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CONTENTS

Section Matters

From the Desk of the Chairperson	1
Officers and Council Members	3
Committees and Directorships	4

Columns

Tax Matters: Corporate Self Report "Secret" Summons and Those Darn Tax Fraudsters <i>Eric M. Nemeth</i>	6
Technology Corner: Is ChatGPT Hot or Not? Generative AI and the Emerging Legal and Ethical Risks <i>Jennifer A. Dukarski</i>	7
Touring the Business Courts: Interviews with Judge Curtis J. Bell, Judge Annette M. Jurkiewicz-Berry, and Judge B. Chris Christenson <i>Douglas L. Toering and Emily S. Fields</i>	10

Articles

Michigan Court of Appeals Broadens Potential Exposure to Securities Fraud by Issuers and Sellers of Debt Instruments in Michigan <i>Matthew P. Allen</i>	14
SEC Sues Coinbase to Establish Jurisdiction Over Cryptocurrencies and Crypto Exchanges <i>Matthew P. Allen</i>	20

Case Digests

Index of Articles	28
ICLE Resources for Business Lawyers	34



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Interviews with Judge Curtis J. Bell, Judge Annette M. Jurkiewicz-Berry, and Judge B. Chris Christenson

In the issue, we interview Kalamazoo County Business Court Judge Curtis J. Bell, Wayne County Business Court Judge Annette M. Jurkiewicz-Berry, and Genesee County Business Court Judge B. Chris Christenson. All are fairly new to the business courts.

Kalamazoo County Business Court Judge Curtis J. Bell

Background

Judge Bell practiced for ten years in a smaller firm before being appointed to the Kalamazoo County Bench in 2005. His practice involved business litigation, contract issues, family law, and criminal law. On the bench, he served in the family division and the probate division for about 10 years each with some overlap. While on the bench, Judge Bell stayed abreast of business issues. (He also taught at the Haworth College of Business at Western Michigan University for nearly 20 years.) He was appointed to the business court effective January 1, 2023. He replaced Judge Alexander C. Lipsey, who retired.

Experience with the Business Court

In short, "it has been a great experience." Counsel are "always well-prepared, which makes my job easier. They are straightforward with their arguments."

Scheduling Conferences and Orders

Before moving to the general civil/business court, Judge Bell modified the scheduling conference form with input from attorneys who frequently practice in his court. The result is a seven-page form titled, "Notice of Early Scheduling Conference." This covers almost every aspect of the case: facts, law, pleadings, discovery, witnesses and exhibits, alternate dispute resolution/case evaluation, settlement conference date, trial date, adjournments, and trial protocol (for both bench and jury trials).¹

The court sends this form to counsel after the answer is filed.

After counsel complete the form, they meet with Judge Bell and Circuit Court Staff Attorney Kelly Dollar to resolve any issues. Given that the resulting order will set dates for a settlement conference and trial, Judge Bell advises counsel to ask for as much time as they need rather than seeking an adjournment later. Indeed, "If there is an issue that can be addressed in the scheduling conference order, this is when it should be addressed." That being said, Judge Bell will generally grant one adjournment of trial, but usually not more.

As to discovery, counsel can generally agree on whatever amount of discovery they need in the order. In sum, "Case management is essential, if you want to get matters resolved timely and efficiently."

Motions

Motion day is typically Monday morning; argument is limited to 15 minutes. Evidentiary hearings are set for Fridays.

As to motions for temporary restraining orders and preliminary injunctions, Judge Bell observes: "Very rarely will you see me sign an ex parte TRO." He can generally arrange for any matter to be heard within 24 hours. Once a full hearing is set, the matter usually gets resolved before the full hearing. Judge Bell notes, "I am not afraid to make a decision at the hearing. I am ready for the hearing and have reviewed everything. I go into the hearing with my eyes wide open; I won't waffle on making a decision. I try to be prepared and ready to make a decision as quickly as possible, so when you leave the hearing, you have an order." This is consistent with his overall approach to respect everyone's time and bring a "swift resolution to the issue."

Discovery

Judge Bell hears his own discovery motions; he will review each discovery request, item-by-item if necessary, and make a ruling. If he were to encounter a complex issue involving electronic discovery, he would look to an outside expert for recommendations.

Generally, Judge Bell allows discovery while a summary disposition motion under MCR 2.116(C)(8) is pending. "I don't like delays," and he typically decides such motions from the bench, so there is not a delay between the hearing and a decision.

Mediation and Case Evaluation

Judge Bell encourages any kind of ADR. He likes early mediation, although he does not order it if counsel object. That said, if a mediation occurs late in the case, it will not delay trial. Judge Bell does not order case evaluation unless counsel request it.

Settlement Conferences and Trials

The final settlement conference occurs the Friday before the trial date. This gives the parties an opportunity to get the case resolved before final trial preparation. But, observes Judge Bell, "I don't want to strongarm anyone to settle. I like trials. If you want a trial, I will give you a trial." He schedules a maximum of four trials for the trial week.

At this writing, Judge Bell is working through the 2020 Covid case backlog, which he hopes to dispose of by late 2023. The goal is that by about February 2024, his docket will be largely "back to normal." To that end, he set August 2023 as a "trial month." He will schedule back-to-back trials beginning late July through August 2023.

In-person v. Zoom?

Judge Bell's courtroom is open. It is up to the attorneys to decide whether proceedings are via Zoom or in-person. (Most attorneys prefer Zoom.)

Judge Bell does not allow a witness to appear by Zoom, however, because this can be “too easily manipulated.”

Advice to Litigators

Judge Bell wants to run an efficient courtroom, consistent with respecting the rights of the parties. His advice? Have as much prepared before trial as possible, to make the trial as efficient as possible. Do not spend time at trial arguing matters that could be decided before trial. Have your witnesses ready. As Judge Bell notes, “Following a tight protocol and sticking to what we say we will do is important.” Overall, “My job is to try to bring resolution to a question that cannot otherwise be resolved or let the jury do this and allow the jury to do this in an educated way.” Judge Bell recognizes that getting jurors to serve is difficult; “we want to make things as easy for them as possible.”

Consistent with his approach of resolving as much as possible before trial, Judge Bell encourages motions in limine. (In one recent case, he had 23 motions in limine including Daubert challenges; he set aside an entire day to hear those.) Judge Bell concludes, “I like to respect the time of the attorneys at trial, but I really want to respect the time of the jury.”

Wayne County Business Court Judge Annette M. Jurkiewicz-Berry

Background

Judge Berry began her legal career as an assistant attorney general, where she served as legal counsel for the departments of: Licensing and Regulation, Education, Consumer and Industry Affairs, and the Secretary of State. In law school, Judge Berry worked for Ford Motor Company in General Litigation and served as a law clerk to the editor of the Michigan Court of Appeals Digest. She also worked for nearly eight years as prosecutor in the criminal division, where she focused on white collar, economic, and conspiracy crimes. Judge Berry ran for circuit judge in 1998 but was not elected. She views

that as a “dress rehearsal” for 2000, when she was elected to the Wayne County Circuit Court. Judge Berry also serves as an adjunct professor at the University of Michigan-Dearborn and previously on the faculty of the Ave Maria School of Law in Ann Arbor. In 2011, she became the president of the Michigan Judges Association. Judge Berry was appointed to the Wayne County Business Court effective January 1, 2023. She replaces Judge David Groner, who retired.

Experience with the Business Court

Like Judge Christenson and Judge Bell, Judge Berry is fairly new to the business court bench. But, she says, “I enjoy business court—a forum that handles some of the most complex litigation in the legal system. Lawyers who handle business court cases are exceptionally talented and bright. They want to cooperate with one another to get the dispute resolved.”

Scheduling Conferences and Orders

Judge Berry is developing a form for an early status/scheduling conference. The scheduling order includes a trial date. This is to show the parties that she is serious about the case, and that they must be too. If someone has a suggestion to streamline the process, “I’m all ears,” she notes.

Before the status conference, counsel will be expected to communicate. (Judge Berry is a fan of telephone or Zoom conferences between counsel, rather than e-mail.) Either the parties must agree on early mediation within 90 days, or a joint case management plan must be filed by plaintiff’s counsel and all counsel will proceed to a status conference. Judge Berry budgets an hour for the status conference. She recommends raising all pertinent issues at the status conference, including spoliation and electronic discovery.

Motions

For motions generally, check Judge Berry’s online protocol.² Regarding a motion for a TRO or a preliminary injunction, she reminds counsel: “Injunctive relief is an extraordinary remedy that issues only when

justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.”³ Check MCR 3.310 for issues such as security and include this in the proposed order. For a TRO, explain why notice was not required. She reminds counsel that in a TRO motion, everything must be addressed in the motion papers; counsel will not be allowed to communicate directly with the judge or have anything on the record because this is being done ex parte.

As a matter of prudence, Judge Berry advises that if parties are trying to resolve a dispute, it is not helpful to do “an end run and file a TRO motion. This sets back the negotiations and can lead to irreparable damage to the parties’ relationship.”

Discovery

Here, Judge Berry again encourages counsel to resolve discovery disputes directly. If a discovery motion is needed, Judge Berry reminds counsel of the requirement to confer in good faith as required by MCR 2.309(C) and 2.310(C)(3). Judge Berry is surprised at how often discovery motions are filed without any meaningful attempt to resolve the issues.

Mediation and Case Evaluation

Early mediation is helpful, observes Judge Berry, and she typically orders it. But if counsel explains why this is not appropriate, she will consider this. “My job is to help you resolve the matter; it is not to stand in the way.” She permits the parties to opt out of case evaluation and proceed to early mediation.

Summary Disposition Motions

Regarding an MCR 2.116(C)(8) summary disposition motion, Judge Berry has not yet had to decide whether a party should have to respond to discovery while such a motion is pending. Judge Berry notes, however, that a (C)(8) motion, if successful, would resolve the case without additional expense. This would tend to militate against having to respond to discovery while a (C)(8) motion is pending.

As to an MCR 2.116(C)(10) motion, Judge Berry observes that responses to a (C)(10) motion are often inadequate. Speculation will not defeat a (C)(10) motion. Affidavits (she emphasizes that these should be notarized) and deposition testimony are very important for these motions. If you need more time to respond, contact the court. Her goal is to help achieve a “resolution of a case to the satisfaction of the parties. We work very hard to work with the parties. I don’t have a problem with adjournments as long you keep them to a minimum.”

Settlement Conferences and Trials

Counsel should “talk a lot” before a settlement conference. This again illustrates Judge Berry’s preference for personal communication among counsel. Pointing out that “we are here to help,” Judge Berry will set up a settlement conference at most any stage of the case. The first settlement conference is by Zoom or in person. Subsequent settlement conferences are done by phone. Why by telephone? The parties may be working or have young children; they appreciate that they don’t have to dress up. That being said, if it is a difficult case, she will conduct subsequent settlement conferences by Zoom or in person. (She and her staff are in the courthouse every day. But if people aren’t comfortable coming to the courtroom in person, Zoom is fine.)

For final pretrial conferences and trial, again check Judge Berry’s online protocol on the court’s website.⁴

Advice to Litigators

Judge Berry provides a few common sense, but important, tips for litigators. Respect the court.⁵ If on Zoom, dress as if you are in court. Be prepared. Be professional. Make your argument in a cogent fashion, sit down, and do not interrupt the other side.” More globally, she recommends: “Review your oath from time to time;⁶ remember why you got into this profession; do not denigrate other professionals. Remember that people are watching; serve as a

role model.” Judge Berry concludes, “Your purpose is to advocate for your client and persuade the judge to see it your way.” Respecting the court goes a long way to achieving this.

Genesee County Business Court Judge B. Chris Christenson

Background

Judge Christenson had his own firm for approximately 20 years before he was elected to the Genesee County Circuit Court in 2020. For most of that time, he practiced with a partner. Upon assuming the bench in 2021, Judge Christenson was assigned to the family division for two years. He was appointed to the business court effective March 15, 2023. He joins Judge Brian S. Pickell on the Genesee County Business Court.

Judge Christenson brings a unique background to the bench. He earned a real estate license when he was 18. Thereafter, he did real estate sales and appraisals. While an undergraduate, he also worked as a carpenter. In law school, he worked as a construction superintendent. He continued in construction after law school, but construction work dried up in the months following 9/11.

Experience with the Business Court

In his current position, Judge Christenson’s docket includes business cases as well as general civil and criminal matters. He likes the tight timelines in the business court. In the business court, “the focus is business. If the dispute will cost the parties a lot of time and money, they will generally get it resolved.” There is often “less emotion and more of a focus on business in the business courts,” Judge Christenson observes.

Scheduling Conferences and Orders

A pretrial conference typically occurs within the first 90 days. The result is a comprehensive scheduling order. This addresses pleadings, witnesses, exhibits, discovery, motions, ADR, case evaluation, mandatory settlement conference, and trial. The sched-

uling order may be amended only on motion. Judge Christenson generally grants adjournments of trial if the parties agree.

Motions

Judge Christenson’s protocol details his approach to motions.⁷ Generally, motions are heard Mondays at 1:30 PM. Summary disposition motions are heard at 3:00 PM. He will schedule up to four summary disposition motions for a particular time on Monday. Call for a specific date if you are filing a summary disposition motion.

Regarding TRO and preliminary injunction motions, Judge Christenson rarely grants TROs. In particular, it is generally inappropriate to request a TRO if counsel have had pre-suit discussions. In that circumstance, there is generally no reason for an ex parte order. Rather, the moving party should give counsel for the non-moving party notice of the motion.

Discovery

In deciding discovery motions, Judge Christenson will review the discovery requests “question-by-question” if necessary, but would prefer not to. He is open to using a discovery master if this would be particularly helpful.

Does he stay discovery while a summary disposition motion under MCR 2.116(C)(8) is pending? Judge Christenson has no standard approach. But often the parties can have a hearing on the (C)(8) motion before the discovery responses are due. As Judge Christenson notes, “I have a full docket. I am not going to play games.” If Judge Christenson does grant a (C)(8) motion, he will typically allow leave to amend the pleadings.

Mediation and Case Evaluation

Judge Christenson is a “fan of early mediation.” He encourages early mediation and will reserve the right to order it if a party will not agree. (In fact, the scheduling order typically requires mediation within 120 days.) As Judge Christenson observes, if a case proceeds for a lengthy period of time, then “attorney fees can be an

impediment to settlement” – the parties now want to recover their attorney fees in a settlement (despite the American Rule).

As to case evaluation, Judge Christenson believes that case evaluation without sanctions has become less effective. He prefers mediation.

Settlement Conferences and Trials

Mandatory settlement conferences occur on the Tuesday that falls the week before trial. Parties must appear in person. Judge Christenson first meets with counsel to determine what separates the parties. With the attorneys’ permission, he may also meet with the parties. Overall, his objective is to “resolve the sticking points” that impede a settlement. That may include arguing motions in limine. He has enjoyed very good success with this approach.

Trials, whether bench or jury, are typically set for Wednesday mornings unless there is a conflict. Trials go from Wednesday through Friday. Check Judge Christenson’s online protocol regarding motions in limine, disputes about voir dire, jury instructions, and the verdict form.

Advice to Litigators

In a trial brief, “please brief the true issues – what is really at issue.” Further to that point, he encourages litigators to “be succinct.” For transactional lawyers, he advises “be clear. Make sure that what document says is clear both today and when a dispute occurs a year or more later.”

7. <https://7thcircuitcourt.com/wp-content/uploads/2023/04/Christenson-Policy.pdf>.



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NOTES

1. See Form 9CC-0246T, which is sent to counsel.

2. <https://www.3rdcc.org/judges#/protocol/31>.

3. *Kernan v Homestead Dev Co*, 232 Mich App 503, 509, 591 NW2d 369 (1998), quoting *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264, 489 NW2d 211 (1992).

4. <https://www.3rdcc.org/judges#/protocol/31>.

5. Judge Berry notes that the customary introduction, “May it please the court,” shows respect for the court.

6. <https://www.michbar.org/generalinfo/lawyersoath>.