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Wayne County Business Court

Although attorneys who practice in a court's general-civil docket will have cases before numerous judges, attorneys who regularly practice in the business courts will consistently appear in front of only a handful of judges. To help attorneys understand the requirements and expectations in the Wayne County Business Court, this article introduces that court and its three judges—Presiding Judge Brian R. Sullivan, Judge Lita M. Popke, and Judge Edward Ewell, Jr.—by providing insight into the judges' views on status conferences, the specific protocols they employ for business cases, their philosophies on discovery motions, and the faux pas they would like to see fewer attorneys commit when practicing in their courtrooms.

Business Dockets in the Detroit Metropolitan Area

Although Wayne, Oakland, and Macomb Counties all have business courts, each court has different docket assignment protocols for business court judges. In Wayne County, the business judges have a full business docket plus a 50 percent civil docket. In Oakland County, the business judges carry a full business docket and a criminal docket. In Macomb County, the business judges carry a business docket, a general-civil docket, and a criminal docket. Thus, attorneys should expect that judges in each of these courts, as well as other business courts, are busy but will have differing protocols for handling business cases.

Status Conferences

Generally, status conferences in the Wayne County Business Court are held 91 days after the answer is filed. The status conferences are not merely pro forma hearings. As Judge Popke emphasized, "When attorneys attend a status conference, I expect them to have done sufficient due diligence to discuss the case in detail and to have a discovery plan in mind that is tai-

lored to the facts and disputes of that particular case." Judge Ewell echoed Judge Popke's point. He added that he uses status conferences to "get a feel for the facts of the case, the lawyers who will be practicing before the Court, and whether there is animosity between counsel or the parties." Counsel should also be prepared to discuss potential business solutions during the initial status conference. Presiding Judge Sullivan noted that "status conferences are not just a process of handing out a form to be filled out, but instead are opportunities to discuss business solutions. Many times, cases can be settled at the status conference."

Specific Protocols

Judge Popke holds her business docket status conferences at 8:30 a.m. and her general-civil docket status conferences at 10:30 a.m. Motion call for business docket motions is on Friday at 8:30 a.m., and general-civil motions are heard at 9:30 a.m. Business docket dispositive motions are heard on Tuesdays, while the general-civil docket dispositive motions are on Thursdays. Judge Popke encourages attorneys to review her policies and protocols on the court's website. They are available for all judges and provide information on what is required to practice in each courtroom.

Judge Ewell does not have an explicitly defined protocol. However, he currently decides business docket disposition motions on Tuesdays, Wednesdays, and Thursdays. Business docket status conferences are held at 9:00 a.m. General-civil and business docket motions are held at 8:30 a.m. on Fridays. However, if a matter requires special attention, Judge Ewell will schedule a special hearing.

Judge Sullivan does not have a specific protocol for scheduling business cases. However, he did emphasize, "attorneys should utilize the Court's time and each other's time so that meaningful progress can be

made. When in doubt, use a common-sense approach to time management, and be respectful of other counsel's time by keeping counsel and the Court advised of any problems that may arise."

Discovery

Asked about discovery motions, Judge Popke replied, "I don't find them problematic, and the discovery motions I deal with are rarely frivolous." Judge Sullivan agreed, "discovery motions serve a legitimate purpose and are necessary because they provide an important vehicle for access to the Court." On the other hand, Judge Ewell is slightly less enthusiastic about discovery practice, "I think attorneys tend to be too aggressive with discovery motions at such an early stage of the litigation even though the meat of the case is not really dealt with until depositions are taken." Nonetheless, Judge Ewell agreed with his colleagues that discovery motions provide the parties access to the court when an impasse arises, "business cases deal with some very interesting, complex issues and many times both sides have very valid points for and against their positions, and so the Court needs to step in and resolve those issues to keep the case moving along."

The Judges agreed that counsel should discuss discovery issues early and often; a discovery motion hearing should not be the first time that counsel have a substantive discussion about the merits of the motion. "If there is a legitimate dispute, I have no problem resolving the matter; that is my responsibility as a Judge. But, I have little patience for counsel who are being obstinate merely for the sake of being obstinate," noted Judge Ewell.

Judges' Advice About Practicing in the Wayne County Business Court

Every litigator wants to know what they should do in court; they also want to know what they should not do. The three judges provided tips on what attorneys should and should not do in their courtrooms.

First, they wanted counsel to understand that business cases are different from other general-civil cases. "For business cases, lawyers need to take off their litigation hats and work together as business lawyers to get the matter resolved as quickly, efficiently as possible for their clients," advised Judge Popke. Judge Ewell agreed: "Lawyers should not share the angst of their clients, and lawyers certainly should not let the matter become personal."

Judge Ewell said that he wants lawyers to contact the court as soon as possible when seeking a temporary restraining order ("TRO"), especially when it is *ex parte*, "I should have at least 24-hours' notice." Judge Popke also requested that attorneys reach out to opposing counsel (if known) before filing a TRO, because "it's truly rare that the matter is such an emergency that there is not time to call opposing counsel to inform them about the hearing." Further, Judge Popke would like counsel to carefully review the court rule before filing a TRO because "most TRO's are denied because parties do not follow the procedures outlined in the court rule."

Judge Ewell pointed out that lawyers need to be thorough when drafting their findings of fact and conclusions of law for a bench trial. "This is your case and you know the facts and record better than anyone else, including me; I should not have to go searching through the record to find support for your contentions."

"An attorney is never just standing in" for another attorney at the firm, said Judge Popke. "If you are in the courtroom and you make an appearance, you are representing a client and I expect—and your client expects—that you are knowledgeable and can handle the matter." Judge

Ewell concurred, "If no one else in your office can handle the matter, discuss with opposing counsel and the Court and see if the date can be moved."

Also, the judges lamented situations where attorneys show a distinct lack of professionalism. "Attorneys should respect each other's time and show respect to both opposing counsel and the Court at all times. Litigation can be contentious, but it should always be conducted with poise and professionalism," said Presiding Judge Sullivan. Both Judge Ewell and Judge Popke agreed, also noting that they are seeing more and more attorneys interrupt opposing counsel and the court. "Sadly, I'm seeing more and more attorneys interrupt each other; it's as if they believe that the louder and more often they speak, the more persuasive they are. I expect better," lamented Judge Ewell.

Nevertheless, Judge Ewell, Judge Popke, and Presiding Judge Sullivan all agreed that they enjoy the complex issues involved in business cases, and that they appreciate the general professionalism from the business litigation bar. Judge Ewell observed that "business lawyers are good at objectively analyzing the strengths and weaknesses of their case, are well-prepared, and are on time." Judge Popke agreed, "it's absolutely refreshing and demonstrates that law is indeed a noble profession."

Words of Wisdom from the Bench

Finally, the judges wanted to remind counsel that, when in doubt, attorneys should go back to the fundamentals. Be on time and be prepared—know your case inside and out and be prepared to discuss it intelligently. Treat each other with respect—pick up a telephone and call opposing counsel and work out disputes when possible. When disputes arise, brief the matter thoroughly, do not be obstinate, and remember not to take the dispute personally.

As for transactional attorneys, Judge Popke shared some advice. "When you draft your documents,

think about what would happen if there is a dispute; be clear and concise so that the Judge does not have to go beyond the four corners of the documents."

Conclusion

The judges of the Wayne County Business Court enjoy the complex nature of the litigation they handle and the professionalism of the attorneys who practice before them. Their goal is to provide a framework for resolution of business disputes in a prompt, efficient, and professional manner.



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