



The Michigan Business Law

JOURNAL

Volume 39
Issue 2
Summer 2019

CONTENTS

Section Matters

From the Desk of the Chairperson	1
Officers and Council Members	2
Committees and Directorships	3

Columns

Tax Matters: IRS and DOJ Continue Global Out-Reach: Did You Get the Letter? <i>Eric M. Nemeth</i>	5
Technology Corner: Technology and Cyber-Risk Obligations and Issues for Lawyers and Law <i>Michael S. Khoury and Stuart A. Panensky</i>	7
Touring the Business Courts <i>Douglas L. Toering and Emily S. Fields</i>	11
In-House Insight: Disclosing the Ins and Outs of Nondisclosure Agreements <i>Jordan Segal</i>	13

Articles

Effective January 1, 2020: Adopted Amendments to the Michigan Court Rules <i>Fatima M. Bolyea and Emily S. Fields</i>	15
The Evolution of Partner Liability Under the Michigan Uniform Partnership Act <i>Ryan B. Opel and Loren M. Andrulis</i>	23
Why Michigan Should Adopt the Revised Uniform Partnership Act <i>Donald A. DeLong</i>	27
You Never Give Me Your Money: Tenancy By the Entireties in Michigan <i>Paul R. Hage</i>	35
Case Digests	46
Index of Articles	48
ICLE Resources for Business Lawyers	53



Published by THE BUSINESS LAW SECTION, State Bar of Michigan

Although operating under a common purpose and overarching set of rules, each court conducts itself differently from the rest and practitioners should familiarize themselves with the practices of the courts. The business courts are no different. This article introduces two of Michigan's business courts and the judges who preside over them: the Macomb County Business Court, and its judges, Judge Richard L. Caretti and Judge Kathryn A. Viviano; and the Genesee County Business Court, and its presiding judge, Judge F. Kay Behm.

The Macomb County Business Court

The Macomb County Business Court was the first specialized business docket in Michigan, and has approximately 250 business cases filed each year. Judge Caretti and Judge Viviano split the business docket evenly; they each have a blended docket which consists of business, general civil, and criminal cases. Judge Caretti and Judge Viviano hold motion calls for all types of cases on Mondays

Judge Viviano

After graduating from Wayne State University Law School, Judge Kathryn A. Viviano first worked for a prominent firm in the area, practicing commercial litigation. She then worked at Viviano and Viviano, where she gained experience in many areas of law. Judge Viviano was elected in November 2010 and served on the family court until 2015. In 2015, she initially took on a 100% civil docket, and assumed Judge John Foster's business docket upon his retirement. Judge Viviano's docket today consists of business, general civil, and criminal cases. She was recently reappointed to a six-year term.

Judge Caretti

Judge Richard L. Caretti earned his law degree from the Detroit College of Law, which he attended at night while working full-time as a Detroit police officer. After law school, Judge Caretti obtained experience in business litigation through private prac-

tice at a prominent firm and then as a name partner at his own firm. He was appointed to the bench in 2002. Judge Caretti joined Judge Viviano as the second Macomb County Business Court judge in 2015. He was recently reappointed to a six-year term. Judge Caretti's docket consists of business, general civil, and criminal cases.

Discovery

Neither Judge Caretti nor Judge Viviano require a particular discovery protocol; they note that attorneys are welcome to use the forms on Macomb County Circuit Court's website. When asked about the use of discovery masters, Judge Caretti stated that he is "not a fan" and has never appointed one. He does, however, encourage lawyers to resolve discovery disputes ahead of court. Judge Caretti may tell lawyers before him on a discovery dispute to go into a jury room and resolve their issues. If the lawyers are unable to do so, he will resolve it on the record and may impose sanctions (although he has never imposed discovery sanctions to date). Judge Viviano generally approaches discovery disputes in the same way as Judge Caretti.

Initial Business Conference, Mediation, and Case Evaluation

The Macomb County Business Court judges both hold initial business conferences ("IBC") as a substitute for early disposition settlement conferences. The triggering event which sets the date of the IBC is the answer or motion in lieu of an answer filed in response to a complaint. The attorneys must file a joint statement ahead of the IBC. The IBC gives the parties an opportunity to discuss the case with the judge, explore the possibility of early settlement, and identify issues that would require a customized scheduling order.

Judge Caretti typically does not order early mediation at the IBC stage, unless it appears that there is a good chance of settlement. Likewise, Judge Viviano will order early mediation at this stage if, after consultation with the attorneys, there appears to

be a good opportunity for settlement. If not, Judge Viviano often sets cases for an early settlement conference after a short period of discovery to determine if early facilitation is appropriate. Judge Viviano finds that many cases are not ready for early substantive settlement negotiations. Both of them do, however, order case evaluation. Both Judges Caretti and Viviano allow attorneys to opt out of court case evaluation for private case evaluation. In private case evaluation, an agreed attorney mediates the case. Failing settlement, the mediator returns an award that is treated like a unanimous case evaluation award under MCR 2.403. The Macomb County Business Court has a specialized case evaluation panel for business cases.

The judges both note that their doors are always open for a settlement conference, though the settlement conferences are typically not scheduled as a matter of course until after case evaluation. Judge Viviano does hold early settlement conferences when appropriate.

Words of Wisdom

Both judges had the same advice to litigators who appear before them: "Be prepared and be punctual." To transactional attorneys, Judge Caretti stresses the need to be specific, avoid ambiguity in drafting, and make sure that the documents reflect the parties' intent and say what the drafting attorney thinks they say. Judge Viviano echoed this sentiment. She added that her job is to enforce the contract as written and the intent of the parties at the time they entered the agreement, so it is important to contemplate issues likely to arise when drafting.

Judge Caretti's greatest satisfaction in presiding over the business court is helping parties resolve their case. He once spent an entire day with parties in an effort to resolve the case. Judge Caretti believes the business courts "are functioning very efficiently." Likewise, Judge Viviano's

greatest satisfaction is helping attorneys find solutions and helping the parties find a role in that process. "I am honored and proud to be a part of it", she said of the business courts.

Unprepared attorneys are Judge Caretti and Judge Viviano's biggest surprise and their pet peeve. Noting that lack of preparation does not happen often, they nevertheless stress the importance of knowing the case, including the briefing and the case law, even if covering for the attorney on the file.

The Genesee County Business Court

The Genesee County Business Court has approximately 50 business cases filed each year. Judge Behm is Genesee's sole business judge and hears all its cases, in addition to her other general civil and criminal cases.

Judge Behm

Judge F. Kay Behm received her juris doctor from the University of Michigan Law School. She then practiced transactional and commercial litigation in private practice. Judge Behm took the bench in 2009 and served on the family court. In 2019, she replaced Judge Judith Fullerton as Genesee County's business court judge. Her docket consists of general civil and criminal cases, with the business cases being a portion of the general civil docket.

Status Conferences

Status conferences are held 30 days from the date of the answer. Currently, Judge Behm's staff holds the status conference over the phone with the attorneys. These conferences generally deal with the amount of time needed for discovery and with other scheduling matters. Going forward, Judge Behm expects to amend this practice given the changes in the discovery court rules and her desire to be more personally involved in early conferences.

Discovery

Judge Behm handles discovery motions just like any other motion

call. She is flexible with respect to timing of discovery. She tries to balance between moving the cases quicker, which is one of the purposes of the business courts, with making adjustments to individual cases so that they have realistic deadlines. Judge Behm has found that the attorneys have been generally conscientious about setting realistic deadlines and moving cases along.

Case Evaluation and Mediation

When asked about case evaluation, Judge Behm stated that she likes the idea of mediation/case evaluation with the same attorney and under the case evaluation sanctions rules. She does not find case evaluation to be particularly useful in large files. In those cases, Judge Behm finds that mediation makes more sense.

Judge Behm does not normally order early mediation. She generally leaves this decision to the attorneys. However, Judge Behm often orders mediation if there is no anticipated resolution after the first settlement conference, which is typically scheduled with her approximately 30 days before the first trial date.

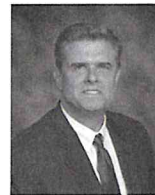
Words of Wisdom

Judge Behm's pet peeve is when attorneys do not communicate with the court when they have resolved an issue or have dismissed a case so that she can devote the time she would spend preparing for that case to another case.

Judge Behm advises transactional attorneys to anticipate what will occur in the future, noting that one of the goals in drafting is to avoid court. "Hopefully, if you're a transactional attorney, you will never see me," she says. She also advises transactional attorneys, and litigators who are involved in closing deals, to make sure that definitions and terms are consistent when multiple documents are involved.

Judge Behm advises litigators to always be prepared. She has found the business court attorneys exceptional and notes that attorney preparation has not been a problem so far. One of her biggest surprises since

joining the business court has been the sheer volume of paper involved in the business cases. She attributes this to the complexities of the business cases, but also notes that, in her experience, the business court attorneys tend to provide more in writing and are thorough.



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