throughout the state have a uniform approach to what kinds of matters are handled by Zoom versus in-person proceedings. This is important because otherwise, if some courts resume in-person proceedings while others remain remote, some attorneys may have to be “in two places at once.” Judge Groner has already experienced attorneys trying to have conferences with him via Zoom while waiting for an in-person hearing with a judge in another county. For his part, Judge Groner is a strong advocate of Zoom. Indeed, Michigan courts are “One Court of Justice.” Accordingly, having a consistent, state-wide policy of court appearances by Zoom is important.

Advice

A veteran of many years on the bench, Judge Groner has seen it all. From that vantage point, he gives practical advice that works for any courtroom. For lawyers who appear in front of him, he wisely recommends litigators “be prepared, be prepared; don’t waste my time.” As for briefs and oral arguments, he adds, “Know your judge; when you know your judge, less is more. Tell the judge up front what you want. Get to the

point.” He reiterates, “I read all the motions. If you don’t get to the point quickly, you probably have a bad motion.” Getting to the point quickly is also important for hearings—other lawyers are waiting, and their time is valuable. Finally, he advises, “Be civil,” and don’t talk over each other. “Honey gets you more than vinegar. Why not be nice and civil to each other?”

Reflecting back decades, Judge Groner provides yet another piece of advice. It was from Judge Thorburn that Judge Groner learned the importance of punctuality. Being late disrespects other counsel and their clients. He reminds us that “judges are appointed, not anointed.” Judge Groner knows what lawyers want: “a judge who will read the papers; provide a good, reasoned opinion; and make a ruling.” He endeavors to do just that. In his courtroom, Judge Groner wants “everyone to be comfortable; I want everyone to be treated with respect, to be treated fairly, and to have their day in court.”

His parting words of advice? “Remember, this is your job, not your life. It’s important work, and hard work, but it’s your work, not your life.”

Two Courts: Ten Years: Congratulations!

November 1, 2021, marked the tenth anniversary of the opening of the Macomb County Specialized Business Docket. Judge Kathryn A. Viviano and Judge Richard L. Caretti are the business court judges there. February 1, 2022, marked the tenth anniversary of the launch of the Kent County Specialized Business Docket. Judge Christopher P. Yates and Judge Terence J. Ackert serve as business court judges there. Congratulations to both courts and to the business court judges.

New Business Court Judges

Judge Michael L. West has been appointed to the St. Clair County Business Court. He replaces Judge Daniel P. Kelly, who retired. On the west side of the state, Judge William C. Marietti has been appointed to the

Muskegon County Business Court. He replaces Judge Timothy G. Hicks, who retired.

Administrative Order; New Case Evaluation Rules

Administrative Order 2013-6 deals with implementation of the business courts. It states, in part:

Courts shall establish specific case management practices for business court matters. These practices should reflect the specialized pretrial requirements for business court cases, and will typically include provisions relating to scheduling conferences, alternative dispute resolution (with an emphasis on mediation scheduled early in the proceeding), discovery cutoff dates, case evaluation, and final settlement conferences.³

Since that Administrative Order was issued, the case evaluation rules were amended, effective January 1, 2022. As a result of these amendments, it is likely that even fewer business litigation cases will go to case evaluation in the future. The amendments remove the case evaluation sanctions. Additionally, the amendments permit the parties to waive participation in the case evaluation process entirely so long as the parties stipulate to another form of ADR (such as mediation) approved by the judge. MCR 2.403(A)(1). Mediation, particularly early mediation, along with early and active judicial involvement, will remain key to resolving business court cases.

Business Court Website

The business court website, which is part of the One Court of Justice website, has been redesigned.⁴ It remains a “clearinghouse” for business court information in Michigan.

One more thing...

Check out “Michigan Trial Courts: Lessons Learned from the Pandemic of 2021: Findings, Best Practices, and Recommendations.”⁵

NOTES

1. This is not an endorsement of a particular videoconferencing platform.

2. <https://www.3rdcc.org/judges#/name/8/1>.

3. https://www.courts.michigan.gov/49bee1/siteassets/courts/business/2012-36_2013-06-05_ao-2013-6_formatted-ao_business-court-st.pdf.

4. <https://www.courts.michigan.gov/administration/trial-court/trial-court-operations/business-court/>.

5. <https://www.courts.michigan.gov/4afc1e/siteassets/covid/lessons-learned/final-report-lessons-learned-findings-best-practices-and-recommendations-111921.pdf>.



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