



THE SUPREME COURT *of* OHIO

REPORT *and* RECOMMENDATIONS *of*
THE SUPREME COURT *of* OHIO

Task Force *on Commercial Dockets*



DECEMBER 2011

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Cuyahoga County Court of Common Pleas

Judge Richard J. McMonagle
Judge John P. O'Donnell

Franklin County Court of Common Pleas

Judge John P. Bessey
Judge Richard A. Frye

Hamilton County Court of Common Pleas

Judge Steven E. Martin
Judge Beth A. Myers

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Judge Gary G. Cook
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INTRODUCTION

In his April 25, 2007 State of the Judiciary speech, the late Chief Justice Thomas J. Moyer spoke of the concern all Ohio citizens share regarding the economic realities challenging the state's job creators. Chief Justice Moyer explained that when making decisions to locate or remain in Ohio, employers assess a number of criteria, including the prospect of costly and time-consuming civil litigation arising from commercial transactions.

As Chief Justice Moyer noted, a number of states have responded to this reality by establishing business or complex commercial dockets in courts of general jurisdiction. These dockets are focused on litigation between businesses, acknowledge the fact that most business-to-business litigation is different from other litigation, and often benefit from advanced case management techniques and judges with business law experience. As a result of this focus, the efficient resolution of commercial cases is promoted, fewer court resources are required, the administration of justice is enhanced, and ultimately the state's business climate is improved.

With this in mind, Chief Justice Moyer created the Supreme Court Task Force on Commercial Dockets, charging it with assessing the best method of establishing commercial civil litigation dockets in Ohio's courts of common pleas. To this end, the Task Force was directed to develop, oversee, and evaluate a pilot project implementing commercial civil litigation dockets in select courts of common pleas.

The Task Force began its work in June of 2007. On March 10, 2008, the Task Force submitted an interim report summarizing the Task Force's work to that point in time (*see Appendix A*). The report also presented a proposed set of Temporary Rules of Superintendence for Courts of Ohio designed to establish the framework for the commercial docket pilot project. Following the Supreme Court's adoption of the temporary rules later that year, the courts of common pleas in Cuyahoga, Franklin, Hamilton, and Lucas Counties agreed to serve and were designated by Chief Justice Moyer as the pilot project courts.¹ Commercial dockets in all four counties were in operation by the beginning of March of 2009.

On March 14, 2011, the Task Force submitted a second interim report (*see Appendix B*). With two years experience with the commercial docket pilot project, this second report communicated the results from surveys conducted of each of the eight commercial docket judges and many of the lawyers involved in commercial docket litigation (*see Appendix C*). The second report noted the great success of the pilot project at that point in time, but also revealed the biggest challenge to each of the commercial dockets – the burden the docket places on the commercial docket judges.

¹ The Task Force extended an invitation to the Montgomery County Court of Common Pleas; however the court declined to participate.

The Task Force now submits its final report and recommendations to the Supreme Court. The 27 recommendations outlined in the report set forth a proposed framework for the permanent establishment of commercial dockets in Ohio's courts of common pleas and the rationale for each recommendation.

REPORT & RECOMMENDATIONS

I. PERMANENT ESTABLISHMENT OF COMMERCIAL DOCKETS

Introduction:

With the approaching completion of the commercial docket pilot project, the initial question to be addressed is whether commercial dockets should be permanently established in Ohio. If so, the subsequent question is whether commercial dockets should be expanded beyond the four current pilot project courts of common pleas. Finally, under what conditions should the commercial dockets be expanded?

Recommendation 1:

The Task Force recommends the permanent establishment of commercial dockets.

Discussion:

The Task Force strongly recommends the permanent establishment of commercial dockets. During the pilot project period, the four pilot project commercial dockets have heard significant cases and achieved a number of successes. For example, one commercial docket case in Columbus expedited the creation of a new, publicly traded real estate investment trust that has been estimated to be worth a half billion dollars. In Toledo, the commercial docket worked through a receivership and related litigation involving the local landmark Tony Packo's restaurant chain, made popular through the 1970s television program M*A*S*H.

Cases such as these indicate the permanent establishment of commercial dockets will result in many benefits to the citizens of Ohio, the bench, and the bar and will ultimately make Ohio a jurisdiction that is more favorable to business. Specifically, permanent establishment would do each of the following:

- Provide the commercial docket judges with more concentrated experience in handling business disputes;
- Increase the number of published commercial litigation decisions, thus providing more guidance to businesses and their legal advisers;
- Promote predictable outcomes, which are important to business decision makers;
- Contribute to greater efficiency in the court system;
- Lessen delays in the court system.

These benefits are important to all businesses. However, it should be noted that they are especially significant for enterprises where there is less margin for error – i.e., smaller businesses, which are extremely important to the overall economic well-being of Ohio.

Additionally, since the mid-1990s, a growing number of states have implemented some manner of commercial docket program, business court, or specialized docket for complex cases. Based on information from the University of Maryland School of Law, the following states have such programs today: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, West Virginia, Wisconsin, and Virginia.² This trend and the need for Ohio to remain competitive with other states provide further support for the permanent establishment of the commercial dockets.

Finally, it is important to acknowledge that the commercial docket concept has gained high levels of approval from the legal community. As previously mentioned, as part of the pilot project evaluation, the Task Force conducted a survey of the pilot project commercial docket judges and those attorneys who have been involved with the commercial docket litigation. Although the survey results indicated areas in which the commercial dockets could be improved, the responses showed wide support for the docket.

Recommendation 2:

The Task Force recommends the option of establishing a commercial docket be available to any court of common pleas that (1) has six or more general division judges or (2) is located in a county that has a population of 300,000 or more according to the latest federal decennial census.

Discussion:

Having addressed the question of permanent establishment of commercial dockets, the subsequent question is which courts of common pleas should be eligible to establish the docket. The four pilot project courts in Cuyahoga, Franklin, Hamilton, and Lucas Counties were selected to participate because the existing volume of commercial litigation in those jurisdictions was significant enough to support the pilot project and provide the necessary statistical feedback. Because the commercial docket concept has already proven to work in those courts, the Task Force strongly recommends the commercial docket be permanently established in each (*see Recommendation 26 for the process by which this should occur*).

² www.law.umaryland.edu/academics/journals/jbtl/bus_tech_res.html

Furthermore, the Task Force believes the benefits of the commercial docket are such that the option to establish the docket should be extended to other courts of common pleas. However, for the goals and benefits of the commercial docket to be realized, a significant volume of commercial litigation must be handled by each commercial docket judge. Additionally, the court must consist of enough general division judges to allow for the concentration of commercial litigation with two or more commercial docket judges.

For these reasons, the Task Force recommends only courts of common pleas in larger counties – i.e., a court with six or more general division judges or a court located in a county with a population of 300,000 or more according to the latest decennial census – be eligible to establish a commercial docket. In addition to the four original pilot project courts, this would currently allow the courts of common pleas in Butler, Lorain, Montgomery, Stark, and Summit Counties to establish a commercial docket, with other courts potentially becoming eligible over time.

Recommendation 3:

The Task Force recommends voluntary participation by a court of common pleas and the commercial docket judges.

Discussion:

Under the commercial docket pilot project, the participation of each court of common pleas and judge was entirely voluntary. The Task Force believes this voluntary participation, patterned on the voluntary nature of existing specialized and dedicated docket programs in Ohio's courts, greatly contributed to the success of the pilot project, just as it has to the success of specialized and dedicated dockets. Voluntary participation helps ensure the participating courts and judges are interested in and committed to the commercial docket. Thus, the Task Force recommends this voluntary element be part of any permanently established commercial docket program.

II. COMMISSION ON COMMERCIAL DOCKETS

Introduction:

The establishment and day-to-day operation of a commercial docket is primarily the concern of the local court of common pleas. However, as will be seen in this report's other recommendations, the Task Force believes there is a need for a minimum degree of centralized oversight of the commercial dockets. As a result, one of the primary questions is whether some manner of a centralized advisory body should be created.

Recommendation 4:

The Task Force recommends the creation of the Supreme Court Commission on Commercial Dockets. Membership should consist of individuals involved with the judicial system or experienced in business litigation. There should be broad diversity in the membership, similar to that of the Task Force.

Discussion:

The Task Force considers state-wide oversight to be important to the effective implementation and operation of commercial dockets. Therefore, it recommends that a commission be created to fill this role. To this end, the Task Force recommends the creation of the Supreme Court Commission on Commercial Dockets, to be charged with the duties and functions outlined in this report.

One initial concern is the composition of the commission. It is important the commission consist of a variety of stakeholders so that diverse points of view may be offered and considered. To this end, membership should reflect not only the gender, racial, ethnic, and geographic diversity of the state, but also include each of the following:

- Transaction and other business attorneys;
- Business and commercial litigators who represent small and large businesses as both plaintiffs and defendants;
- An individual representing each court with a commercial docket;
- At least one commercial docket judge from one of the courts with a commercial docket;
- A current or former administrative judge from one of the courts with a commercial docket;
- A court administrator from one of the courts with a commercial docket.

III. COMMERCIAL DOCKET JUDGES

Introduction:

The linchpin to the commercial docket concept is the commercial docket judge. As noted, the commercial docket concentrates commercial cases in the hands of a limited number of commercial docket judges in order to give these judges (1) more experience with the management of commercial cases, (2) greater familiarity with business terminology, contractual conventions, and the relevant principles of law, and (3) a better understanding of the business context for commercial disputes, including business practices and structures in common use. This concentration contributes to a more consistent and efficient approach to commercial cases. In turn, the central role of the commercial docket judge makes the ultimate success of any commercial docket greatly dependent upon the quality and dedication of the judges selected to participate.

The Task Force notes this is one of the reasons for the success of the pilot project – the high quality of the participating pilot project commercial docket judges. Because the Task Force understands the success of a commercial docket will ultimately depend upon the efforts of the participating judges, it believes a permanently established commercial docket program should include procedures to ensure the quality and dedication of those judges. With this in mind, the Task Force makes the following recommendations.

Recommendation 5:

The Task Force recommends each commercial docket have at least two commercial docket judges.

Discussion:

Based upon the experiences of the pilot project commercial docket judges, the Task Force has concluded that each commercial docket should have, at a minimum, two commercial docket judges. Having multiple judges helps avoid forum shopping by the parties and minimizes the impact of recusals. Additionally, multiple judges are necessary to handle the volume of cases in an efficient manner.

Finally, although two commercial docket judges is the recommended minimum, the volume of cases or other circumstances for a specific court with a commercial docket may warrant the appointment of additional judges (*see Recommendation 21*). Thus, provision should be made to allow for expansion as needed.

Recommendation 6:

The Task Force recommends the Chief Justice designate the commercial docket judges and set the number of judges for each court, based upon the recommendation of the Commission on Commercial Dockets.

Discussion:

As previously noted, the decision to establish a commercial docket and its day-to-day operation are primarily the concern of each local court of common pleas. As a result, there is a strong element of local control with regard to the commercial docket. However, because the ultimate success of the commercial docket is highly dependent upon the quality of the commercial docket judges, the Task Force believes there is a need for central oversight in the selection of the judges.

To this end, the Task Force recommends the Chief Justice be given the authority to designate the commercial docket judges for each court with a commercial docket from the pool of volunteers from the court as well as to set the number of judges for each court. To assist the Chief Justice in this responsibility, the Task Force suggests the Commission on Commercial Dockets vet and recommend to the Chief Justice candidates for appointment and the number of judges for each court. The Task Force believes this centralized approach will help ensure the quality of the judges designated and the state-wide consistency of the selection criteria.

Recommendation 7:

The Task Force recommends that if a vacancy occurs in the position of commercial docket judge, leaving a commercial docket with only one judge, and there are no other sitting judges of the court willing to serve on the docket, the court should no longer be eligible to add cases to its commercial docket absent the temporary assignment by the Chief Justice of a retired, current, or sitting former commercial judge or a non-commercial docket judge who has participated in commercial docket training or possesses business-litigation or other similar experience to serve as a second commercial docket judge.

Discussion:

As noted in Recommendation 5, the caseload of the commercial docket necessitates a minimum of two commercial docket judges. If a commercial docket has only one commercial docket judge, even temporarily, the judge would be overburdened to the detriment of the commercial docket. In the event of a vacancy, another judge of the court should be designated as a commercial docket judge or the Chief Justice should temporarily assign to the commercial docket a retired, current, or sitting former commercial docket judge or a non-commercial docket judge who has participated in commercial docket training or has business-litigation or other similar experience (*see Recommendations 19 and 20*).

However, if these solutions are not available, the Task Force believes the commercial docket for that court should be terminated in an orderly manner. The first step would be for the court to cease making case assignments to the commercial docket. Cases currently assigned to the remaining commercial docket judge would remain with the judge until final disposition. Following the disposition of all pending commercial docket cases, the commercial docket for that court would cease to exist. The commercial docket could be re-established in the court at a future date.

IV. TRAINING

Introduction:

Because of the specialized nature of the commercial docket, a principal question is whether the commercial docket judges should participate to some degree in business law-related educational programs. Additionally, there is the question of whether it would be beneficial to extend these educational opportunities to non-commercial docket judges.

Recommendation 8:

The Task Force recommends the Supreme Court Judicial College continue providing training for all newly appointed commercial docket judges.

Discussion:

Under the pilot project, the Supreme Court Judicial College, with the assistance of the Task Force, provided training focusing on specific provisions of Ohio law and the needs of newly appointed pilot project commercial docket judges. The Task Force believes this training has proven helpful to the commercial docket judges and recommends that it continue to be provided by the Judicial College, in collaboration with the Commission on Commercial Dockets, for all newly appointed commercial docket judges.

Recommendation 9:

The Task Force recommends commercial docket judges meet some level of ongoing post-appointment educational requirements. Additionally, commercial docket judges should be afforded the opportunity to participate in business law-related educational programs as part of their ongoing continuing judicial educational requirements.

Discussion:

The Task Force recommends commercial docket judges complete at least twelve hours of post-appointment educational requirements every two years. Additionally, the commercial docket judges should be afforded the opportunity to participate in business law-related educational programs as part of their normal continuing judicial education requirements under Rule IV of the Rules of the Government of the Judiciary of Ohio. This would provide the commercial docket judges with ongoing exposure to business law training while simultaneously allowing them to satisfy part of their general continuing judicial education requirements.

Recommendation 10:

The Task Force recommends the Commission on Commercial Dockets be required to notify commercial docket judges of any available or required business law-related educational programs.

Discussion:

As noted in the Recommendation 9, it is important for the commercial docket judges to participate in business law-related educational programs. There are, at any given time, a number of current educational opportunities in which commercial docket judges could participate. To assist commercial docket judges in identifying these opportunities, the Task Force recommends the Commission on Commercial Dockets be charged with notifying the judges of available or required business law-related educational programs as well as any other programs that may benefit the judges.

Recommendation 11:

The Task Force recommends non-commercial docket judges be encouraged to attend commercial docket judge training courses.

Discussion:

The Task Force recommends non-commercial docket judges be encouraged to attend the commercial docket training opportunities outlined in Recommendations 8 through 10. First, as set forth in further detail in Recommendation 20, this will create a pool of sitting non-commercial docket judges who are potentially eligible for temporary assignment to a commercial docket.

Second, the courts of common pleas in many smaller counties located near larger metropolitan areas are experiencing an increase in their commercial litigation as a result of their proximity to the business community in the larger county. These smaller counties generally do not have the number of sitting general division court of common pleas judges to warrant the establishment of a commercial docket. However, the courts in these smaller counties could nevertheless benefit from their judges receiving training in commercial litigation.

V. SCOPE OF THE COMMERCIAL DOCKET

Introduction:

A primary consideration that impacts the very nature of the commercial docket is the scope of cases assigned to it. The initial concept implemented under the pilot project focused upon disputes relating to and between business entities. To this end, cases that involved consumers, labor organizations, and residential foreclosures as well as cases in which the government was a party were ineligible for the commercial docket. The question now becomes whether the scope of the commercial docket should be revised.

Recommendation 12:

The Task Force recommends the scope of the commercial docket not be revised, other than to provide further clarity as to which cases are eligible for the docket.

Discussion:

Under the pilot project, cases were eligible for assignment to the commercial docket only if both parties were business entities or a business entity and an owner, sole proprietor, shareholder, partner, or member of a business entity. Based upon the initial feedback from the pilot project commercial docket judges, the Task Force considered also including trade secret, non-disclosure, and non-compete cases between a business entity and an employee or agent of a business entity. However, upon further consideration, the Task Force concluded the commercial docket should continue to focus on litigation between business entities or a business entity and an owner, sole proprietor, shareholder, partner, or member of a business entity. No major changes should be made to the scope of the commercial docket at this time, other than additional language further clarifying which cases are not eligible for the docket.

VI. ASSIGNMENT OF CASES TO THE COMMERCIAL DOCKET

Introduction:

A key matter in the administration of a commercial docket is the manner in which commercial docket cases are assigned to the docket. Under the commercial docket pilot project, cases were first randomly assigned to a general division judge of the court of common pleas and then, if eligible, transferred to the commercial docket. This approach allowed for the assignment of cases to the commercial docket while simultaneously complying with the random case assignment requirement of Sup. R. 36. With permanent implementation of the commercial docket, the question becomes whether this assignment procedure should be retained or revised.

Recommendation 13:

The Task Force recommends cases eligible for the commercial docket be identified as such by the filer and then directly assigned to a randomly selected commercial docket judge. A commercial docket case should not be assigned to a non-commercial docket judge unless it is determined after assignment to the commercial docket that the case is not eligible for the docket.

Discussion:

Feedback from the pilot project commercial docket judges and attorneys involved in commercial docket litigation strongly recommended the case assignment procedure used under the pilot project be revised. Although randomly assigning cases to the general division followed by transfer to the commercial docket kept within the intent of Sup. R. 36, it also created an administrative hurdle to the quick resolution of commercial cases. Additionally, this approach meant that unless the parties or judges were diligent in identifying commercial docket cases, a commercial docket case would not be assigned to the docket.

As a result, the Task Force recommends an approach by which commercial docket cases are identified as such by the filer (*see Recommendation 14 on the identification method*) and then randomly assigned to one of the commercial docket judges. In the event an eligible case is not designated as a commercial docket case or an ineligible case is incorrectly so designated, the procedure established under the pilot project for the transfer of cases into or out of the commercial docket has worked efficiently and, except as noted below, should generally remain part of the assignment process under permanent implementation.

Finally, based upon the feedback of the pilot project commercial docket judges, the Task Force recommends one minor revision to the reassignment process. In the event that a commercial docket case is mistakenly assigned to a non-commercial docket judge and was filed 120 or more days before the proposed reassignment to the commercial docket, the case should not be assigned to the commercial docket absent the consent of the commercial docket judge. In such instances, the case will have likely proceeded to the point that transfer to the commercial docket would result in a significant delay in resolution.

Recommendation 14:

The Task Force recommends courts with a commercial docket use “CD” or some other manner of identification in order to designate commercial docket cases.

Discussion:

To assist the implementation of Recommendation 13, the Task Force suggests courts with a commercial docket use some manner of identification at the time of filing to designate cases as commercial docket cases. This approach would benefit clerks, bailiffs, and other court personnel by allowing them to easily identify commercial docket cases. Additionally, it would provide some degree of uniformity among the various courts with a commercial docket as well as help expedite case management.

Recommendation 15:

The Task Force recommends no special filing fees for commercial docket cases be created or imposed.

Discussion:

The Task Force initially considered recommending the Supreme Court establish a specific filing fee to be imposed by the local court on all commercial docket cases. The concept was that the revenue from such a fee could be used for the specific benefit of the commercial docket. For example, a court with a commercial docket could use the revenue to hire additional law clerks for the commercial docket judges.

However, the Task Force has concluded there is no existing authority for the Supreme Court to establish such a fee absent legislative enactment. Additionally, imposing a special filing fee complicates the commercial docket case management process. For example, which party would pay the fee and when would payment be required? Furthermore, the imposition of a fee may cause the commercial dockets to be viewed as costly and not available for small businesses. For these reasons, the Task Force specifically recommends against imposition of any special filing fees.

VII. WORKLOAD

Introduction:

As previously noted, a very significant challenge in the operation of a commercial docket has been and will continue to be the burden it places on the commercial docket judges. Not all commercial docket cases are complex. However, a high percentage of the cases have multiple parties and involve significant amounts of money, resulting in far lengthier and more complex pretrial discovery and motion practice. Commercial docket cases also frequently address novel legal issues and more complex factual situations than other types of civil cases.

The pilot project attempted to manage workload burdens by providing that for each commercial docket case assigned to a commercial docket judge, the judge would transfer a non-commercial docket civil case of similar complexity back to the general division. The Task Force's hope was that this approach would equalize the overall workload among the judges of the court. However, in practice, the non-commercial docket cases transferred have rarely been equivalent relative to the time required to resolve the commercial docket cases.

Complicating this matter for some of the pilot project commercial docket judges is their criminal caseload. With the exception of the judges in Cuyahoga County,³ the pilot project commercial docket judges continue to receive a full criminal caseload. Because criminal cases must be given priority over the civil docket, the commercial docket judges' focus oftentimes must be on the criminal cases. These pilot project commercial docket judges note that a significant portion of a common pleas judge's court time is devoted to criminal cases; hence a reduction in the number of criminal cases assigned would free up a substantial amount of time that could be devoted, in large time blocks, to commercial cases.

In contrast, for some of the pilot project commercial docket judges, the primary cause of their workload burden is not their criminal caseload, but rather their non-commercial docket civil caseload. For these judges, a relief in their civil caseload, as opposed to their criminal caseload, would be more helpful.

Finally, the pilot project commercial docket judges have understood that key goals of the commercial docket are to have knowledgeable judges readily available to meet with counsel for injunction and discovery hearings and overall case management; to produce timely decisions; and to develop a greater body of reported case law to guide business lawyers and their clients. As a result, the pilot project commercial docket judges have endeavored to write more-reasoned decisions on motions as well as final opinions in non-jury cases.

³ The judges of the Cuyahoga County Court of Common Pleas agreed to an arrangement under which the commercial docket judges received a 50% reduction in their non-capital case criminal caseload.

These factors have resulted in an increased workload that has undermined, in part, the goals of the pilot project. The higher volume of complicated cases each pilot project commercial docket judge receives contributes to delay, fewer reported opinions, and increased fatigue and frustration for the commercial docket judges. Ultimately, these factors threaten to overwhelm the judges and erode many of the successes of the commercial docket.

Recommendation 16:

The Task Force recommends the Supreme Court require each court with a commercial docket to adopt a local rule addressing the workload for each commercial docket judge through one of the following measures:

- **A commercial docket judge receiving no fourth or fifth degree felony cases;**
- **A 50% reduction in the number of criminal cases assigned to a commercial docket judge;**
- **Some meaningful degree of relief in the non-commercial docket civil caseload for the commercial docket judges – e.g., the commercial docket judges receiving no administrative appeals, foreclosure cases, etc.**

Discussion:

The Task Force's discussions with the pilot project commercial docket judges indicate that the most effective means of addressing the judges' workload issues would be a reduction in the judges' non-commercial docket caseload. However, there are multiple ways of implementing this approach.

One potential avenue would be for the commercial docket judges to receive no fifth or fourth degree felony cases due to the increased amount of a judge's time such cases require and the fact that criminal cases must be given priority over civil cases. Alternatively, the judges could receive only one-half the number of criminal cases they normally receive – the argument being that, although eliminating fourth and fifth degree felony cases would save time, it would only do so sporadically, given that these cases are rarely tried. A third option would be to relieve the commercial docket judges of some meaningful degree of their non-commercial docket civil caseload, such as administrative appeals, foreclosure cases, etc.

When discussing these options with the pilot project commercial docket judges, it became apparent there is no single approach that would be equally effective throughout the courts with a commercial docket. First, there was no uniformity among the pilot project commercial docket judges as to which approach would best address their workload burdens since the source of their workload burden varies. Additionally, none of the options would receive uniform acceptance from the non-commercial docket judges of each court with a commercial

docket. As a result, it appears the manner of managing the workload burden must be court-specific.

The Task Force takes no position on which of these three approaches should be implemented; believing only that some manner of addressing the workload must be established. To this end, the Task Force believes the Supreme Court should require each court with a commercial docket to adopt a local rule implementing one of the three listed approaches. This will require each court with a commercial docket to take action to address the workload burden for its commercial docket judges, but also allow each court to do so in a manner that best responds to that courts' unique circumstances.

Recommendation 17:

The Task Force recommends the Commission on Commercial Dockets periodically review the topic of the commercial docket judge's workload and make recommendations to the Supreme Court as to additional ways to manage the workload.

Discussion:

The three approaches for addressing a commercial docket judge's workload outlined in Recommendation 16 are based upon the experience of the pilot project commercial docket judges and courts. However, with permanent implementation of the commercial dockets, it is likely other methods of workload reduction will become apparent. Thus, the Task Force believes it would be beneficial for the Commission on Commercial Dockets to periodically review the topic and make recommendations to the Supreme Court so that potential additional methods of workload reduction may be implemented.

Recommendation 18:

The Task Force recommends the Commission on Commercial Dockets review the topic of commercial docket judges utilizing commercial docket law clerks provided and compensated by appropriate third parties.

Discussion:

Some of the pilot project commercial docket judges have noted the positive impact additional law clerks have had on alleviating workload burdens. For example, for several months the pilot project commercial docket judges in Franklin County worked with young lawyers compensated through a program of the Capital University Law School. The judges reported the law clerks helped the judges continue to meet the commercial docket's goals and time requirements. However, they noted the law clerks required close supervision; and their written work – coming from brand new lawyers – required close editing in complicated cases.

Despite these limitations, the Task Force believes commercial docket law clerks can help alleviate the judge's workload burden. The more seasoned the law clerks and the longer time they can be in that role, the more help they can be to the commercial docket judges.

However, the Task Force notes that, given the current economic environment and courts' funding constraints, the employment of additional clerks may not be a viable option for the courts. Thus, the Task Force recommends the Commission on Commercial Dockets review the topic of commercial docket law clerks provided and compensated by appropriate third parties and also make recommendations regarding guidelines to comply with ethical requirements and to avoid the appearance of impropriety with respect to any third-party payor.

Recommendation 19:

The Task Force recommends the Chief Justice establish a list of retired and sitting former commercial docket judges eligible for temporary assignment to a commercial docket when needed due to the temporary unavailability of a commercial docket judge or to relieve caseloads.

Discussion:

Pursuant to §6(C) of Article IV of the Ohio Constitution, the Chief Justice may temporarily assign a retired judge to active duty. Additionally, §5(A)(3) of Article IV allows the Chief Justice to assign sitting judges of the courts of common pleas and courts of appeal to a court of common pleas. Over time a pool of retired and sitting former commercial docket judges will develop. The Task Force believes these judges present a valuable resource to the judicial system. To this end, the Chief Justice should establish a list of retired and sitting former commercial docket judges who are willing to be assigned to a commercial docket when no commercial docket judge is able to hear a case due to recusal or other reason or when an additional commercial docket judge is temporarily needed to expedite or relieve the current caseload.

Implicit in this recommendation is the suggestion that if a commercial docket judge is unable to hear a case, another commercial docket judge should be assigned to the case rather than a non-commercial docket judge. As previously noted, the key to the commercial docket concept is the commercial docket judge who has (1) more experience with the management of commercial cases, (2) greater familiarity with business terminology, contractual conventions, and the relevant principles of law, and (3) a better understanding of the business context for commercial disputes, including business practices and structures in common use. The temporary assignment of a non-commercial docket judge to handle a commercial docket case would negate these advantages.

Finally, the Task Force also recommends to the Chief Justice modifications to the current system of payment of the retired commercial docket judges. The volume of motion practice and documentary evidence may make it appropriate for an assigned retired commercial docket judge to work on an hourly basis, and the assigned judge's presence in the courthouse of the county where the case is pending may not be required for some phases of the proceedings.

Recommendation 20:

The Task Force recommends commercial docket judge educational courses be open to sitting non-commercial docket judges. Sitting non-commercial docket judges who have attended a set number of these courses and/or possess a pre-determined degree of business-litigation or other similar experience should be eligible for temporary assignment to a commercial docket.

Discussion:

As previously noted, under §5(A)(3) of Article IV of the Ohio Constitution, the Chief Justice may assign a sitting judge of a court of appeals or a court of common pleas to temporarily sit or hold court on any other court of common pleas or division thereof. The Task Force recommends, when possible, the commercial docket training opportunities outlined in Recommendations 8 through 10 be open to sitting non-commercial docket judges. In turn, those judges who complete a set number of training hours and/or possess a pre-determined degree of business-litigation or other similar experience, as recommended by the Commission on the Commercial Dockets, would be eligible for temporary assignment to the commercial docket in the event the commercial docket judge is the temporary unavailable or to relieve caseloads.

Recommendation 21:

The Task Force recommends, when necessary, the appointment of three or more commercial docket judges.

Discussion:

In the event Recommendations 16 through 20 are implemented but fail to provide sufficient workload relief or if the circumstances of a local court with a commercial docket otherwise warrant it, the appointment of an additional commercial docket judge pursuant to the procedures outlined in Recommendation 6 should be considered.

VIII. SPECIAL MASTERS / ALTERNATIVE DISPUTE RESOLUTION

Introduction:

The commercial docket pilot project permitted the use of special masters with the consent of all parties – a case management tool not otherwise available in Ohio’s courts. It must now be determined whether the use of special masters should be retained as part of the permanent implementation of commercial dockets. Furthermore, the experiences of the pilot project commercial docket judges indicate that consideration should be given to forms of alternative dispute resolution.

Recommendation 22:

The Task Force recommends that use of special masters should continue to be available. However, the current requirement that the parties must consent to the use of a special master should be eliminated.

Discussion:

According to the survey conducted by the Task Force of the commercial docket judges, special masters do not appear to have been widely used in the pilot project. However, the Task Force believes the availability of their use benefited the pilot project commercial docket judges and parties by providing a process through which pretrial, evidentiary, and post-trial matters could be addressed timely and effectively through the use of extra-judicial resources.

As a result, the Task Force has concluded the use of special masters should continue to be available to the commercial docket in the same manner as under the pilot project, with one revision – eliminating the requirement that the parties must consent. The pilot project commercial docket judges noted there have been cases in which the use of a special master would have been advantageous, but a master could not be appointed due to the objection of one or more of the parties. The Task Force and pilot project commercial docket judges feel the commercial docket judge is in the best position to determine whether the use of a special master would be warranted and thus believe the decision should be left to the judge.

Recommendation 23:

The Task Force recommends a commercial docket judge be permitted to refer a commercial case to a commercial docket judge from another county or a retired or sitting former commercial docket judge for alternative dispute resolution.

Discussion:

One of the useful tools for expediting resolution of commercial cases is alternative dispute resolution. The Task Force believes a process should be established by which a commercial docket judge can refer a commercial docket case for alternative dispute resolution to another commercial docket judge from another county or by a retired or sitting former commercial docket judge. Cases can then be handled by a judge with commercial docket experience.

The Task Force believes the judge accepting the alternative dispute resolution assignment should not be entitled to additional compensation. However, in appropriate circumstances where out-of-county travel, overnight lodging, or other out-of-pocket expenses are reasonably incurred, the judge should be reimbursed from the court in which the case is pending. Such expenses would be taxed as costs.

IX. CASE MANAGEMENT PRETRIAL ORDER

Introduction:

Under the pilot project, the Task Force was charged with developing a model commercial docket case management pretrial order for use by commercial docket judges and parties. The question now is whether the model pretrial order should be retained and, if so, whether it should be part of the rules establishing the commercial docket.

Recommendation 24:

The Task Force recommends the sample model plan not be part of the proposed Rules of Superintendence for the Courts of Ohio establishing the commercial docket, but rather be available on the Supreme Court's website.

Discussion:

The Task Force notes the model commercial docket case management pretrial order provides for a predictable and repeatable process for parties in the commercial docket. However, the pilot project commercial docket judges generally followed their own pretrial procedures during the pilot program. Accordingly, the Task Force recommends making a model order available for reference, but not mandating that a particular form be used by the courts.

X. TIMELINES FOR RULING ON MOTIONS AND SUBMITTED CASES

Introduction:

The pilot project included time limits for commercial docket judges' rulings on motions and on cases submitted for determination. Specifically, the commercial docket judges were required to rule on all motions in a commercial docket case no later than 60 days from the date of which the motion was filed. The temporary rule further provided that a commercial docket judge must issue a decision in all commercial docket cases submitted for determination after a court trial no later than 90 days from the date on which the case was submitted.

Recommendation 25:

The Task Force recommends dispositive motions be decided no later than 90 days from completion of briefing or oral arguments, whichever is later, and all other motions no later than 60 days from completion of briefing or oral arguments, whichever is later.

Discussion:

The pilot project demonstrated that there was a variation in time in the commercial docket judges receiving complete briefing on motions. The commercial docket judges often faced the dilemma of ruling on a motion in a timely manner without the benefit of the parties' oral argument or hearing the argument and not timely ruling on the motion. Accordingly, the Task Force recommends the time for deciding motions be computed from the closing of briefing or oral argument, whichever is later. This will allow the commercial docket judge to rule on the matter when the judge has all the briefing and argument appropriate for making a decision.

XI. TRANSITION

Introduction:

One of the final matters to be addressed in the permanent establishment of commercial dockets is the transition that will occur when a pilot project court permanently establishes its commercial docket and when new courts choose to establish the docket.

Recommendation 26:

The Task Force recommends that, absent the affirmative decision of a court to eliminate its commercial docket, each of the pilot project commercial dockets automatically be converted to a permanent docket with each current commercial docket judge remaining on the docket.

Discussion:

The survey results indicated each of the commercial dockets is valued in its community. Thus, the Task Force recommends their automatic permanent establishment absent a decision of the court to withdraw. As for the judges, the survey results indicated the current commercial docket judges are well respected in their roles and thus should be retained.

Recommendation 27:

The Task Force recommends that after a court of common pleas approves the creation of a commercial docket and at least two judges of that court are appointed as commercial docket judges, the commercial docket should take effect no later than 60 days after the judges have been appointed.

Discussion:

The Task Force considered that newly appointed commercial docket judges may seek additional education or training and that a court's case designation filing form may have to be modified to reflect commercial docket cases.

To this end, the Task Force recommends the commercial docket become effective no later than 60 days after the court's approval of the docket and the appointment of the necessary judges. The 60-day period assumes that newly appointed commercial docket judges have had access to appropriate materials and resources. Also, 60 days is believed to be sufficient for appropriate publicity and form modification.

APPENDIX A – First Interim Report

The following is the first Interim Report prepared by the Task Force on Commercial Dockets.

The Supreme Court of Ohio
SUPREME COURT TASK FORCE ON COMMERCIAL DOCKETS

MEMORANDUM

TO: Chief Justice Thomas J. Moyer
FROM: Members of the Task Force
DATE: March 10, 2008
RE: Interim Report and Proposed Temporary Rules of Superintendence

The Task Force on Commercial Dockets is submitting this interim report to inform you on the Task Force's progress in developing a pilot program to establish commercial dockets in some of the Ohio courts of common pleas. We also request that the attached Temporary Rules of Superintendence for Courts of Ohio be submitted to the Justices of the Supreme Court for approval in order to move the pilot project into the implementation phase.

The Task Force has met ten times. With the assistance of the Corporate Law Center at the University of Cincinnati College of Law, our thinking has been informed by a comprehensive review of what other states have done to create commercial dockets and business courts. The Task Force has also developed five Work Groups that have developed recommendations for discussion and approval by the Task Force.

The pilot project (described in more detail below) is designed to concentrate commercial cases in front of a limited number of judges ("commercial docket judges"). This will enable the commercial docket judges to develop: (1) greater expertise with respect to case management of commercial disputes, (2) greater familiarity with the relevant principles of law, and (3) a better understanding of the business context for commercial disputes. The Task Force also supports a consistent approach to commercial docket cases in the courts that participate in the pilot project to promote efficiency and as an aid to the commercial docket judges and to the parties before the court.

Based on the experience in other states, we believe the commercial docket will expedite the resolution of commercial cases. Resolving these cases more quickly and efficiently will require less of the court's resources. Consequently, the commercial docket should improve the administration of justice for all. An efficient process will also improve Ohio's business climate and promote economic growth.

The Task Force also proposes that the Supreme Court post decisions and dispositive orders of the commercial docket judges on the Supreme Court's website. With a greater body of case law on commercial matters, lawyers can better advise their clients in planning business transactions and in evaluating alternate courses of conduct.

Subject to comments from and revisions by the Justices of the Supreme Court, the Task Force proposes the following:

- The Task Force will coordinate with the Administrative Judge and/or Presiding Judge and present the pilot project to the judges in Cuyahoga, Franklin, Hamilton, Lucas and Montgomery Counties. If the court agrees to participate in the pilot project, the Task Force would ask for volunteers from the judges to serve as commercial docket judges. The number of commercial docket judges in each county needs to permit concentration of the commercial cases to allow expertise to develop, without overburdening a single judge and creating a bottleneck. The Chief Justice would designate the commercial docket judges based on the recommendation of the Task Force. This is described in proposed Sup. R. Temp. 2(B).
- The cases accepted into the commercial docket would be disputes relating to business entities and disputes between businesses. This is set forth in proposed Sup. R. Temp. 3(A). Under Sup. R. Temp. 3(B), other cases – including those involving consumers, labor organizations, and residential foreclosures, and cases in which the government is a party – would not be eligible for the commercial docket.
- Procedurally, the attorney filing a case that falls under the scope of the commercial docket would include a motion for the transfer of the case to the commercial docket when the case is filed (*See* Annexes B and C for sample plaintiff and defendant motions and Annex D for a sample court order). If the attorney does not file a motion for transfer of the case to the commercial docket, any other party in the case would file a motion for transfer with its first responsive pleading or upon its initial appearance, whichever occurs first. If no party files a motion for transfer of the case to the commercial docket, the judge to whom the case is assigned must ask the Administrative Judge to transfer the case to the commercial docket. If a case is improperly assigned, the commercial docket judge can remove the case from the commercial docket. An order of the Administrative Judge as to the transfer of the case would not be subject to review or appeal. This is set out in proposed Sup. R. Temp. 4.

- For each commercial docket case transferred to a commercial docket judge, that judge would request that the Administrative Judge transfer a case from the civil docket of the commercial docket judge. There would be no change in assignments for criminal cases. This is set out in proposed Sup. R. Temp. 4(E).
- Opinions and dispositive orders rendered in commercial docket cases would be published on the Supreme Court's website. This is stated in proposed Sup. R. Temp. 9.
- The Task Force also believes that a rule similar to the Federal rule allowing the use of special masters would be an aid to commercial docket judges in resolving some commercial docket cases. This is set out in proposed Sup. R. Temp. 5.

While we recognize some additional administrative burden for the recordkeeping associated with the commercial docket in the participating counties, and some cost for publication of decisions and orders of the commercial docket judges on the Supreme Court's website, we do not believe additional resources will be necessary to implement the pilot project.

The Task Force expects to stay in contact with the pilot project courts and commercial docket judges to learn if there are aspects of the pilot project that should be revised or adjusted to make the commercial docket better achieve its objectives, whether in the pilot project phase or as part of a broader initiative that the Supreme Court may undertake. If the Supreme Court identifies aspects of the pilot project that deserve particular focus in operation and evaluation, we would appreciate those suggestions. We hope not to burden the Supreme Court with further requests, but even in the pilot phase there may be some adjustments that may require that the Supreme Court modify the temporary rules.

Once there is a preliminary selection of potential commercial docket judges in the participating counties, the Task Force would present an orientation and training seminar for those judges (*See* proposed Sup. R. Temp. 2(B)(2)). In addition, with the assistance of the Ohio State Bar Association and the Supreme Court of Ohio Judicial College, the program would include CLE presentations providing an overview of Ohio commercial and business laws.

The Task Force has developed a template for a case management order. The Task Force will ask for suggestions from the commercial docket judges participating in the pilot project for revisions to the template and will encourage the judges to adopt a consistent approach to case management for commercial docket cases in all the pilot project courts (*See* proposed Sup. R. Temp. 6).

The Task Force is well aware that a report on the pilot project is due to the Court in mid-2009, and we are working to implement the pilot project in mid-2008. Accordingly, the Task Force respectfully requests that the Temporary Rules of Superintendence attached as Annex A be submitted to the Justices of the Supreme Court for approval in order to initiate the pilot project.

Respectfully submitted,

Honorable John P. Bessey, Co-Chair
Patrick F. Fischer, Co-Chair
Honorable Reeve W. Kelsey
James Kennedy
Honorable William A. Klatt
Harry Mercer
Scott North
Robert G. Palmer
Jeanne M. Rickert
Jack Stith
Adrian Thompson



APPENDIX B – Second Interim Report

The following is the second Interim Report prepared by the Task Force on Commercial Dockets.

**SUPREME COURT TASK FORCE ON
COMMERCIAL DOCKETS**

MEMORANDUM

TO: Chief Justice Maureen J. O'Connor
FROM: Members of the Task Force on Commercial Dockets
DATE: March 14, 2011
RE: Interim Report and Request

The Supreme Court of Ohio adopted Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio on May 6, 2008. The Courts of Common Pleas in Cuyahoga, Franklin, Hamilton, and Lucas Counties voted to participate in the pilot project. This Task Force reviewed applications from volunteer judges in the pilot project courts who were willing to serve, and, based upon the Task Force's recommendations, Chief Justice Thomas Moyer appointed two commercial docket judges for each court. The commercial docket has been in operation in all four counties for over two years.⁴

The Task Force has monitored the operation of the dockets, working closely with the Supreme Court staff. The Task Force has also surveyed the judges and the lawyers who have been involved in commercial docket cases. And the Task Force has had several meetings with the appointed judges, most recently in December 2010.

The pilot project was designed to concentrate commercial cases in front of a limited number of judges ("commercial docket judges"). The goal was for the commercial docket judges to develop: (1) greater expertise with respect to case management of commercial disputes, (2) greater familiarity with the relevant principles of law, and (3) a better understanding of the business context for commercial disputes. Based on the experience in other states, the Task Force believed the commercial docket would both expedite the resolution of commercial cases and provide more specialized results for all Ohio businesses, large and small.⁵ As part of the pilot project, the Supreme Court also agreed to post decisions and dispositive orders of the

⁴ The commercial docket was accepting cases in Hamilton County in September 2008. Franklin County and Lucas County were up and running in January 2009. Cuyahoga County was in operation at the start of March 2009.

⁵ Since the mid-1990s a number of states have implemented commercial docket programs, business courts, or specialized dockets for complex cases. Notably, Delaware that has long been known to business lawyers for its Chancery Court, reacted to what other states were doing, and, in 2010, created a specialized docket for complex commercial litigation. Based on information on the website of the University of Maryland School of Law, the following states have such programs today: Alabama, Arizona, California, Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Nevada, North Carolina, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina and West Virginia (www.law.umaryland.edu/academics/journals/jbtl/bus_tech_res.html).

commercial docket judges on its website. This reporting system was created to enable lawyers to better advise their Ohio business clients in planning transactions and in evaluating alternate courses of commercial conduct.

In general, based on survey results,⁶ vocal support from the local bar associations in the counties where the pilot project is operating, and requests from other counties to participate in the pilot project, the Task Force strongly believes that the pilot project has been highly successful to date. The Task Force is reviewing the pilot project and considering recommendations as to how the commercial docket may become a regular feature of the Ohio court system.

Experience to date has caused the Task Force to conclude that there is one important aspect of the pilot project that deserves attention. The Task Force submits this interim report to request the assistance of this Court with this single element of the pilot project while the commercial docket is still in its pilot/experimental stage. The Task Force would then have the benefit of additional experience under the revised pilot project in order to inform its subsequent and final report on the pilot project.

The request is that the Court seek funding or some other means for one additional staff attorney to be assigned to each of the four pilot project courts, the services of this individual would be shared by the two commercial docket judges in that county. There are many different factors that underlie this request and the principal drivers are outlined below.

The Task Force is acutely aware of the budget constraints in Ohio and does not make this request lightly. However, the Task Force thinks it prudent to make this request at the pilot project stage in order to be able to better evaluate whether the staff attorney assistance can ameliorate the significant burdens now felt by the commercial docket judges. That will enable the Task Force to evaluate whether this is something to consider on a more long term basis when the Task Force makes further recommendations.

The biggest challenge in the operation of the commercial docket in each of the pilot project courts has been the burden the docket is placing on the judges. While not all commercial docket cases are complex, those that are complex involve a significantly lengthier and more numerous motion practice, and more issues (and sometimes more complex issues) than other types of cases. While the commercial docket judges generally ‘lose’ one other case for each commercial case assigned in an effort to equalize the number of cases among judges on each Common Pleas court, the case “lost” is often not an equivalent case. The cases that are reassigned generally require less judicial time and effort, and the commercial docket cases are time consuming cases. Over time, by reassigning many “smaller” – in time needed – cases and substituting the more time consuming cases, the commercial judges have built up a docket heavily weighted with “bigger” – more time consuming – cases.

⁶ See Annex A.

The commercial docket judges also understand the pilot project's goal of a greater body of reported case law to guide business lawyers and their clients, and are endeavoring to write more reasoned decisions on motions as well as the final opinions in non-jury cases. This process also takes more of the judges' time.

This 'build up' can contribute to slower resolution, delay handling cases or fewer reported opinions. There is also much more work and fatigue for the judges than they had before volunteering to be a commercial docket judge.

These factors have made the commercial docket a significant burden on the judges and, absent some change, threaten to overwhelm them and the pilot project. While all of the current commercial docket judges have been enthusiastic for the project, they and this Task Force share a concern that commercial docket judges are at risk for a significant rate of burnout if something is not altered to address this burden.

The Task Force is concerned further that a work burden to the point of burnout for the pilot project commercial docket judges could mean that other judges, if given the option, would not choose to serve as commercial docket judges. The judges now serving agreed to participate in the pilot project, but it is not clear that if the project is continued or expanded that they or other judges would self-select into this role. The Task Force believes one reason the pilot project has been so successful to date was the self-selection by very interested and now experienced commercial docket judges. To lose that quality of judicial interest and skill at this point could doom the pilot project.

The Task Force is well aware, and believes that the legislature also recognizes, that commercial docket is important to the business community in Ohio. If Ohio abandons the commercial docket it will be noted that Ohio is a less friendly place for business. Given the challenges facing Ohio, that would be highly undesirable.

In considering its final recommendations, the Task Force also will consider other avenues to address the burdens experienced by the commercial docket judges. For example, the Cuyahoga Court of Common Pleas has taken a different tack and lowered the burden on commercial docket judges by lowering the number of criminal cases the two commercial judges receive.⁷ The Task force will continue to monitor that approach and to explore other alternative means to lessen the high potential for the burnout the Task Force is already seeing.

At this point in time there is still an opportunity to explore how an additional staff attorney might affect the pilot project. The Task Force respectfully asks the support of the Court to provide some means to acquire this temporary resource for the pilot project for evaluation.

⁷ For this reason, the Court may decide to support the request of the Task Force but to reduce its scope and seek additional support for the judges of the commercial docket in only three counties (rather than all four).

APPENDIX C – Commercial Docket Survey Results

The following are the results of a survey conducted by the Task Force on Commercial Dockets of the commercial docket judges and those attorneys who had been involved with litigation in the commercial docket

Commercial Docket Pilot Project

Attorney Questionnaire

Responses Received as of August 16, 2010

SUMMARY OF RESPONSES TO OPINION-SEEKING QUESTIONS

Question Number	Question Text	Number of Responses	% Strongly Disagree or Disagree	% Neither Agree nor Disagree	% Strongly Agree or Agree
A1a	Assignment to the commercial docket made a difference in the court's case management of my case(s) because: <i>I had earlier contact with the assigned judge</i>	210	14%	23%	63%
A1b	Assignment to the commercial docket made a difference in the court's case management of my case(s) because: <i>I had more frequent contact with the assigned judge</i>	214	14%	31%	55%
A1c	Assignment to the commercial docket made a difference in the court's case management of my case(s) because: <i>The assigned judge was familiar with the subject matter</i>	249	6%	14%	76%
A2	Based on my experience, if I had a choice of where to file a commercial case, I would choose to file in a court with a commercial docket program.	248	5%	10%	84%
B2	The commercial docket has affected my other cases (please respond only if you selected a response other than 'No Cases' in the preceding question).	171	60%	37%	4%
B3	There is evidence (even if simply anecdotal) that the commercial docket has been beneficial to the parties in commercial docket cases.	186	9%	15%	77%
B4	There is evidence (even if simply anecdotal) that the commercial docket has had benefits for non-commercial docket cases.	186	10%	77%	12%
B5	There is evidence (even if simply anecdotal) that the commercial docket has had an adverse effect in commercial docket cases.	186	78%	18%	4%
B6	There is evidence (even if simply anecdotal) that the commercial docket has had benefits for non-commercial docket cases.	186	49%	49%	2%
B7	The judge should be able to require the use of a special master in commercial docket cases.	186	21%	34%	45%

Commercial Docket Pilot Project	
Attorney Questionnaire	
<i>Responses Received as of August 16, 2010</i>	
TEXT COMMENTS	
A1	Assignment to the commercial docket made a difference in the court's case management of my case(s) because: (a) I had earlier contact with the assigned judge, (b) I had more frequent contact with the assigned judge, or (c) The assigned judge was familiar with the subject matter.
	<i>Number Please describe any additional reasons</i>
	1 Commercial docket judge was better prepared by experience w/ the subject matter.
	2 My case involved a non-compete agreement and we were also seeking a temporary restraining order. Because Judge Frye has experience in this area as both an attorney and as a judge, the process was much smoother than has been my experience in courts where the judges have little or no commercial litigation experience.
	3 The judges actually care about their civil docket, which is unusual. They're not constantly trying to kick the case so they can pay attention to their criminal dockets. It's wonderful.
	4 Judge and staff attorney were more knowledgeable of the subject matter and could devote more time to understanding the cases and their particular nuances.
	5 Judge Myers did an excellent job staying well informed and ruling quickly and thoroughly.
	6 The commercial judges actually understand commercial issues. Regrettably, the other judges in Hamilton County do not.
	7 The Judge in several cases took personal interest in the case and moved them along.
	8 This program is very successful at getting commercial cases in front of judges who are engaged with the developments in commercial law. Although such a program may not be as needed in smaller counties, all metropolitan counties should adopt a commercial docket.
	9 many, but not all, judges in Hamilton County are pretty good. But the judges selected to handle the Commercial Docket are two of the best we have.
	10 Actually, I think a lack of funds in the Hamilton County Clerk of Courts is impacting case flow far more than creation of the commercial docket.
	11 I believed that the Judge took a more interested view of the case and paid closer attention to it than the non-commercial docket judges typically do.
	12 I got an earlier trial date and expedited attention to the case.
	13 The case was dismissed for jurisdiction so the interaction with the commercial docket was very limited.
	14 Things seem to be moving more quickly than under the regular civil docket.
	15 The Court seemed to care that special attention should be given to the case.
	16 It has made no difference in the court's management of my cases.
	17 The commercial docket judges seem to be overworked with the normal case load on top of the commercial docket. The earlier contact with the judge simply set a quicker scheduling order, and then little to no contact, absent a hearing, pre-trial or trial, as with standard docket judges.
	18 I actually didn't notice much of a difference.
	19 it makes no sense to have it with judges who still have heavy criminal dockets because they can still only spend the same amount of time on it as an original judge would have. if you want to do it right create a judgeship which is strictly civil and not combined criminal and civil because criminal still takes precedence over trials for civil litigation.
	20 It is very helpful to know how these judges like to proceed with the cases (such as motions for the appointment of a receiver) ahead of time. It is also very helpful to know what to expect from each judge so as to structure initial pleadings accordingly, which saves legal fees and allows these matters to proceed through the court at a much more efficient pace.
	21 At least in Franklin County, we are blessed with knowledgeable Judges in this position. Too often political appointees from the Governor's staff or Prosecutor's office have little knowledge of civil matters involving commercial problems. Choice of appointees is a very important part of the process.
	22 I had no contact with the judge prior to settlement. I simply filed documents and the judge ruled on the motions without conferences or oral argument. That does not mean it was a bad experience. The judges involved have ruled on motions promptly and thoughtfully, and counsel was cooperative in settling the case.
	23 It is too early to tell in my case.

Commercial Docket Pilot Project		
Attorney Questionnaire		
<i>Responses Received as of August 16, 2010</i>		
TEXT COMMENTS		
	24	Although my case fit the categories and was transferred to the commercial docket, the non-commercial docket judge contacted the commercial docket judge and wanted the case back. The commercial docket judge indicated at the initial status conference that he was planning to send the case back to non-commercial because, notwithstanding the gravamen of the pleadings, the case was not large enough for the commercial docket.
	25	It took me 55 days to get a default judgment, and then only because I requested a status conference.
	26	Terrible result; I have had little or no contact with the Judge, who is overwhelmed.
	27	Attention from Judicial Staff Attorney was also critical and early.
	28	The problem I had was that the original case schedule was revised by the Clerk and then by the Judge. It resulted in a 9 month time tract for my case, with no input from the lawyers. I filed a Motion to Dismiss based upon Jurisdiction grounds. The Court did not decide the case until approximately 45 before trial. The Judge would not continue the trial. I had no contact with the Court other than by Motions.
	29	Better judges on complex cases.
	30	When your case is on the commercial dockets all the attorneys know they need to get to it and move the case along.
	31	The assigned judge had more experience with business litigation generally.
	32	The primary advantage of the commercial docket is having judges who have familiarity and interest in the subject matter.
	33	Although there were earlier pretrials, I do not have enough information to date.
	34	I did not have early contact with the judge in the one case I am currently handling. That may be because the first appearance was in December when the judge was on vacation. His staff handled it.
	35	This process works exactly as advertised in Cuyahoga County. You get in very early with experienced judges dedicated to one cause and the cases are "worked to resolution" or refined to the real issues
	36	Because Judge McMonagle could focus on our case, we were able to resolve the matter at considerably less cost than had we conducted typical discovery and motion practice.
	37	The cases that I had were TRO situations so I don't know if the judge assignment made a difference. In the two cases I had, the judge (same judge) didn't the case. How was this judge picked? He should be back in the criminal area.
	38	Prompt, thoughtful disposition of issues requiring immediate attention; never got pushed aside for a criminal matter.
	39	The commercial docket judges are accessible and willing to invest the time needed to resolve issues quickly
	40	The commercial docket judges are accessible and willing to invest the time needed to resolve issues quickly
	41	The commercial docket is a fantastic development. Many of us have waited their entire careers for this type of innovation BUT the judges are overwhelmed-the cases are heavy on motions, etc. I realize we are in tough times, but the judges need more help.
	42	Our commercial docket judges in Cuyahoga County are very hands-on, and take a great interest in their commercial docket cases. There has been a night and day difference in how our cases are being handled with our commercial docket judges, all good.
	43	Richard McMonagle is both smart and experienced. This gave the parties more confidence that they could negotiate a resolution that would closely match a likely adjudication.
	44	The two Judges assigned to the Commercial Docket in Cuyahoga County are doing an outstanding job. I wish I had them on all of my cases.
	45	I believe the commercial docket is a great program. It gets cases moving quicker and with more knowledgeable, hands-on judges.
	46	This program has been excellent and should be expanded to include a wider array of cases. The clients are very happy because their cases get immediate attention from the court.
	47	Scheduling and case management was facilitated. Frequent contact among court and counsel leads to creative ways to handle adjudication.

Commercial Docket Pilot Project	
Attorney Questionnaire	
<i>Responses Received as of August 16, 2010</i>	
TEXT COMMENTS	
48	This program simply has to continue. In fact, after 35 years of practice, we should have three dockets in the larger counties: civil tort; civil otherwise (commercial, admin. appeals, etc.) and criminal. The commercial docket can remain within the "civil otherwise."
49	Court was clearly better prepared to initiate as opposed to react to discussions
50	Assigned judge actually read and understood the key issues before our first pre-trial. Actually meeting with the judge at the pre-trial is now a rare treat.
51	Actually, the case before McMonagal had quick judge contact and he was familiar with the case. In O'Donnell's room, his staff attorney handled everything and there was little or no contact with the judge before trial. The trial date was later than requested and then it was postponed.
52	Personal and timely attention to each case.
53	Judge has a very bright staff attorney and that can make all the difference
54	In today's world, I suspect that commercial cases in court are rare, most of the cases I suspect are criminal cases and also personal injury cases and collection cases in the small jurisdictional courts. Additionally, because of economics and the ability to run a campaign without negatively affecting your livelihood, at least in our area, most of the judges are career prosecutors who may or may not have ever had any dealing with commercial law since law school. Commercial dockets make sense because it is extremely helpful if the Judge at least understands the basic logic of commercial transactions.
55	My answers would depend on to which of the two judges the case had been assigned--one judge handles his dockets with dispatch and a firm hand; the other is rather laissez faire about deadlines; he holds conferences as required, but then does not stick to the deadlines imposed if the other side seeks delay.
A2	Based on my experience, if I had a choice of where to file a commercial case, I would choose to file in a court with a commercial docket program.
	<i>Number Please explain what changes you made and why (or add additional comments)</i>
1	familiarity with subject matter and time limitations on deciding motions
2	Not sure what this question asks for.
3	More time given to handle case
4	I still think the commercial judges have too many cases. You probably need another one now.
5	In theory, yes, a judiciary familiar with commercial issues, familiar with the case pleadings, and ready to make rulings would make a considerable difference in the efficiency of commercial litigation. However, I have yet to see that occur in practice. My cases on the commercial docket have not been handled with more knowledge of commercial issues or with anymore efficiency. It is the same old--Court of Common Pleas Judges are terrified to make rulings of law in commercial cases.
6	the two judges assigned to this docket are particularly good and that is another reason to use this docket as well....
7	I believe the commercial docket program is an utter failure. Great in theory -- horrible in practical application. After having four cases on the commercial docket, I can say that the time restraints and strict calendaring measures create more headache and hassle than they are worth. Not every commercial case can be ready for trial in 18 months. Given the caseloads typically carried by counsel engaged in these commercial disputes, it is almost impossible to effectively prepare and try these cases under the commercial docket parameters. Please end this program.
8	If the case was filed in Hamilton County, but not so sure in Franklin County where the court appears bogged down and unable to rule timely or afford adequate time to the litigants.
9	Earlier trial date and expedited discovery exchanges in the appropriate cases. Many commercial matters, particularly collections, are routine and can be expedited.
10	The parameters of what cases qualify need refined. I have a financial services case regarding the management of a large investment portfolio that was rejected from the commercial docket because one of the parties was an investment trust rather than a business. While there will be gray areas, such as in this example between commercial and professional tort, the commercial docket rules should be written to allow the judge to exercise some discretion to accept cases that fit the spirit of a commercial case.

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11	knowing that there is a Commercial Docket is very attractive
12	I agree for now, but it seems as though the cases are more drawn out and are taking longer and longer which doesn't give me an incentive to be in the commercial docket. For example, I can be on a 12 month case management plan without the commercial docket - when going to the commercial docket the case gets an automatic 18 month case management plan. It would be better to have two tracks at least because not every commercial case needs 18 months.
13	So far, the commercial docket program has made no difference to the management of my cases, except that I get the same two judges every time.
14	Depends on quality of the Judges assigned to the commercial docket.
15	The Commercial Docket seems to help make more predictable, however, the shorter mandate of 1 year resolution seems to make cases more expensive as it does not give the parties time to truly get through the thought processes of the cases and allow issues to developed. An 18 month to 2 year completion goal would be better.
16	Having judges that are knowledgeable about commercial matters (such as foreclosures) is extremely helpful.
17	See prior response. Quality of judges is the primary reason.
18	I have not noticed a difference.
19	Again, too early to tell.
20	There is no predictability as to whether or not the case will remain on the commercial docket, and the judges whose prior law practice consisted of primarily civil matters are envious of those chosen for the commercial docket. Other judges indicate that the commercial docket judges have an advantage in fundraising, and such judges have catered to the larger law firms in town, who in turn are ready to contribute to their campaigns since they have a keen interest.
21	No improvement.
22	From 12 months it is an automatic 18 month schedule even for the simplest of cases; then when trial date comes, it gets sua sponte bumped because the Court is too busy; motions do not get ruled on timely; even docketing the case is a nightmare.
23	The docket was too rushed. Commercial cases can involve extensive discovery and the required scheduling orders did not leave enough time to fully prepare the case.
24	Normally I would have removed both cases to Fed court. I didn't because of the judges who are assigned to them. This is a great idea.
25	There is no question.
26	See above. In general, the commercial docket judges are more experienced with this type of litigation.
27	Not enough information to date.
28	It makes a big difference having judges who are both familiar and interested in commercial cases hearing the cases.
29	The timeline is quicker to trial.
30	Many common pleas judges come from a criminal law background and aren't as familiar with commercial issues. I'd prefer one who is.
31	Depending, of course, on the judges assigned to the docket. They have to be interested in their civil docket, and have a good feel for civil litigation.
32	I might move a case to the commercial docket based on the judge assigned to the case. The quality of commercial court judges is unequal, however, so I would be cautious in case I got the judge that I feels doesn't get commercial disputes.
33	Obtain review by someone interested in commercial litigation with a willingness to wade through issues that can be new and not easily understood; avoid litigation with judges who have little or no civil trial experience.
34	It is unclear as to whether cases that have been pending for quite some time can be transferred to the commercial docket.
35	In the past I would always file in federal court when i had diversity. Now I always file in a court with commercial docket, if I can.

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36	The majority of my cases are simple Complaints for Money Only on commercial leases. I was able to obtain judgments more quickly because initial hearings/pretrials were scheduled either immediately after filing or shortly thereafter. Most of my cases go to default so the judges attempted to set subsequent pretrials for a date after the answer date, when no one appeared for the initial hearing or pretrial. As soon as that date passed, I was able to file my motion for default judgment and the subsequent pretrial was converted to a default hearing, enabling me to obtain a judgment when the defendant did not appear. These simple cases would have otherwise "clogged" the court's docket and the delays endemic to the general docket had in the past given many companies/individuals sufficient time to dispose of assets or liquidate so there was nothing left for my client to collect by the time I was able to obtain a judgment. The ability to obtain a judgment more quickly in simple cases increases the likelihood that there will be something left to execute upon once judgment is rendered. If a default docket could be added to the commercial docket, that would be even better. Most attorneys know if a
37	It should be a permanent system as it really works.
38	While the commercial docket still has kinks that must be worked out, primarily relating to commercial docket judges also handling criminal cases, it is still a vast improvement over the prior system
39	My case was basically handled in a minimum amount of time, at a minimum of legal expenses. In fact, no answer or discovery was even filed. My colleague's experience has been the same.
40	It would depend entirely on the judges and their views on law and relevant issues as reflected in written opinions and by lawyers most familiar
41	The real issue is speed in getting the case heard. I think the commercial docket should include a waiver of jury.
42	Personalized attention.
43	if the commercial judge knew what he or she was doing--all judges don't
44	It would depend upon the jurisdiction. My single experience with Cuyahoga County (I generally practice in Lucas County) was a nightmare with a pretrial seemingly scheduled every 30 days for no apparent reason.
B1	Apart from cases on the commercial docket, I have other cases pending in the local court.
	<i>Number Comments</i>
1	Almost all of my cases are in federal court.
2	Personally, I work in insolvency cases primarily. Our local Commercial judges understand receivership powers and principles and work to resolve matters for creditors efficiently.
3	I have had numerous cases pending at any given moment in civil and criminal court.
4	Most of my cases involve damages above the jurisdictional limits of the municipal courts so, unless I am filing an eviction action in a case where the Cleveland Municipal Court has jurisdiction, I must file my damages action in the Common Pleas Court.
5	Consumer collections and foreclosures.
B2	The commercial docket has affected my other cases (please respond only if you selected a response other than 'No Cases' in the preceding question).
	<i>Number Comments</i>
1	I don't understand what you are asking in this question
2	Other complicated cases go to busier, lesser qualified judges, on occasion.
3	I have had to push dates in other cases just to comply with the scheduling deadlines imposed in my commercial docket cases. It can create huge problems.
4	Too soon to tell
5	The commercial docket, to my understanding, by its very nature reduces the likelihood that a non-commercial case will be assigned to a commercial docket judge.
6	I cannot perceive a difference in the other cases I have.

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	7	I have a civil case that predates the commercial docket rules that should be consolidated with a case that is on the commercial docket. The rules on consolidation don't make sense because it would require the older civil case -- which is two years old and in which the current judge is familiar with all parties, subject matter and the case -- to consolidate with a commercial judge who knows nothing about that case. That doesn't make sense, but the older case cannot move forward without the commercial case moving forward first.
	8	Since the Commercial Docket was created, I have filed few cases on the General Docket. It would be really great if Cognovit Complaints were filed on the Commercial Docket as well because, if judgment cannot be rendered on all issues (ie., there is a claim that must be alleged in the cognovit complaint or you risk losing it), resolution of the other issues is inevitably delayed.
	9	Not yet
	10	No negative impact. In fact, "other cases" more timely attention.
B3	There is evidence (even if simply anecdotal) that the commercial docket has been beneficial to the parties in commercial docket cases.	
	<i>Number</i>	<i>Comments</i>
	1	None that I know of.
	2	too early to tell
	3	None whatsoever.
	4	It is mixed---it depends on the Court and Judge. Great concept inadequately implemented.
	5	I have experienced the benefit in several cases already
	6	The quality of the commercial docket judges, as opposed to the presence of the commercial docket itself, is the more important factor in assessing benefits of the commercial docket.
	7	The judges in my commercial docket cases have been extremely efficient at advancing the cases.
	8	The commercial docket could be far more successful if the judges were allowed to shed a majority of their criminal cases and arraignment responsibilities.
	9	I believe that the judges are taking their roles as commercial docket judges very seriously and are actively managing these cases in a productive, efficient manner.
	10	Again, with judges who can concentrate on business issues, there is more action and less delay. Some other judges will take months to make a simple decision, perhaps because they do not understand the issues or the urgency to parties.
	11	The system is not working as it was supposed to work. The commercial judges are looking at the civil cases they consider "prestigious", and sending the remaining cases back to the non-commercial docket. If there was an amount in controversy jurisdictional threshold, then it would make more sense. At least we'd know what to expect from the judges.
	12	They move along more expeditiously and have the benefit of being handled by knowledgeable judges
	13	My one case with the commercial docket was not very beneficial. It was due to the way the court handled the case more so than the nature of the case. I would have preferred to stay with the original judge.
	14	Without question.
	15	I have had clients ask if their cases can qualify for the commercial docket.
	16	Commercial docket cases move more quickly and time is money in litigation
	17	I typically represent institutional type clients that are in court frequently. My clients have commented frequently and positively about our commercial docket court in Cuyahoga County.
	18	See my other comments.
	19	Opinions are written decisions are made and business issues are resolved in a prompt orderly fashion.
	20	Only where the case is addressed quickly.
	21	Yes
B4	There is evidence (even if simply anecdotal) that the commercial docket has had benefits for non-commercial docket	
	<i>Number</i>	<i>Comments</i>
	1	don't know

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	2	none that I know of
	3	I don't believe it has affected non-commercial cases at all
	4	I have seen no affect on the other cases.
	5	The judges take just as long to rule on summary judgment motions and motions to dismiss alike. I still have to experience judges ruling on motions to dismiss only a few weeks before dispositive motion cutoff dates.
	6	Judges in Cuyahoga County Court of Common Pleas need to be freed from their criminal docket to have the appropriate amount of time to deal with the complexity of cases in the commercial docket.
	7	It lightens the load for the other judges to handle standard cases.
	8	I'm certain it has because it has likely reduced both the number of cases filed on the non-commercial docket and the number of complex cases on that docket that require a great deal of discovery/settlement conference/trial time. Both these factors should enable the other cases to be scheduled and heard in a more timely fashion.
	9	the judges don't get better by virtue of not having commercial cases
B5	There is evidence (even if simply anecdotal) that the commercial docket has had an adverse effect in commercial docket	
	<i>Number</i>	<i>Comments</i>
	1	Not every commercial case is cut and dry. Trying to pigeon-hole each as something that can be ready for trial in 18 months is a big mistake.
	2	Results are mixed--see comments above.
	3	The Commercial Docket seems to help make more predictable, however, the shorter mandate of 1 year resolution seems to make cases more expensive as it does not give the parties time to truly get through the thought processes of the cases and allow issues to develop. An 18 month to 2 year completion goal would be better.
	4	Delay, delay, delay.
	5	Timing is too rushed on these cases.
	6	I have heard from staff attorneys that their judges are simply exhausted due to the volume of cases and are unable to spend the amount of time they would like to help both sides come to an agreement, leading to more trials. See my suggestion re reducing the number of cases initially assigned.
B6	There is evidence (even if simply anecdotal) that the commercial docket has had adverse effects for non-commercial	
	<i>Number</i>	<i>Comments</i>
	1	Cuts into time that would otherwise be used to schedule events in other cases. Too much pressure created (and put on attorneys' shoulders) as a result of the time frames involved in the commercial docket.
	2	No perceivable impact either way.
	3	I don't know this firsthand but have the impression the judges who have commercial cases are still getting a lot assigned to them in the random assignment of cases and therefore may be overwhelmed by having far more cases than they had in the past.
B7	The judge should be able to require the use of a special master in commercial docket cases.	
	<i>Number</i>	<i>Comments</i>
	1	don't know what a special master is
	2	Why only if parties request it. Otherwise Commercial Judge should do his -her job!
	3	I'd leave that to the court's discretion
	4	Agree only if the parties agree to do this.
	5	Waste of time
	6	The use of special masters should be determined by the complexity of the case, regardless of whether it is commercial.
	7	the issue is "require." This may be something that should be "encouraged" or even strongly encouraged but not "required"
	8	I do not understand the "special master" usage. If it refers to magistrate judges, then yes.

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9	I agree but would need the rules to be very well spelled out and the appointment of such to be transparent so that the Special Master doesn't become a way to pay back for campaign contributions.
10	This appears to have potential for clearing dockets quickly if it is properly used. The only danger is creation of a new bureaucracy within the court system.
11	This will become a haven for special favors for retired judges, judges who lose elections, visiting judges or lawyers who are simply friends of judges but have no special training.
12	This would just add another layer of bureaucracy.
13	from experience in an Arizona case involving a special master, it slows the process; allows obstreperous parties one more outlet that they just don't need; and having judge remain in charge tends to limit nonsense and delay. on the positive side, it would be benficial if something needs to be heard ASAP and judge absolutely positively cannot deal with it for a long time.
14	How would the judges acquire the necessary expertise? This would lead to duplication of effort, and erode the positive effect of the docket. Another layer of decision making.
15	Agree, provided the special master is used only in appropriate circumstances and does not become a surrogate for the judge in all commercial cases.
16	The benefit of the commercial docket is getting a specialized judge - why would you want to be referred to someone else?
17	These Masters must be carefully used as they get expensive quickly. And, anytime you give a someone other than the Judge powers you have to build in clear checks and balances.
18	adding another layer is not a good idea
19	While i support this concept,it would have to be done carefully and selectively.An additional staff atty or 1/2 of one may be a better idea.The attys need a direct pipeline to the judge,not a special master,in these cases.
20	It is too early to tell. If commercial docket judges had less criminal cases, they could likely address commercial docket cases without the need of a special master.
21	This should be an option for the parties if they feel that they need someone with particular expertise in the matters at issue (ie., a patent infringement case) or a judge indicates that he does not feel qualified to hear the case.
22	A dedicated comercial docket mediator would also be helpful, even if only part time
23	The so-called special masters are often just freinds of the judge who have to hire a professional in the field and the parties end up paying for both.
24	especially if the special master is bright
B8	If the commercial docket were to continue as a feature of your local court of common pleas after the pilot project, are there any changes you would suggest to the applicable court rules or other rules you would implement to make the commercial docket work better?
	<i>Number Response Text</i>
1	nothing to suggest
2	The commercial docket judges should hear ONLY commercial cases, with no criminal docket whatsoever.
3	I would impose penalties for plaintiffs that fail to transfer their cases to the commercial docket.
4	no
5	n/a
6	No.
7	No, although I have not given much thought on how to improve the process. I have found Judge Frye to be extremely responsive, accessible, and knowledgable in the commercial (i.e., unfair competition) cases in which I have been involved.
8	I would look at the dockets of the commercial judges and see how many commercial cases are assigned to each. If commercial cases comprise more than 60% of a judge's docket, I think it is a strong indication of a need for more judges to be assigned to the commercial docket.
9	have these cases classified as commercial cases right when they are filed, instead of having to file a motion to transfer to commercial docket.

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	10	n/a
	11	Expand the pool of eligible judges.
	12	The transfer procedure is unwieldy. At the time of filing, the case should simply be coded "commercial" and referred directly to the commercial judges. As it is, some judges (and practitioners) don't transfer cases to the commercial docket that should be unless counsel requests it.
	13	Define a commercial case.
	14	Yes - I would like to ensure a system is set up so that injunctive matters involving commercial entitites automatically go to the commercial docket rather than, at least initially, to the equity judge.
	15	The commercial docket should not allow continuances of trial dates except upon a showing of exceptional need.
	16	I like that in Cuyahoga County a motion to transfer is not necessary because the civil cover sheet now has an option for commercial docket.
	17	No.
	18	No response
	19	Broaden its scope and get as many before commercial judges as possible.
	20	No.
	21	Have the Motions really decided in timeline suggested
	22	Require that designation of the case having been assigned to commercial docket appear on the face of each pleading filed. Consider rule requiring that courtesy copy of each such pleading be delivered to appropriate staff attorney if the pleading is one which requires decision by the Court within certain period of time under the program.
	23	Need more judges. Judges have too many cases.
	24	When filing a new case it would be helpful to be able to directly file a case as a "Commercial Docket" case rather than having to go through the motion and transfer process, especially in a TRO or other emergency relief situation. I would also suggest that the Court mandate an early pretrial date and/or require the formal exchanging of a discovery plan similar to Federal Rule 26 for Commercial Docket cases. Otherwise, with an 18 month schedule, the case can just sit there for many months since there are no court imposed deadlines.
	25	no
	26	It is not about rules, its about rulings--Judges have to make them. For too long it has been the practice in commercial cases to simply let the matters work themselves out.
	27	More commercial docket judges (one of the two in Hamilton County frequently recuses). Remove more noncommercial cases from commercial docket judges.
	28	no
	29	Send fewer criminal cases to the commercial judges so that they can truly specialize in commercial matters.
	30	Sheriff takes up to 80 days to issue deed after sale, this make the whole system fail
	31	No changes
	32	I would like to see it stopped immediately. No benefit, just big headaches and stress. Not what attorneys or their clients need.
	33	Lighten or eliminate the criminal load and reduce the non-commercial case load for Judges who will handle complex commercial cases--which require more time. And impose consequences on Judges who do not rule timely in commercial cases so that deadlines apply not only to the litigants but also the Judge.
	34	no
	35	None
	36	No, Judge Martin is very efficient and effective in running the commercial docket. It is critical that the Judge assigned to a commercial docket understands commercial issues, thus my only complaint would arise if a Judge was assigned to this docket who does not have the ability to handle it.
	37	No, seems to be working well now.
	38	None at this time.
	39	not at this time

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	40	I have only had one case assigned to it thus far and see it going no differently than other cases in the local system. I cannot suggest any changes because I see no affect that it has made and saw no strong need for it but I do not handle a large amount of commercial docket type cases.
	41	None.
	42	The commercial Judge should be relieved of her or his criminal docket
	43	no
	44	No
	45	There should be a time limit on depositions (as in the local federal rules) which could be modified as necessary and upon motion. There should be a compendium of written opinions and orders from the commercial judges, available to the public on-line.
	46	Yes. See comment 2 above.
	47	I believe that it working pretty good right now. Maybe the use of a special master (maybe senior attorneys with strong commercial experience would be a good idea.
	48	The commercial judges still have too many criminal matters on their dockets. While better with the commercial judges, it is still too hard to see the judge when need be. Full time commercial judges might be worth considering.
	49	no
	50	No
	51	Please see my responses above. I have seen the implementation of the commercial docket throughout the state. Franklin County seems to have had the most success. Hamilton County would have greater success with better implementation. This is no criticism of Administrative Judge West, but I think there should be a focus group solely for the commercial docket judges at the fall judicial conference to allow them to share their experiences - the process is lacking shared experiences and critical feedback.
	52	Shorten discovery period
	53	Some cases should be filed with the commercial docket, but either because counsel forgets about it or otherwise, the case isn't filed there. The case can then be on the non-commercial docket for a while if the other counsel don't notice this either. I think the rule should have a provision to address this situation. I think now it just says that you have to request moving to the commercial docket with your answer, but if you don't do it with your answer, I'm not sure the rule addresses how to get it on the commercial docket later.
	54	Not that I can think of at this time.
	55	I think the commercial docket judges need to be relieved of their criminal docket. I believe that a rotation of the commercial docket judges may prove beneficial. Some type of docket oversight needs to be implemented.
	56	Only that parties attempting to invoke the equity power of the court regarding injunctive relief be mandated a better priority status
	57	I have encountered delays in getting cases transferred to the commercial docket.
	58	More judges
	59	none
	60	I would suggest that the filer be permitted to select the commercial docket in qualifying cases at the time of filing, rather than having to separately file a motion to transfer. I would also consider drastically reducing the number of criminal cases assigned to the commercial docket judges. In Hamilton County, there still is a great deal of unpredictability in terms of appointed times for hearings and proceedings in civil matters due to the daily criminal docket.
	61	Simplify the process to avoid filing additional motions and other papers.
	62	No.
	63	I have been involved only in one commercial docket case. I have no suggestions based on that experience.
	64	NO
	65	Create a category for commercial docket cases when filing with the Clerk's Office instead of having to file a motion to have the action moved to the commercial docket.

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66	Lighten the load on those judges assigned commercial cases, so they don't continue to get a load of non-commercial cases equal to the other judges not getting commercial cases; allow claims that fit the requirements of commercial cases to still be filed in the commercial docket even if they have some pendant claims that would not alone meet such requirements (e.g., if a corporation is being sued for misappropriation of trade secrets along with a plaintiff's former employee (non-shareholder) being sued for violating his non-compete agreement).
67	No.
68	Possibly assign a common pleas magistrate(s) to assist the judges assigned to the commercial docket.
69	I really cannot opine, I was involved in one case and it was dismissed for jurisdiction before the commercial docket could be featured.
70	Automatic assignment to commercial docket when filed if requested by Plaintiff. Probably need an additional commercial judge.
71	Yes. I would like for the applicable rules to be more clear that the originally assigned judge, i.e. the non-commercial docket judge, may hear not only emergency matters such as TRO's, but also things like cognovit judgments. Sometimes the originally assigned judges are reluctant to hear any motions or sign cognovit judgments because they don't want to step on the toes of the commercial docket judge who is going to be assigned to the case. This creates a problem because, at least in Franklin County, it can take up to two weeks after a case is filed to find out which commercial docket judge has been assigned the case--sometimes it takes several days for the originally assigned judge and the administrative judge to sign the order transferring the case, and thereafter it can take a week or more for the Clerk to re-assign the case to Judge Frye or Judge Bessey. By the time I find out which of them has the case and get an audience with him to sign the cognovit judgment, the primary defendant could have already filed an Answer, thus potentially negating my ability to obtain the cognovit judgment.
72	Require early hands on involvement of the Court in case management and settlement issues. Permit existing cases to be transferred to the commercial docket.
73	I think you would need more than 2 judges in Hamilton County.
74	1. Reduce the non-commercial caseload of the commercial docket judges. Actually make it possible for these judges to expedite cases. 2. Enforce (or more strongly encourage) the 60-day rule for ruling on motions. 3. Push ADR early and strongly.
75	It doesn't seem to be making a difference at all. The cases take the same amount of time with the commercial docket judges as it does with the non-commercial docket judges. I see no difference.
76	Clearly define the cases that qualify for the docket.
77	The Commercial Docket seems to help make more predictable, however, the shorter mandate of 1 year resolution seems to make cases more expensive as it does not give the parties time to truly get through the thought processes of the cases and allow issues to develop. An 18 month to 2 year completion goal would be better.
78	Change the Case Designation Sheet to add a Commercial Docket checkbox. Otherwise, most cases that should be assigned to the commercial docket are remaining with the originally assigned judges.
79	see above comment
80	None.
81	I believe the clerk should be able to designate a case as "commercial docket" at the time of filing, which would avoid the paperwork involved in transferring the matter to the commercial docket. In other words, filing a motion to transfer should only be necessary if a case was inappropriately designated as a "commercial docket" matter. This would reduce the amount of paperwork necessary for each commercial docket matter and allow a case to move more quickly at the outset (e.g., for cognovit judgments and/or in the situations where an ex-parte appointment of a receiver is necessary to protect the value of property to be foreclosed upon). Other than that small complaint, I think the commercial docket system works very well and I am glad that it was implemented in Franklin County.

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	82	A more stringent review of cases and automatic assignment. Some judges receive commercial cases which should be on the commercial docket, and are reluctant to give them up after assignment.
	83	No.
	84	The principal obstacle to settlement often is delays in ruling on substantive motions, because the parties do not know where they stand relative to the ultimate resolution of the case. Sometimes this means that the parties do not know what the true issues of fact even will be. Couple that with a heavy non commercial caseload, and delay creates significant financial losses to both parties, that inevitably result from delays. Thus, I strongly support a dedicated commercial litigation docket, where motions are ruled on by a well informed judiciary promptly after response deadlines. I would also suggest an initial conference to schedule discovery, akin to what is done in the federal courts.
	85	no
	86	Too early to tell.
	87	None
	88	Make it searchable on the online docket - you cant search for dissolution of companies by the company name
	89	Yes. First, there ought to be a civil docket and a criminal docket judge. Second, if we are to maintain the commercial docket pilot program, the rules should specifically state an amount in controversy jurisdictional amount so that there is no confusion amongst the bar and the courts as to what the intent of the program is. Third, the rules should specifically state whether non-commercial docket judges have subject matter jurisdiction to issue orders in cases that are within the jurisdiction of the commercial docket.
	90	Judges should stand for election to the 'commercial docket' and/or be required to demonstrate some meaningful experience in commercial litigation.
	91	Docketing has to be automatic, not by motion OR in the discretion of the original judge. Trial schedule should be the same as for other cases. Absolutely need more judges assigned.
	92	None at this time. THRILLED to have commercial docket and equally thrilled to have Judge Bessey assigned-- knowledgeable, fair, in charge, technologically aware/advanced, fast track (not so much experience with other judge but like him too).
	93	none
	94	Mandatory ADR (either mediation, early neutral evaluation, or similar process). Local Rule or Civil Rule that mandates a specific Case Management Order in these cases.
	95	Allow more time for discovery.
	96	Add at least one more judge in Hamilton County. Our two judges are overloaded--working hard, but overloaded.
	97	no
	98	1. Assign another judge. 2. Provide commercial docket judges with an extra clerk.
	99	No
	100	No
	101	Not at this time.
	102	I do not view the commercial docket as necessary.
	103	Perhaps a reduction of criminal docket requirements
	104	Require a disclosure like the federal rules require Rule 26(a), hold an EARLY discovery conference, after disclosures, and schedule mediation at same conference
	105	There should be input from the lawyers before a case is sent to the commercial docket. My case was relatively simple and did not need a sophisticated judge or a lot of time to understand the issues or resolve the case.
	106	n/a
	107	Provide a commercial docket option on the cover sheet rather than requiring a motion to transfer.
	108	No.
	109	The commercial docket in Hamilton County works very well. The cases are heard quickly and efficiently and parties/counsel rarely spend time waiting on criminal matters.
	110	No.
	111	Add more judges to handle the commercial cases
	112	No

Commercial Docket Pilot Project	
Attorney Questionnaire	
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TEXT COMMENTS	
113	Eliminate criminal cases for commercial docket judges.
114	I would request that commercial cases conforming to the commercial docket's requirements be automatically assigned to the commercial docket. If a party wished to challenge that assignment, it could always do so but right now, the present process is not practically different from that and only causes delay in emergency or TRO proceedings.
115	not at this point. not enough time to evaluate and determine what changes may be required
116	Add one or more judges to the commercial docket. Require one-for-one "trade" of cases transferred to the commercial docket, or otherwise find a way to make sure the caseloads of the commercial docket judges do not become disproportional to other judges on the court.
117	No
118	Reassign criminal cases from the Commercial judges. They need more time to deal with more complex cases. Someone should be creative enough to deal with the single assignment system and the needs of the Commercial judges to have the time to do their jobs.
119	None
120	Possibly assigning one additional judge to the commercial docket (we have two in our Court now). I practice primarily in the field of business litigation, and by luck of the draw, almost all of my cases are in front of the same judge (although he is a very good judge, I tend to not want all of my cases and motions decided by the same person).
121	Better understanding of what cases will be on the commercial docket. I have litigated several non-competition cases. There seems to be some confusion as to where these belong. It seems that if a company sues a competitor and the former employee, it is on the commercial docket. But if a company names only a former employee, the case is not on the commercial docket. I am not sure why that matters, as the issues are very similar.
122	no, I am very pleased
123	Have electronic filing and service of all pleadings available. Also need to keep docket current daily; some of the documents did not appear in the docket promptly after they were filed, which makes it much more difficult to know what's pending and to determine response times for parties in the case (if the document was not served on the party viewing the docket).
124	No; I think it works very well. The next thing to consider would be having a specialized appellate commercial court (but maybe I'm dreaming).
125	I think it has been a success. Commercial clients like it, too.
126	Consider a discovery protocol, in particular an standard e-discovery plan.
127	no
128	None here
129	Judges assigned only to the commercial docket, so they wouldn't be assigned regular cases. And/or a magistrate(s) for commercial docket only. Currently, magistrates in Cuyahoga County only handle foreclosures.
130	Ohio should adopt rules permitting for the transfer of related commercial cases pending in different common pleas courts to a single court for coordinated pretrial proceedings, as in the federal MDL process. No such mechanism exists under current Ohio law.
131	Reduce the commercial docket judge's caseload of other types of civil or criminal cases.
132	As it is fashioned now, the Cuyahoga County commercial docket judges still have a regular criminal and civil draw. I would suggest assigning one or two judges to do nothing but the commercial docket.
133	No.
134	Better NOTICE to defendants of initial CMC or pretrial. Often we catch these only because we get a daily report of cases filed in the local court and we learn our clients have been sued and then check the docket. Plaintiffs don't call to let them know anything has been scheduled.
135	In Cuyahoga County the Commercial Docket judges have to be relieved of their criminal dockets.
136	No
137	No, it is worthwhile to continue and expand.
138	Better selection of judges assigned to the commercial docket.

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TEXT COMMENTS		
	139	Supreme Court should adopt a rule making it clear that the non-commercial judge must transfer the case. Also the criminal docket for the commercial judges should be eliminated. I have a case in California where there are 7 commercial judges. These judges have no criminal docket and it really helps in terms of the judges knowledge of the case and the scheduling.
	140	Judges on the commercial docket should not be required to take criminal cases
	141	Relieve the commercial docket judges of their non-commercial assignments such as criminal and other matters. In Cuyahoga County each judge is now handling more than 200 commercial cases, many of which are complex. The system, i.e. the Supreme Court of Ohio, must relieve them of their other cases since their fellow judges have chosen not to do so.
	142	Assign more judges.
	143	None at this time. Cuyahoga County has made it easy to file cases and get them immediately placed on the commercial docket, a procedure that is especially helpful in emergency relief (e.g. TRO) cases.
	144	I would much prefer a system in which, at least in larger cities, we had separate civil and criminal divisions. Far too few of our judges are versed in, or interested in, complex civil litigation, whether or not between strictly "commercial" litigants. Barring that, certain types of disputes not currently defined as "commercial" should be so defined. That definition should be expanded to include, for example, cases pled as putative class actions regardless of the theory of liability or whether the plaintiff class consists of "consumer" or "commercial" parties.
	145	I would suggest alleviating the commercial docket judge's criminal docket. The commercial docket judges carry a very full case load.
	146	More judges for the commercial docket
	147	The current rule of superintendence has a gap in it-when a former employee,who was not an owner,etc(see 1.03(A)(3) is against a business entity in a trade secret type case.As a practical matter,in our county,the commmercial dkt judges usually take these cases anyhow.
	148	Clarify whether the time limits for transferring cases to the commercial docket. Require the parties to have an early telephone conference with the commercial docket judge to determine whether it would be beneficial for the parties and counsel to meet with the court or to explore early resolution. Less criminal cases assigned to commercial docket judges.
	149	no
	150	Our administrative judge in Cuyahoga County will not let the commercial docket judges handle proceedings on cognovit notes which makes no sense because cognovit proceedings by definition are commercial in nature. We end up bifurcaing cases that have one count seeking judgment on a cognovit instrument and additional counts seeking other relief. This is nonsense and has to change.
	151	The judges on the commercial docket in Cuyahoga County, due to the case load, should be freed from other types of cases being assigned to them. Also, in Cuyahoga County, a third commercial judge should be considered.
	152	No.
	153	I can't think of anything at present. The Commercial Docket in Cuyahoga County has worked very well, and has, thus far, been an excellent development.
	154	For cuyahoga county it might be even better to add one more Judge for a total of 3 commercial judges. Also possibly removing criminal cases from a commercial judge's docket. i.e. have a separate civil court and a criminal court.
	155	See prior suggestions re how to reduce the initial case load for the judges.
	156	Expand the scope of cases that are eligible. Hire a commercial docket mediator. Enact a mandatory intial disclosure rule similar to federal court.
	157	Eliminate or lessen the burden of the criminal case component of the commercial docket judges' dockets. The criminal case burden prevents the judges from having appropriate time to deal with the cases on the commercial docket in a manner the judges or counsel would prefer. Avoid efforts by non-commercial docket judges to retain or pull back commercial docket cases assigned to the commercial docket. If such judges want the cases, let them volunteer to assist with the commercial docket.

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TEXT COMMENTS		
	158	As the commercial dockets grow the assigned judges are getting overwhelmed resulting in a delay in ruling on motions. These cases are often complex. If they settle early that's fine but when they get bogged down it is hard to get trial time and prompt rulings. Judges need to have the rest of their dockets freed up or perhaps assigned additional staff.
	159	One of the commercial docket judges still handles a significant number of criminal cases that distracts him from concentrating on his commercial docket cases
	160	Not yet
	161	establish a rule that limits the time in which the judge can transfer the case to the commercial docket. presently, the rule does not impose any time constraints on the assigned judge
	162	NA
	163	I would suggest that the rules governing the commercial docket be written more clearly. I would also suggest that the commercial judges take on as few non-commercial civil cases as possible.
	164	no.
	165	1. No jury trials. 2. Trial date within 6 months. 3. Personal contact between parties and judge. 4. Restrict the dockets of the commercial docket judges. Criminal cases interfere with the speed that is necessary to have value from the commercial docket.
	166	None. I really like the program.
	167	Keep the same Judges on the Commercial Docket. The Judges, their Staff Attorneys and Bailiffs are all on the same page (unlike others not on the Commercial Docket).
	168	Requiring mediation before substantial discovery in the event the commercial docket judge does not have the time, due to non-commercial docket cases, to spend the time to facilitate settlement discussions.
	169	I would give the judges for the commercial dockets an additional law clerk. One of our judges has quite a backlog of dispositive motions.
	170	I would require that the judges who handle the commercial docket make those cases his/her priority and keep them moving swiftly according to set timetables, without giving in to the demands for delay by the defendant. The commercial docket was designed to speed things up, not business as usual.
	171	no
	172	No
	173	No.
	174	none
	175	None at this time.
	176	None in my local court.
	177	Not yet. It is too early to determine what is working well and what is working not as well. The judges are acclimating to the process and I sense are finding their way through the process at the same time as the attorneys appearing before them.
	178	Perhaps have a magistrate assigned to the commercial judges to assist with the mundane or routine matters since there appear to be a significant number of commercial cases.
	179	Please encourage the use of special masters. Even judges assigned to the commercial docket do not have the "commercial experience" to address many of the issues which face them, though they are frequently better qualified to hear commercial cases than their fellow general docket judges. Their designation as "commercial judges" can make some of these judges think they are better than they are, which can be a problem. Also, there are times when I feel I do not want to be assigned a judge with commercial experience, which can lead to a system whereby attorneys can attempt to "game" the system. Suggest you look to the federal system where both parties have to consent to the use of the US Magistrate in civil and misdemeanor criminal cases for guidance in fashioning the commercial judge arrangement in Common Pleas court.
	180	the commercial docket judges are overworked and need more time per case.
	181	the special master idea is great especially in that judges here often dump trials onto visiting judges who walk in cold, glance at the file and screw up the trial

Commercial Docket Pilot Project

Judicial Questionnaire

Responses Received as of August 16, 2010

SUMMARY OF RESPONSES TO OPINION- AND INFORMATION-SEEKING QUESTIONS

Question Number	Question Text	Number of Responses	% Strongly Disagree or Disagree	% Neither Agree nor Disagree	% Strongly Agree or Agree
1	I have changed the way I manage commercial docket cases or other cases on my docket as a result of the commercial docket.	5	20%	0%	80%
2	I have changed my case management order or case management process because of the commercial docket.	5	40%	20%	40%
3	The commercial docket has changed my workload as to the amount of time required to attend to commercial docket cases.	5	0%	0%	100%
4	The commercial docket has changed the workload for my law clerks or other support staff.	5	0%	0%	100%
5	Generally speaking, counsel in commercial docket cases has reacted positively to the commercial docket and any changes I have made for judicial management of commercial docket cases.	5	0%	0%	100%
6	I have had a significant trial in a commercial docket case since the inception of the commercial docket.	5	20%	0%	80%
7	In such significant trial, I used special scheduling or procedures to minimize the disruption of the trial on other matters on my calendar (please answer only if you answered in the affirmative to the preceding question).	5	20%	20%	60%
8	The commercial docket has created new challenges or new opportunities for:				
	a. the other judges of my court	3	0%	100%	0%
	b. my law clerks	3	0%	0%	100%
	c. the law clerks of other judges	3	0%	67%	33%
	d. other legal support staff	3	33%	33%	33%
	e. the clerk's office	3	33%	0%	67%
	f. others in the courthouse	3	0%	100%	0%
9	There is evidence (even if simply anecdotal) that the commercial docket has been beneficial to the parties in commercial docket cases.	3	0%	0%	100%
10	There is evidence (even if simply anecdotal) that the commercial docket has had benefits for non-commercial docket cases.	3	33%	33%	33%
11	There is evidence (even if simply anecdotal) that the commercial docket has had an adverse effect in commercial docket cases.	3	100%	0%	0%
12	There is evidence (even if simply anecdotal) that the commercial docket has had adverse effects for non-commercial docket cases.	3	33%	0%	67%
13	The commercial docket pilot program has met my expectations.	3	33%	0%	67%
14	I should be able to require the use of a special master in commercial docket cases.	3	67%	0%	33%

Supreme Court Task Force on Commercial Dockets

Commercial Docket Pilot Project

Judicial Questionnaire

Responses Received as of August 16, 2010

SUMMARY OF RESPONSES TO OPINION- AND INFORMATION-SEEKING QUESTIONS

Question Number	Question Text	Number of Responses	Never	Rarely	Don't Know	Sometimes	Almost Always
15	The parties in commercial docket cases typically have been through an ADR process before the case is filed.	4	0%	50%	25%	25%	0%
			Never	Rarely	Sometimes	Almost Always	Always
16	If the parties have NOT been through an ADR process before filing of the case, I encourage ADR or use of other specific mechanisms inside or outside the Court to attempt to resolve the case.	4	0%	25%	75%	0%	0%
17	There are third party services or other ADR methods that I find to be effective, or that minimize my personal involvement, that I may recommend.	3	0%	33%	33%	33%	0%

Supreme Court Task Force on Commercial Dockets

Commercial Docket Pilot Project		
Judicial Questionnaire		
Responses Received as of August 16, 2010 (N=5)		
TEXT COMMENTS		
Question	Comment Number	Comments and Explanations
1		I have changed the way I manage commercial docket cases or other cases on my docket as a result of the commercial docket.
	1	I try to be slightly more pro-active in getting lawyers prompt TRO/Preliminary injunction hearings, or conferences on discovery disputes.
	2	More hands-on management W/ status conferences and setting specific performance dates. Requirement that the parties e-mail anything they file to my staff attorney.
	3	More hands-on management w/ status conferences and the setting of ordered performances dates
	4	I try to move the cases along in a more efficient manner.
2		I have changed my case management order or case management process because of the commercial docket.
	1	Early on I identify and prioritize the issues of the case. An emphasis is placed in dealing first w/ the major issues that are relevant to the highest # of parties. I also focus on common areas of discovery to minimize duplication of effort. In effect I set the tasks to be accomplished and develop a time line for their completion. Enhanced communications w/ attorneys gives me a much better sense of the "rhythm" of each case
3		The commercial docket has changed my workload as to the amount of time required to attend to commercial docket cases.
	1	Many of these cases are "front-end-loaded" requiring additional conferences or hearings at the outset. In addition, now that the docket has "matured" to 9 - 15 months there quite often appear to be more contentituous, complex pretrial motions presented than otherwise are regularly seen on the civil docket. Plus, to the extent we "publish" decisions on the website I try to assure some quality control above and beyond the norm.
	2	My criminal docket is quite time-consuming. I have two aggravated murder cases set for later this summer, along with a 32 defendant RICO matter. The commercial docket is a blessing and a curse, depending what position I feel like taking .
	3	It is very difficult to maintain an appropriate balance between my civil, criminal, and CD dockets. The time required to deal w/ the CD is higher as are the expectations of counsel. As a result I am spending more time to keep up with the work load. The only alternative is to neglect one or more of my responsibilities to the other dockets.
	4	The cases are more complicated, the attorneys are more aggressive, and their expectations are higher. Because of the need to prioritize the C/D I feel there have be a few occasions when the regular docket has suffered.
	5	These cases just take more time especially more motion practice.
4		The commercial docket has changed the workload for my law clerks or other support staff.
	1	Many more "interruptions" - calls from counsel to schedule hearings, requests for guidance on procedural matters, and other simple administrative things. (Generally speaking the civil/commercial lawyers do not regularly come to court like the criminal bar.) Then, the motions are often more complex and take more time to research and draft for me.
	2	I never used a staff attorney for the last 31 years...now I do use one on a more regular basis.
	3	Indeed it has! This is my most daunting challenge. The work load of the SA has increased exponentially. The civil motions docket suffers because of the time constraints of the CD. The only answer is to work harder and longer. Fine for me, but my SA did not volunteer for this opportunity.
	4	This is the most significant challenge. Even with status conferences the motions docket has increased exponentially and the work load borders on being unrealistic. Additionally, I feel the motions docket for the regular cases suffer because of the need to give the C/D cases priority.
5		Generally speaking, counsel in commercial docket cases has reacted positively to the commercial docket and any changes I have made for judicial management of commercial docket cases.
	1	Good attorneys who litigate are inherently competitive. Losing a CD case is no less irritating and unacceptable than losing a regular docket case. On the balance I think most of the attorneys are supportive of the CB. Some are grateful - some are mildly enthusiastic.
	2	Good trial attorneys are very competitive so losing a C/D case is no less unacceptable and irritating than losing a regular docket case. On balance, I feel most of the attorneys are supportive of the C/D. Some even mildly enthusiastic.
6		I have had a significant trial in a commercial docket case since the inception of the commercial docket.
	1	I have had a number of dispositive hearings lasting over a half day, the outcome of which has resulted in the case being settled.
	2	I have had at least six cases with dispositive hearings on motions. I have had two significant trials to the court.
7		In such significant trial, I used special scheduling or procedures to minimize the disruption of the trial on other matters on my calendar (please answer only if you answered in the affirmative to the preceding question).
	1	I cleared my entire criminal and civil docket for a 2 week period, The trial went quite smoothly, beginning at 8:30 and finishing around 5:00 each day. .
	2	The scheduling was significant in that it was quickly set and tried through to completion without interruption.

Supreme Court Task Force on Commercial Dockets

Commercial Docket Pilot Project		
Judicial Questionnaire		
Responses Received as of August 16, 2010 (N=5)		
TEXT COMMENTS		
Question	Comment Number	Comments and Explanations
8		The parties in commercial docket cases typically have been through an ADR process before the case is filed.
	1	If the parties have NOT been through an ADR process before filing of the case, I encourage ADR or use of other specific mechanisms inside or outside the Court to attempt to resolve the case.
	2	I have had only one case of court ordered mediation and that was only done to prove to one of the parties that it would not work. My position on ADR is neutral. If all the parties want it I support their decision.
10		There are third party services or other ADR methods that I find to be effective, or that minimize my personal involvement, that I may recommend.
	1	They all help.
13		There is evidence (even if simply anecdotal) that the commercial docket has had benefits for non-commercial docket cases.
	1	We may be neglecting the "ordinary" civil docket somewhat.
16		The commercial docket pilot program has met my expectations.
	1	I didn't expect it would be quite this much extra work.
17		I should be able to require the use of a special master in commercial docket cases.
	1	This has significant cost implications - if the parties want a public judge we shouldn't try to force them into a quasi-private setting.
18		If the commercial docket were to continue as a feature of your local court after the pilot project, are there changes you would suggest to the Supreme Court's Rules of Superintendence for the Courts of Ohio or local rules, or other rules you would implement, to make the commercial docket work better?
	1	MANDATE that the commercial docket judges receive only a 1/2 draw or less of felony cases. As it is, we are buried in felony trials, pleas, sentencings, post-trial motions, etc. So, we are truly incapable of giving commercial docket cases the detailed attention or timely resolution that Supt. Rule aspired to provide.
	2	Yes. There should not be combined docket with other civil and criminal matters.
	3	I think the current temporary rules are adequate. They were flexible enough to allow my court to simplify the transfer procedure. I would like to get rid of the misapplied word "gravaman",
19		What were your expectations about the commercial docket pilot program?
	1	Given my own law practice background, I assumed that civil lawyers would be better behaved, and help me to move these cases in a timely, efficient way. Instead too many lawyers file needless motions to delay, fight over stupid stuff, etc. In addition, given my experience I thought there would not be a significant increase in time demands on me or staff. That has proven incorrect, as described above.
	2	Helping the claimants and attorneys have better access to the courts.
	3	To enhance the functionality of my court so that it better address the changing needs of the parties that seek help from the court.
20		If additional resources could be made available, what additional resources would be most helpful to you in managing the commercial docket and commercial docket cases (e.g., law clerks, visiting judge for criminal matters or other routine civil matters, services of an experienced mediator)?
	1	Lower draw of criminal cases, or visiting judges to take a good share of the criminal load. Other, ordinary civil cases are not the problem - we spend about 75% of our time on criminal here.
	2	To have no criminal docket would be helpful. Most attorneys do not want to deal with a staff attorney; I do not blame them.
	3	I enjoy working but there are only 24 hours in the day. I need another law clerk.
21		We will be asking counsel of record in commercial docket cases to complete an evaluation of the commercial docket. Are there other lawyers or other persons (including parties to commercial docket cases or courthouse personnel) who should be asked to comment on the commercial docket pilot program?
	1	I would ask the state and local bar associations to comment, along with Ohio lawyers who are members of the American College of Trial Lawyers, the American Bd. of Trial Advocates and other similar groups of experienced trial lawyers. Even if individuals have had limited personal exposure to the commercial dockets, they will provide a broader perspective on how the dockets are working (or not working) - a macro view of the system if you will.
	2	The Metropolitan Bar Assn. would be good to speak to, they have a Section that encourages use of the Comm. docket.
	3	The leadership of the local bar associations and any type of business round table type groups.



APPENDIX D – Proposed Rules of Superintendence

The following proposed Rules of Superintendence for the Courts of Ohio, prepared by the Task Force on Commercial Dockets, implement the recommendations presented in the Task Force’s Report and Recommendations.

RULE 49.01. **Definition.**

As used in Sup. R. 49.01 through 49.36, "business entity" means a for profit or nonprofit corporation, partnership, limited liability company, limited liability partnership, professional association, business trust, joint venture, unincorporated association, or sole proprietorship.

RULE 49.02. **Creation of Commission on Commercial Dockets.**

There is hereby created the Supreme Court Commission on Commercial Dockets.

RULE 49.03. **Duties and Authority.**

(A) **Duties**

The Commission on Commercial Dockets shall do all of the following:

- (1) Provide ongoing advice to the Supreme Court and its staff regarding the promotion of statewide rules and uniform standards for commercial dockets in courts of common pleas;
- (2) Provide assistance to those courts of common pleas establishing a commercial docket under Sup. R. 49.20;
- (3) Pursuant to Sup. R. 49.21(B), recommend to the Chief Justice of the Supreme Court candidates for designation as commercial docket judges and the number of commercial docket judges for each court;
- (4) Pursuant to Sup. R. 49.23(C), notify commercial docket judges of available commercial docket training;
- (5) Review and make recommendations to the Supreme Court regarding use by commercial docket judges of law clerks compensated by third parties, including any appropriate guidelines to comply with ethical rules and measures to avoid the appearance of impropriety, and work to facilitate programs to provide commercial docket judges with law clerks or other staff assistance;
- (6) Periodically review the topic of the commercial docket judges' workloads and make recommendations to the Supreme Court regarding methods to manage the workloads;

(7) Establish a recommended number of hours of commercial docket judge educational training a non-commercial docket judge should complete and a recommended list and amount of business-litigation or other similar experience a non-commercial docket judge should possess in order to be eligible for assignment by the Chief Justice of the Supreme Court to temporarily serve on a commercial docket pursuant to Article IV, Section 5(A)(3) of the Ohio Constitution;

(8) Consider any other issues the commission deems necessary to assist the Supreme Court and its staff regarding commercial dockets in courts of common pleas.

(B) Authority

The commission shall have no independent policy-setting authority.

RULE 49.04. Membership.

(A) Appointments

The Commission on Commercial Dockets shall consist of fifteen or more members appointed by the Supreme Court as follows:

(1) For each court establishing a commercial docket pursuant to Sup. R. 49.20, one member who is an employee or official of the court. The Administrative Director of the Supreme Court shall solicit a minimum of two nominees from the administrative judge of the general division of each court.

(2) One member who is a current commercial docket judge designated pursuant to Sup. R. 49.21(A);

(3) One member who is a current or former administrative judge of the general division of a court establishing a commercial docket pursuant to Sup. R. 49.20;

(4) One member who is a court administrator of a court establishing a commercial docket pursuant to Sup. R. 49.20;

(5) Eight members who shall be broad based and multi disciplinary to represent a cross section of interests related to commercial dockets and commercial litigation, including business and commercial litigation plaintiffs and defendants and small and large businesses.

(B) Composition

Commission membership should represent the gender, racial, ethnic, and geographic diversity of the state.

RULE 49.05. Terms and Vacancies.

(A) Terms

The term of a member of the Commission on Commercial Dockets shall be for three years, provided that an initial appointment may be abbreviated and staggered to allow for a rotation of members.

(B) Reappointment

A commission member shall be eligible for reappointment, but shall not serve more than two consecutive full terms. A commission member shall be eligible for reappointment after serving two consecutive full terms, but only upon at least a six-month break in service. Abbreviated initial appointments and appointments to fill a vacancy shall not constitute a full term.

(C) Judge and attorney vacancies

If a judge commission member leaves office or an attorney member no longer practices in the state, the member shall be disqualified and a vacancy shall occur.

(D) Filling of vacancies

Vacancies on the commission shall be filled in the same manner as original appointments. A commission member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the term.

RULE 49.06. Chairperson; Vice-Chairperson.

The members of the Commission on Commercial Dockets shall elect one member as chairperson and one member as vice-chairperson. The chairperson and vice-chairperson shall serve for two years and may be reelected to a second two-year term. A commission member shall not serve as chairperson or vice-chairperson for more than two consecutive full terms, provided elections to fill a vacancy in the position of chairperson or vice-chairperson shall not constitute a full term.

RULE 49.07. Secretary.

The Administrative Director of the Supreme Court shall assign a Supreme Court employee to serve as secretary to the Commission on Commercial Dockets. The commission secretary shall assist the commission as necessary, but shall at all times be considered a Supreme Court employee.

RULE 49.08. Meetings.

(A) Manner

The Commission on Commercial Dockets may meet in person or by telephonic or other electronic means available to the Supreme Court.

(B) Frequency

The commission shall meet as often as required to complete its work, provided the commission shall meet in person a minimum of two times per year. The commission may meet at the call of the commission chairperson, at the request of a majority of the commission members, or at the request of the Supreme Court.

(C) Scheduling

All commission meetings shall be scheduled for a time and place so as to minimize costs to the Supreme Court and to be accessible to commission members, Supreme Court staff, and the public.

(D) Public attendance and notice

All commission meetings shall be open to the public. Public notice of all commission meetings shall be provided on the Supreme Court's website.

(E) Member attendance

(1) A commission member shall make a good faith effort to attend each commission meeting. Should a commission member miss three consecutive meetings, the commission or the commission secretary may recommend to the Supreme Court the member relinquish the member's position on the commission.

(2) A commission member who is unable to attend a meeting may request the chairperson allow the member to participate by telephonic or other electronic means available to the Supreme Court. A commission member participating in this manner shall be considered present for meeting attendance purposes. However, commission members should participate in person for a fully effective commission.

(3) A commission member may occasionally designate a replacement for participation in meetings.

(F) Minutes

Minutes shall be kept at every commission meeting and distributed to the commission members for review prior to and approval at the next meeting.

(G) Quorum

There shall be a quorum present for the work of the commission when a majority of commission members is present for the meeting, including those members participating by telephonic or other electronic means.

(H) Actions

At any commission meeting at which a quorum is present or has been declared, the commission members may take action by affirmative vote of a majority of the members in attendance. Proxy votes shall not be permitted.

RULE 49.09. Subcommittees.

(A) Creation

The Commission on Commercial Dockets may form such subcommittees it believes necessary to complete the work of the commission. A subcommittee should consist of select commission members and such other persons who the chairperson believes will assist in a full exploration of the issue under the review of the subcommittee.

(B) Size

A subcommittee should remain relatively small in size, not exceeding eight to twelve members, and have a ratio of commission members to non-commission members not exceeding one to three.

(C) Application of rules

Sup. R. 49.07, 49.08(A) through (D), (G), and (H), 49.10, and 49.12 through 49.14 shall also apply to the work of a subcommittee.

RULE 49.10. Code of Ethics.

Members of the Commission on Commercial Dockets shall comply with the requirements of the Supreme Court's "Code of Ethics for Court Appointees." The commission secretary shall provide each commission member with a copy of the code following the member's appointment to the commission and thereafter at the first meeting of the commission each year.

RULE 49.11. Annual Report.

By January 31st of each year, the chairperson of the Commission on Commercial Dockets shall issue a report to the Chief Justice and the Administrative Director of the Supreme Court detailing the activity and accomplishments of the commission and the status of the commercial dockets during the previous calendar year.

RULE 49.12. Work Product.

The work product of the Commission on Commercial Dockets shall be the property of the Supreme Court.

RULE 49.13. Budget.

The budget of the Commission on Commercial Dockets shall be set by the Supreme Court through its internal budget process and as implemented by the office or section through which it operates. The commission shall have no authority to set its own budget.

RULE 49.14. Reimbursement of Expenses.

A member of the Commission on Commercial Dockets shall be reimbursed for travel and meal expenses incurred in service to the commission as permitted by the Supreme Court’s “Guidelines for Travel by Court Appointees.”

RULE 49.20. Establishment of Commercial Docket.

(A) General

Except as provided in division (B) of this rule, a court of common pleas having six or more general division judges or located in a county having a population of three hundred thousand or more according to the latest federal decennial census may establish and maintain a dedicated docket to hear commercial litigation pursuant to Sup. R. 49.20 through 49.36. The docket shall be styled a “commercial docket.”

(B) Pilot project commercial dockets

Upon the effective date of this rule, the commercial docket of a court of common pleas designated by the Chief Justice of the Supreme Court to participate in the commercial docket pilot project pursuant to Temp. Sup. R. 1.02(A) shall be permanently established unless, prior to that date, a majority of the judges of the court vote to end the docket.

RULE 49.21. Designation of Commercial Docket Judges.

(A) Designation by Chief Justice

The Chief Justice of the Supreme Court shall designate two or more sitting judges of the general division of each court of common pleas that has established a commercial docket pursuant to Sup. R. 49.20 to hear cases assigned to the docket. The Chief Justice shall not designate a judge unless the judge agrees to participate. Such judges shall be styled “commercial docket judges.”

(B) Commission recommendation

The Supreme Court Commission on Commercial Dockets shall recommend to the Chief Justice candidates for designation as commercial docket judges and the number of commercial docket judges for each court.

RULE 49.22. Termination of Commercial Docket.

If a vacancy in the position of a commercial docket judge occurs and results in a court of common pleas that has established a commercial docket pursuant to Sup. R. 49.20 having only one commercial docket judge and no other judge of the court volunteers to serve and is appointed by the Chief Justice to the commercial docket, the court shall terminate the commercial docket as follows:

- (A) The court shall cease assigning cases to the commercial docket;
- (B) Commercial docket cases assigned to the remaining commercial docket judge shall remain with the judge until final disposition;
- (C) Following final disposition of all commercial docket cases assigned to the remaining commercial docket judge, the commercial docket shall cease to exist.

RULE 49.23. Commercial Docket Judge Training.

(A) Initial orientation and training seminar

Each commercial docket judge shall complete an orientation and training seminar on Ohio business law and the administration of commercial dockets to be offered or approved by the Supreme Court Judicial College.

(B) Biennial training

Each commercial docket judge should complete at least twelve hours of commercial docket training for each two-year reporting period.

(C) Notification

The Supreme Court Commission on Commercial Dockets shall notify commercial docket judges of available commercial docket training opportunities under divisions (A) and (B) of this rule as well as any other training or educational programs that may benefit the judges.

(D) Non-commercial docket judges

Non-commercial docket judges shall be encouraged to attend commercial docket training opportunities.

RULE 49.24. Cases Eligible for the Commercial Docket.

Any civil case, including any jury case; non-jury case; injunction, including any temporary restraining order; class action; declaratory judgment; or derivative action, shall be eligible for assignment into the commercial docket of a court of common pleas pursuant to Sup. R. 49.26 if the gravamen of the case relates to any of the following:

- (A) The formation, governance, dissolution, or liquidation of a business entity;
- (B) The rights or obligations between or among the owners, shareholders, partners, or members of a business entity, or rights and obligations between or among any of them and the business entity;
- (C) Trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner, or member of the business entity;
- (D) The rights, obligations, liability, or indemnity of an officer, director, manager, trustee, partner, or member of a business entity owed to or from the business entity;
- (E) Disputes between or among two or more business entities or individuals as to their business or investment activities relating to contracts, transactions, or relationships between or among them, including without limitation the following:
 - (1) Transactions governed by the uniform commercial code, except for consumer product liability claims described in Sup. R. 49.25(B);
 - (2) The purchase, sale, lease, or license of; a security interest in; or the infringement or misappropriation of patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
 - (3) The purchase or sale of a business entity or the assets of a business entity;
 - (4) The sale of goods or services by a business entity to a business entity;
 - (5) Non-consumer bank or brokerage accounts, including loan, deposit, cash management, and investment accounts;
 - (6) Surety bonds and suretyship or guarantee obligations of individuals given in connection with business transactions;
 - (7) The purchase, sale, lease, or license of or a security interest in commercial property, whether tangible, intangible personal, or real property;

- (8) Franchise or dealer relationships;
- (9) Business related torts, such as claims of unfair competition, false advertising, unfair trade practices, fraud, or interference with contractual relations or prospective contractual relations;
- (10) Cases relating to or arising under federal or state antitrust laws;
- (11) Cases relating to securities or relating to or arising under federal or state securities laws;
- (12) Commercial insurance contracts, including coverage disputes.

RULE 49.25. Cases Not Eligible for the Commercial Docket.

A civil case shall not be eligible for assignment into the commercial docket of a court of common pleas pursuant to Sup. R. 49.26 if the case does not relate to any of the topics provided under Sup. R. 49.24 or if the gravamen of the case relates to any of the following:

- (A) Personal injury, survivor, or wrongful death matters;
- (B) Consumer claims against business entities or insurers of business entities, including product liability and personal injury cases, and cases arising under federal or state consumer protection laws;
- (C) Matters involving wages or hours, occupational health or safety, workers' compensation, or unemployment compensation;
- (D) Environmental claims, except those arising from a breach of contractual or legal obligations or indemnities between business entities;
- (E) Matters in eminent domain;
- (F) Employment law cases, except those involving owners as described in Sup. R. 49.23(C);
- (G) Cases in which a labor organization is a party;
- (H) Cases in which a governmental entity is a party;

- (I) Discrimination cases based upon the federal or state constitutions or the applicable federal, state, or political subdivision statutes, rules, regulations, or ordinances;
- (J) Administrative agency, tax, zoning, and other appeals;
- (K) Petition actions in the nature of a change of name of an individual, mental health act, guardianship, or government election matters;
- (L) Individual residential real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes;
- (M) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate divisions of a court of common pleas;
- (N) Any matter subject to the jurisdiction of a municipal court, county court, mayor's court, small claims division of a municipal court or county court, or any matter required by statute or other law to be heard in some other court or division of a court;
- (O) Any criminal matter, other than criminal contempt in connection with a matter pending on the commercial docket.

RULE 49.26. Assignment of Case to the Commercial Docket.

Notwithstanding the case assignment requirements of Sup. R. 36(B)(2), the following shall apply when a case is filed with a court of common pleas that has established a commercial docket:

- (A) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.24, the attorney filing the case shall include with the initial pleading a notification that it is a commercial docket case. Upon receipt of the pleading and notification, the clerk shall randomly assign the case to one of the commercial docket judges.
- (B) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.24, but the attorney filing the case fails to file the notification pursuant to division (A) of this rule and the case is assigned to a non-commercial docket judge, an attorney representing any other party shall file a motion for transfer of the case to the commercial docket with that party's first responsive pleading or upon that party's initial appearance, whichever occurs first. Copies of the motion shall be delivered to the administrative judge.
- (C) If the case is eligible for assignment to the commercial docket pursuant to Sup. R. 49.24, but the attorney filing the case does not file the notification pursuant to division

(A) of this rule, no attorney representing a party in the case files a motion for transfer pursuant to division (B) of this rule, and the case is assigned to a non-commercial docket judge, the judge shall sua sponte request the administrative judge to transfer the case to the commercial docket. If the judge requests the transfer of the case to the commercial docket one-hundred and twenty days or more after the case was filed, the transfer of the case to the commercial docket shall be at the discretion of the commercial docket judge to whom the case would be assigned.

(D) If the case is not eligible for assignment to the commercial docket pursuant to Sup. R. 49.25, but the case is assigned to the commercial docket, upon motion of any party or sua sponte at any time during the course of the litigation, the commercial docket judge shall transfer the case from the commercial docket, provided the case shall remain assigned to the judge.

RULE 49.27. Review of Transfer to the Commercial Docket.

(A) Ruling or decision on transfer

(1) A non-commercial docket judge shall rule on a party's motion for transfer of a case to the commercial docket filed pursuant to Sup. R. 49.26(B) no later than two days after the filing of the motion. A party to the case may appeal the non-commercial docket judge's decision to the administrative judge within three days of the non-commercial docket judge's decision. The administrative judge shall decide the appeal no later than two days after the filing of the appeal.

(2) An administrative judge shall decide the sua sponte request of a non-commercial docket judge for transfer of a case to the commercial docket made pursuant to Sup. R. 49.26(C) no later than two days after the request is made.

(B) Review of transfer

(1) The factors set forth in Sup. R. 49.24 and 49.25 shall be dispositive in determining whether a case shall be transferred to or removed from the commercial docket pursuant Sup. R. 49.26(B) through (D).

(2) The ruling or decision of the administrative judge as to the transfer of a case under division (A) of this rule is final and not appealable.

RULE 49.28. Commercial Docket Judge Workload.

(A) Adjustment of other case assignments

To promote a fair and equal distribution of cases, for each commercial docket case assigned to a commercial docket judge pursuant to Sup. R. 49.26, a similar non-commercial docket civil case shall be assigned by lot from the docket of the commercial docket judge to a non-commercial docket judge of the court.

(B) Adoption of local rule reducing workload

Notwithstanding the case assignment requirements of Sup. R. 36(B)(2), a court of common pleas establishing a commercial docket pursuant to Sup. R. 49.20 shall adopt a local rule of court reducing the number of cases assigned to each commercial docket judge of the court through one or more of the following measures:

- (1) Each commercial docket judge receiving no fourth or fifth degree felony cases;
- (2) A fifty percent reduction in the number of criminal cases assigned to each commercial docket judge;
- (3) A meaningful reduction in the non-commercial docket civil cases assigned to each commercial docket judge.

RULE 49.29. Appointment of Special Master.

(A) Appointment

A commercial docket judge may, by written order, appoint a special master to do any of the following with regard to the case:

- (1) Perform duties consented to by the parties;
- (2) Hold trial proceedings and make or recommend findings of fact on issues to be decided by the judge without a jury if appointment is warranted by some exceptional condition or the need to perform an accounting or resolve a difficult computation of damages;
- (3) Address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.

(B) Disqualification

A special master shall not have a relationship to the parties, counsel, the case, or the commercial docket judge that would require disqualification of a judge under Jud. Cond. R. 3(E), unless the parties consent with the judge's approval to the appointment of a particular person after disclosure of any potential grounds for disqualification.

(C) Judicial considerations

In appointing a special master, the commercial docket judge shall consider the fairness of imposing the likely expenses on the parties and shall protect against unreasonable expense or delay.

(D) Notice to parties

A commercial docket judge shall give the parties notice and an opportunity to be heard before appointing a special master. Any party may suggest candidates for appointment.

RULE 49.30. Order Appointing Special Master.

(A) Order

An order of a commercial docket judge appointing a special master pursuant to Sup. R. 49.29 shall direct the special master to proceed with all reasonable diligence and include each of the following:

- (1) The special master's duties, including any investigation or enforcement duties, and any limits on the special master's authority under Sup. R. 49.31;
- (2) The circumstances, if any, under which the special master may communicate ex parte with the commercial docket judge or a party;
- (3) The basis, terms, and procedure for fixing the special master's compensation.

(B) Amendment of order

A commercial docket judge may amend an order appointing a special master at any time after notice to the parties and an opportunity by the parties to be heard.

RULE 49.31. Authority of Special Master.

(A) General authority

Unless the appointing order expressly directs otherwise, a special master appointed by a commercial docket judge pursuant to Sup. R. 49.29 shall have authority to regulate all proceedings and take all appropriate measures to perform the assigned duties fairly and efficiently. The special master may impose appropriate sanctions for contempt committed in the presence of the special master and may recommend a contempt sanction against a party and sanctions against a nonparty.

(B) Evidentiary hearings

Unless the appointment order expressly directs otherwise, a special master conducting an evidentiary hearing may exercise the power of the commercial docket judge to compel, take, and record evidence.

RULE 49.32. Special Master Orders and Reports.

(A) Orders

A special master appointed by a commercial docket judge pursuant to Sup. R. 49.29 who makes an order shall file the order with the clerk of the court of common pleas and promptly serve a copy on each party. The clerk shall enter the order on the docket.

(B) Reports

A special master shall report to the commercial docket judge as required by the appointment order. The special master shall file the report and promptly serve a copy of the report on each party unless the commercial docket judge directs otherwise.

(C) Action on order, report, or recommendations

(1) In acting on a special master's order, report, or recommendations, the commercial docket judge shall afford the parties an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the special master with instructions.

(2) A party may file an objection to or a motion to adopt or modify a special master's order, report, or recommendations no later than fourteen days after a copy is served, unless the court sets a different time.

(3) The court shall decide all objections to findings of fact made or recommended by a special master in accordance with the same standards as a ruling of a magistrate under paragraph Civ. R. 53(D)(3), unless the parties, with the commercial docket judge's approval, stipulate that the findings will be reviewed for clear error or will be final.

(4) The commercial docket judge shall decide de novo all objections to conclusions of law made or recommended by a special master.

(5) Unless the order of appointment establishes a different standard of review, the commercial docket judge may set aside a special master's ruling on a procedural matter only for an abuse of discretion.

RULE 49.33. Special Master Compensation.

(A) Amount

The commercial docket judge appointing a special master pursuant to Sup. R. 49.29 shall fix the special master's compensation before or after judgment on the basis and terms stated in the order of appointment. However, the commercial docket judge may set a new basis and terms after notice and an opportunity by the parties to be heard.

(B) Payment

The compensation of a special master shall be paid either by a party or parties or from a fund or subject matter of the case within the commercial docket judge's control.

(C) Allocation among parties

The commercial docket judge shall allocate payment of a special master's compensation among the parties after considering the nature and amount of the controversy and the extent to which any party is more responsible than other parties for the reference to a special master. An interim allocation may be amended to reflect a decision on the merits.

RULE 49.34. Alternative Dispute Resolution.

(A) Referral of case

A commercial docket judge may refer a commercial docket case to alternative dispute resolution by a commercial docket judge in another county or a retired or sitting former

commercial docket judge with the approval of the judge to whom the case would be referred.

(B) Compensation

A sitting, retired, or sitting former commercial docket judge accepting an alternative dispute resolution assignment pursuant to division (A) of this rule shall not be entitled to additional compensation. However, in appropriate circumstances where out-of-county travel, overnight lodging, or other out-of-pocket expenses are reasonably incurred, the judge shall be reimbursed from the court in which the commercial docket case is pending. Such expenses may be taxed as costs.

RULE 49.35. Rulings on Motions and Submitted Cases.

(A) Deadline for ruling

(1) A commercial docket judge shall rule upon all dispositive motions in a commercial docket case no later than ninety days from the completion of briefing or oral arguments, whichever is later, and all other motions no later than sixty days from the completion of briefing or oral arguments, whichever is later.

(2) A commercial docket judge shall issue a decision in all commercial docket cases submitted for determination after a court trial no later than ninety days from the date on which the case was submitted.

(B) Notification from attorney

If a commercial docket judge fails to comply with the requirements of division (A) of this rule, an attorney representing a party to the case shall provide the judge with written notification alerting the judge of this fact. The attorney shall provide a copy of the notification to all other parties to the case.

RULE 49.36. Commercial Docket Case Disposition Time Guideline.

Except for a case designated as complex litigation pursuant to Sup. R. 42, a court shall aspire to dispose of a commercial docket case within eighteen months of the date on which the case was filed. This time guideline is not mandatory, but shall serve as a benchmark and assist courts and commercial docket judges in measuring the effectiveness of commercial docket case management.



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