



The Michigan Business Law

JOURNAL

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Published by THE BUSINESS LAW SECTION, State Bar of Michigan

The legislature passed the business court statute in October 2012. The legislation was effective January 1, 2013. By that time, two specialized business dockets were already in operation, one in Macomb County Circuit Court (established November 1, 2011) and one in Kent County Circuit Court (established March 1, 2012). What led up to the creation of the specialized business dockets, which predated the business court statute? This column takes a retrospective view of the business courts from the point of view of Kent County Business Court Judge Christopher P. Yates and retired Macomb County Business Court Judge John C. Foster, the first two business court judges in Michigan. Furthermore, Judge Timothy G. Hicks of the Muskegon County Business Court will share some advice for both transactional attorneys and litigators alike.

The First Business Courts

Macomb County

In 2011, Judge Foster became increasingly interested in the idea of business courts. "I attended bar meetings on the topic and I began to read about the concept." Judge Foster already had some business cases at the time, and he really enjoyed them. So, he approached then Chief Judge (now Michigan Supreme Court Justice) David F. Viviano and discussed implementing a business docket. "Judge Viviano let me build a business docket bit by bit, taking fewer general civil cases and criminal cases over time." Beyond that, Judge Mary A. Chrzanowski was "very supportive and took on my criminal docket." As a result, Macomb County Circuit Court had the first true business docket in Michigan, and Judge Foster was the first business court judge in Michigan.

Eventually, Judge Foster became Chief Judge of Macomb County Circuit Court. This allowed him to establish a larger business court docket. In the end, the business court met his expectations: "We were able to pull

business cases from the bottom of other dockets and give them the time and attention they needed and required; it also allowed judges on the other dockets to get some relief from these paper intensive cases."

As part of this effort to implement the specialized business docket, Judge Foster marshaled a group of court staff and private attorneys. They established discovery protocols for various kinds of business litigation. Judge Foster appreciates the efforts of the court staff and the private attorneys.

Judge Foster retired in April 2015. He still has fond memories of the Macomb County Specialized Business Docket, and he is particularly proud that Macomb County had the first business court in Michigan. Today, Judge Richard L. Caretti and Judge Kathryn A. Viviano serve as the two business court judges for Macomb County. They both maintain a mixed docket of business, general civil, and criminal cases.

Kent County

As Judge Yates recalls, the business courts really began to build momentum when the State Court Administrative Office (SCAO) contacted the chief judges in Wayne, Kent, and Macomb counties to discuss a "pilot project on business courts." Chief Judge Donald A. Johnston of Kent County Circuit Court jumped at the opportunity. After some discussion with his fellow Kent County judges, Chief Judge Johnston decided that Judge Yates would become the first business court judge for Kent County. At that point, Judge Yates recollects, "we had to create the business court from scratch."

"Everyone was a little nervous about this because the criminal and family divisions would be losing me," Judge Yates notes. But, his fellow judges were supportive and took on his family and criminal docket. In fact, the criminal and family divisions were generally happy about the transition because "complicated, pa-

per intensive cases would come off of their dockets."

In the meantime, the Kent County Circuit Court set up its specialized business docket website and an electronic filing system, which had not previously existed in Kent County. Judge Yates and Chief Judge Johnston worked on the Local Administrative Order (LAO) (2011-05), which was ultimately accepted by SCAO and was issued on October 18, 2011. "That order set up our entire business court system in Kent County, and great thanks is owed to Chief Judge Johnston who did most of the heavy lifting on preparing the LAO." Looking back, Judge Yates is pleased with the way the specialized business docket was established in Kent County.

Fast forward to today. Judge Yates observes, "We get 250-270 filings a year in the business court; this is much larger than we had anticipated, and it has become a significant share of the circuit court's docket as a whole." Although other judges from Kent County Circuit Court had joined Judge Yates on the business docket for short periods of time, Judge Yates is now the only business court judge for Kent County. His docket is solely business cases.

The Original Business Courts in Action

Judge Yates gets deeply involved in business court cases from day one: "For small cases, I almost immediately schedule a settlement conference before permitting discovery." Judge Yates tried to impress on counsel that "it's not worth spending sixty-thousand dollars on attorney fees for a forty-thousand-dollar case." Even for larger cases, Judge Yates favors early settlement discussions and early mediation.

As part of his standard protocol, Judge Yates also insists that counsel attend an initial case conference in person. "I don't let them submit a scheduling timeline; I want them to come in and discuss the case and tailor the case schedule to what is actually needed and anticipated."

The Kent County Business Court also publishes Judge Yates' decisions online in a searchable format. Although business court cases are posted on SCAO's website,¹ the Kent County Business Court website includes decisions before the business court statute was passed and that are not on SCAO's website. According to Judge Yates, posting his decisions gives litigators and transactional attorneys a sense of consistency and predictability because "they can look at the opinions and see how I am likely to rule on an issue based on previous cases with similar facts."

Likewise, Judge Foster took a very similar approach when he was the business court judge in Macomb County. "I was very proactive about initial disclosures and early resolution of disputes. I tailored my approach to the needs of the individual case; I wanted to implement timelines that made sense. I wanted to sit down with counsel, with the parties, and get things done."

Practicing in the Business Courts

Judge Hicks, the business court judge in Muskegon County, would like to see transactional attorneys put "a greater focus on plain English" when drafting their documents. "There is real value to using plain English and shorter sentences. Shorter sentences are more precise and can eliminate a lot of ambiguity." He also recommends using "defined terms" because they help parties understand exactly what they are agreeing to and can provide guidance if a dispute arises.

He had similar advice for litigators: "Don't be afraid to shorten your paragraphs or to use plain English and concise prose." Judge Hicks recommends that counsel be judicious with their textual emphasis. "In some briefs, almost every other line is emphasized in italics or bold—that is too much." Finally, Judge Hicks suggested that more attorneys use headings. He believes that "the proper use of headings really helps orient the reader and provides a framework to understand the matter at hand."

Judge Yates and Judge Foster echoed Judge Hicks's advice: be clear, be precise, be concise. Both Judge Foster and Judge Yates recommend that attorneys be proactive in business cases. If counsel have disputes, they should contact each other by telephone and try to resolve those disputes as quickly as possible.

Judge Foster also provided some advice for new business court judges: "Don't be afraid to innovate and to improve the business court docket. It can be a lot of work to keep the cases moving and you have to stay on it, but it's a rewarding experience that is worth the effort."

NOTES

1. The SCAO website is an excellent source of information on the business courts. It includes the local administrative orders and decisions of the business court judges in an organized, searchable format. <http://courts.mi.gov/administration/admin/op/business-courts/pages/business-courts.aspx>.



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