

## **COMMERCIAL DOCKET: PRACTICE AND PROCEDURE**

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### **I. INTRODUCTION**

Commercial Dockets in Ohio's Common Pleas Courts were formed by the Supreme Court of Ohio and are governed by the Temporary Rules of Superintendence, Rules 1.01 through 1.11. A copy of the Temporary Rules of Superintendence are attached and are available at <http://www.sconet.state.oh.us/LegalResources/Rules/superintendence/Superintendence.pdf#TR1.01>. Sample documents are also available, including a motion to transfer a case to the commercial docket, a sample order granting a motion to transfer a case to the commercial docket, and a sample pretrial order setting the case management issues for the handling of the matter on commercial docket. See, <http://www.sconet.state.oh.us/Boards/commDockets/docs/default.asp>. Copies of the applicable documents are attached for reference.

### **II. THE COMMERCIAL DOCKET PILOT PROJECT COURTS**

The Temporary Rules of Superintendence created four commercial docket pilot project courts in Ohio. The commercial docket rules became effective July 1, 2008. These rules remain in effect until July 1, 2012 unless they are extended or withdrawn by the Supreme Court of Ohio. Temp. Sup. R. 1.11.

The judges that have been designated to hear all cases assigned to the commercial docket are:

*Cuyahoga County:* Judge Richard McMonagle and Judge John O'Donnell;

*Franklin County:* Judge John Bessey and Judge Richard Frye;

*Hamilton County:* Judge Steven Martin and Judge Beth Myers; and

*Lucas County:* Judge Gary Cook and Judge Gene Zmuda.

Each of these commercial docket judges received special training on the administration of commercial dockets. See, Temp.Sup.R. 1.02(C).

### **III. COMMERCIAL CASES DEFINED**

Pursuant to Temp.Sup.R.1.03, a case will be accepted on the commercial docket if the gravamen of the case relates to:

- A. the formation or dissolution of a business entity;
- B. rights or obligations between or among owners, shareholders, partners, or members of a business entity;
- C. trade secrets;
- D. non-compete or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner or member thereof;
- E. rights, obligations or indemnity of an officer, director, manager, or partner of a business entity, owed to or from the business entity; and
- F. disputes among two or more business entities relating to contracts, transactions or the relationships between the business entities including:
  - 1. transactions governed by the UCC,
  - 2. intellectual property actions,
  - 3. the purchase or sale of a business entity or its assets,
  - 4. the sale of goods or services between businesses,
  - 5. non-consumer bank or brokerage accounts,
  - 6. surety bonds or guarantee obligations of individuals in connection with business transactions,
  - 7. commercial property sales, leases, or licensing,
  - 8. franchise or dealer relationships,
  - 9. business related torts,
  - 10. state or federal antitrust issues,
  - 11. securities issues, and
  - 12. commercial insurance contracts, including coverage disputes.

Pursuant to the rules, a "business entity" is a for profit or non-profit corporation, partnership, limited liability company, limited liability partnership, professional association, business trust, joint venture, unincorporated association, or sole proprietorship.

Personal injury, consumer, occupational health and workers' compensation claims are some of the types of cases that are not accepted onto the commercial docket. Matters that are subject to the jurisdiction of the municipal court are not permitted on the commercial docket. Also, when a government agency or labor organization is a party the case cannot be transferred to the commercial docket. See, Temp.Sup.R.1.03(B) for a complete list of cases not accepted onto the commercial docket.

#### **IV. PROCEDURE FOR TRANSFER TO COMMERCIAL DOCKET**

If the case meets the requirements of Temp.Sup.R.1.03(A), the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket.

If the filing attorney does not file the motion to transfer, then an attorney representing any other party shall file such a motion with the first responsive pleading or upon the party's initial appearance whichever occurs first.

The trial court judge also has the ability to *sua sponte* request that the administrative judge transfer the case to the commercial docket. See, Temp.Sup.R.1.04(B). Copies of any motion for transfer of the case to commercial docket must be delivered to the administrative judge. If the case is assigned to the commercial docket, but the court determines that Temp.Sup.R.1.03(A) has not been met, then any party or the commercial docket judge *sua sponte* can remove the case from the commercial docket.

When a motion to transfer the case to the commercial docket is filed, the trial court judge (i.e., the non-commercial docket judge) shall rule on the motion within two days after its been filed. A party can appeal from the non-commercial docket judge's decision to the administrative judge within three days of the non-commercial docket judge's decision. The decision of the administrative judge as to the transfer of the case is final and not appealable.

#### **V. SPECIAL MASTERS**

The commercial docket judge may appoint a special master over the case to perform duties consented to by the parties, to hold trial proceedings, and make recommended findings of fact on issues to be decided by the judge without jury and address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.

The special master cannot have a relationship to the parties, counsel, the case, or the commercial docket judge unless the parties consent with the judge's approval to the appointment of that person. The parties have an opportunity to be heard before a special master is appointed. Any party may suggest candidates for appointment.

The special master shall report to the commercial judge as required by the order of appointment. The commercial docket judge may adopt, affirm, modify, wholly or partly, reject or reverse, or resubmit the matter to the special master with instructions after receipt of the special master's order. Parties are required to file objections to a special master's report within 14 days after a copy of that report is served upon it.

All objections to findings of fact or recommendations by the special master will be handled pursuant to the Ohio Rules of Civil Procedure, Civ.R.53 (D)(3), applying a clear error standard of review to findings of fact. The commercial docket judge will decide de novo all objections to

conclusions of law made by the special master. However, with respect to the special master's rulings on procedural matters, these will only be set aside based on an abuse of discretion standard.

Importantly, findings of facts made by a special master who is appointed to perform duties consented to by the parties or to hold trial proceedings or make findings of fact on issues when the appointment is warranted by some special condition or the need to perform an accounting or resolve a difficult computation of damages, is final. See, Temp.Sup.R.1.05(g)(3)(b).

The commercial docket judge will set the special master's compensation. It will 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. The commercial docket judge will allocate payment of the special master's compensation among the parties.

## **VI. SPEEDY DISPOSITION OF COMMERCIAL DOCKET CASES**

The commercial docket judge is required to rule on all motions on the commercial docket within 60 days of the motion. All cases will be decided upon within 90 days after a court trial.

The entire case needs to be disposed of within 18 months of the date on which the case is filed. However, this is a guideline and not a mandatory time line.

If these time lines are not met, the rules just allow for an attorney to bring this to the court's attention. However, the rules do not expand on what happens after that notice is provided.

## **VII. PILOT PROJECT**

The implementation of the commercial docket is a pilot project. The Supreme Court Task Force on Commercial Dockets is charged with the responsibility of collecting and analyzing data concerning the commercial docket of each pilot project court. Temp. Sup. R. 1.10. The purpose of the task force is to assess the best method of establishing commercial civil litigation dockets in the courts of common pleas of Ohio. Following completion of the pilot project, the task force shall submit a final report and recommendations to the Chief Justice and the Supreme Court. See, Operating Guidelines for the Supreme Court Task Force on Commercial Dockets, available at <http://www.sconet.state.oh.us/Boards/commDockets/OpGuide.pdf>.

<u>RULE</u>	<u>TITLE</u>	<u>CORRESPONDING FORMER RULE(S)</u>
<u>67</u>	<u>Estates of Minors of Not More than Ten Thousand Dollars</u>	
<u>68</u>	<u>Settlement of Injury Claims of Minors</u>	
<u>69</u>	<u>Settlement of Claims of or Against Adult Wards</u>	
<u>70</u>	<u>Settlement of Wrongful Death and Survival Claims</u>	
<u>71</u>	<u>Counsel Fees</u>	
<u>72</u>	<u>Executor's and Administrator's Commissions</u>	
<u>73</u>	<u>Guardian's Compensation</u>	
<u>74</u>	<u>Trustee's Compensation</u>	
<u>75</u>	<u>Local Rules</u>	
<u>76</u>	<u>Exception to the Rules</u>	
<u>77</u>	<u>Compliance</u>	
<u>78</u>	<u>Probate Division of the Court of Common Pleas - Case Management in Decedent's Estates, Guardianship, and Trusts</u>	
<u>79-98</u>	<u>Reserved</u>	
<u>99</u>	<u>Effective Date</u>	C.A. 99, C.P. 99, M.C. 99
	<b><u>Temporary Rules</u></b>	
<u>1.01</u>	<u>Definition</u>	
<u>1.02</u>	<u>Designation and Organization</u>	
<u>1.03</u>	<u>Scope of the Commercial Docket</u>	
<u>1.04</u>	<u>Transfer of Case to the Commercial Docket</u>	
<u>1.05</u>	<u>Special Masters</u>	
<u>1.06</u>	<u>Commercial Docket Case Management Plan</u>	
<u>1.07</u>	<u>Rulings on Motions and Submitted Cases</u>	
<u>1.08</u>	<u>Commercial Docket Case Disposition Time Guideline</u>	
<u>1.09</u>	<u>Publication of Opinions and Orders</u>	
<u>1.10</u>	<u>Pilot Project Evaluation</u>	
<u>1.11</u>	<u>Term of Temporary Rules 1.01 through 1.11</u>	

Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio were approved by the Supreme Court on May 6, 2008, effective July 1, 2008:

**Temp. Sup. R. 1.01.            Definitions**

As used in Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio, "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.

**Temp. Sup. R. 1.02.                    Designation and Organization**

**(A)    Designation of pilot project courts**

The Chief Justice of the Supreme Court shall designate up to five courts of common pleas to participate in the commercial docket pilot project pursuant to Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio. Such courts shall be styled "pilot project courts." The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice courts for designation as pilot project courts. The Chief Justice shall not designate a court as a pilot project court unless the court agrees to participate in the commercial docket pilot project.

**(B)    Establishment of commercial docket**

Notwithstanding any rule of the Rules of Superintendence for the Courts of Ohio or local rule of court to the contrary, each pilot project court is authorized to establish and maintain a commercial docket pursuant to the requirements of Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio.

**(C)    Designation and training of commercial docket judges**

(1)    The Chief Justice of the Supreme Court shall designate one or more sitting judges of each pilot project court to hear all cases assigned to the commercial docket. Such judges shall be styled "commercial docket judges." In the event of the death, resignation, or removal from or forfeiture of office of a commercial docket judge, the Chief Justice may designate another sitting judge of that pilot project court to serve as a commercial docket judge. The Supreme Court Task Force on Commercial Dockets shall recommend to the Chief Justice candidates for designation as commercial docket judges. The Chief Justice shall not designate a judge as a commercial docket judge unless the judge agrees to participate in the commercial docket pilot project.

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

**(A) Cases accepted into the commercial docket**

A commercial docket judge shall accept a civil case, including any jury; non-jury; injunction, including any temporary restraining order; class action; declaratory judgment; or derivative action, into the commercial docket of the pilot project court if the case is within the statutory jurisdiction of the court and the gravamen of the case relates to any of the following:

- (1) The formation, governance, dissolution, or liquidation of a business entity, as that term is defined in Temporary Rule 1.01 of the Rules of Superintendence for the Courts of Ohio;
- (2) 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 entity;
- (3) Trade secret, non-disclosure, non-compete, or employment agreements involving a business entity and an owner, sole proprietor, shareholder, partner, or member thereof;
- (4) 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;
- (5) 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:
  - (a) Transactions governed by the uniform commercial code, except for consumer product liability claims described in division (B)(2) of this rule;
  - (b) The purchase, sale, lease, or license of, or a security interest in, or the infringement or misappropriation of, patents, trademarks, service marks, copyrights, trade secrets, or other intellectual property;
  - (c) The purchase or sale of a business entity or the assets of a business entity;
  - (d) The sale of goods or services by a business entity to a business entity;
  - (e) Non-consumer bank or brokerage accounts, including loan, deposit, cash management, and investment accounts;



- (f) Surety bonds and suretyship or guarantee obligations of individuals given in connection with business transactions;
- (g) The purchase, sale, lease, or license of, or a security interest in, commercial property, whether tangible, intangible personal, or real property;
- (h) Franchise or dealer relationships;
- (i) Business related torts, such as claims of unfair competition, false advertising, unfair trade practices, fraud, or interference with contractual relations or prospective contractual relations;
- (j) Cases relating to or arising under state or federal antitrust laws;
- (k) Cases relating to securities, or relating to or arising under federal or state securities laws;
- (l) Commercial insurance contracts, including coverage disputes.

**(B) Cases not accepted into the commercial docket**

A commercial docket judge shall not accept a civil case into the commercial docket of the pilot project court if the gravamen of the case relates to any of the following:

- (1) Personal injury, survivor, or wrongful death matters;
- (2) 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;
- (3) Matters involving occupational health or safety, wages or hours, workers' compensation, or unemployment compensation;
- (4) Environmental claims, except those arising from a breach of contractual or legal obligations or indemnities between business entities;
- (5) Matters in eminent domain;
- (6) Employment law cases, except those involving owners described in division (A)(3) of this rule;
- (7) Cases in which a labor organization is a party;
- (8) Cases in which a governmental entity is a party;

- (9) Discrimination cases based upon the United States constitution, the Ohio constitution, or the applicable statutes, rules, regulations, or ordinances of the United States, the state, or a political subdivision of the state;
- (10) Administrative agency, tax, zoning, and other appeals;
- (11) Petition actions in the nature of a change of name of an individual, mental health act, guardianship, or government election matters;
- (12) Individual residential real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes;
- (13) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate division of the court;
- (14) 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;
- (15) Any criminal matter, other than criminal contempt in connection with a matter pending on the commercial docket of the court.

**Temp. Sup. R. 1.04.**

**Transfer of Case to the Commercial Docket**

**(A) Random assignment**

A case filed with a pilot project court shall be randomly assigned to a judge in accordance with the individual assignment system adopted by the court pursuant to division (B)(2) of Rule 36 of the Rules of Superintendence for the Courts of Ohio.

**(B) Transfer procedure**

(1) If the gravamen of a case filed with a pilot project court relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket.

(2) If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if the attorney filing the case does not file a motion for transfer of the case to the commercial docket, and if the case is assigned to a non-commercial docket judge, an attorney representing any other party shall file such a motion with that party's first responsive pleading or upon that party's initial appearance, whichever occurs first.

(3) If the gravamen of the case relates to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, if no attorney representing a party in the case files a motion for transfer of the case to the commercial docket, and if 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.

(4) If the case is assigned to the commercial docket and if the gravamen of the case does not relate to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio, upon motion of any party or sua sponte at any time during the course of the litigation, the commercial docket judge shall remove the case from the commercial docket.

(5) Copies of a party's motion for transfer of a case to the commercial docket filed pursuant to division (B)(1) or (2) of this rule shall be delivered to the administrative judge.

**(C) Ruling or decision on transfer**

(1) A non-commercial docket judge shall rule on a party's motion for transfer of a case filed under divisions (B)(1) or (2) of this rule 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 within two days of 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 made under division (B)(3) of this rule no later than two days after the request is made.

**(D) Review of transfer**

(1) The factors set forth in Temporary Rule 1.03 of the Rules of Superintendence for the Courts of Ohio shall be dispositive in determining whether a case shall be transferred to or removed from the commercial docket pursuant to division (B) of this rule.

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

**(E) Adjustment of other case assignments**

To guarantee a fair and equal distribution of cases, a commercial docket judge who is assigned a commercial docket case pursuant to division (B) of this rule may request the administrative judge to reassign a similar civil case by lot to another judge in the pilot project court.

**Temp. Sup. R. 1.05.**

**Special Masters**

**(A) Appointment**

(1) With the consent of all parties in a commercial docket case, a commercial docket judge may appoint a special master to do any of the following with regard to the case:

- (a) Perform duties consented to by the parties;
- (b) 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;
- (c) Address pretrial and post-trial matters that cannot be addressed effectively and timely by the judge.

(2) 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 division (E) of Canon 3 of the Code of Judicial Conduct unless the parties consent with the judge's approval to appointment of a particular person after disclosure of any potential grounds for disqualification.

(3) 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.

**(B) Order appointing a special master**

(1) 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.

(2) An order appointing a special master shall direct the special master to proceed with all reasonable diligence and shall include each of the following:

- (a) The special master's duties, including any investigation or enforcement duties, and any limits on the special master's authority under division (C) of this rule;
- (b) The circumstances, if any, under which the special master may communicate ex parte with the commercial docket judge or a party;
- (c) The basis, terms, and procedure for fixing the special master's compensation.

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

**(C) Special master's authority**

Unless the appointing order expressly directs otherwise, a special master shall have authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently the assigned duties. 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.

**(D) Evidentiary hearings**

Unless the appointing 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.

**(E) Special master's orders**

A special master 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.

**(F) Special master's reports**

A special master shall report to the commercial docket judge as required by the order of appointment. 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.

**(G) Action on special master's 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 the 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 the special master in accordance with the same standards as a ruling of a magistrate under paragraph (D)(3) of Rule 53 of the Rules of Civil Procedure, unless the parties, with the commercial docket judge's approval, stipulate either of the following:

(a) The findings will be reviewed for clear error;

(b) The findings of a special master appointed under division (A)(1)(a) or (b) of this rule 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.

**(H) Compensation**

(1) The commercial docket judge shall fix the special master's compensation before or after judgment on the basis and terms stated in the order of appointment, but the judge may set a new basis and terms after notice and an opportunity to be heard.

(2) The compensation of the 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.

(3) The commercial docket judge shall allocate payment of the 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.

**Temp. Sup. R. 1.06.**

**Commercial Docket Case Management Plan**

The Supreme Court Task Force on Commercial Dockets shall establish a model commercial docket case management pretrial order to provide for the issuance of a commercial docket case management plan tailored to the requirements of the commercial docket. A commercial docket judge may use the model commercial docket case management pretrial order. Notwithstanding any contrary provision of a case management plan adopted by a pilot project court pursuant to division (B)(1) of Rule 5 of the Rules of Superintendence for Courts of Ohio, a commercial docket case management plan issued by a commercial docket judge shall govern the litigation of each commercial docket case assigned to that judge.



**(A) Rulings on motions**

(1) A commercial docket judge shall rule upon all motions in a commercial docket case within sixty days of the date on which the motion was filed.

(2) If a commercial docket judge fails to rule upon a motion in a commercial docket case within sixty days of the date on which the motion was filed, an attorney representing the movant 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.

**(B) Submitted cases**

(1) A commercial docket judge shall issue a decision in all commercial docket cases submitted for determination after a court trial within ninety days of the date on which the case was submitted.

(2) If a commercial docket judge fails to issue a decision in a commercial docket case submitted for determination after a court trial within ninety days of the date on which the case was submitted, 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.

**Temp. Sup. R. 1.08.**

**Commercial Docket Case Disposition Time Guideline**

**(A) Time guideline**

Except for a case designated as complex litigation pursuant to Rule 42 of the Rules of Superintendence for the Courts of Ohio, a pilot project court shall aspire to have each case assigned to a commercial docket judge to disposition within eighteen months of the date on which the case was filed. This time guideline is not mandatory, but rather is intended to serve as a benchmark and assist pilot project courts and commercial docket judges in measuring the effectiveness of their case management.

**(B) Notification of delay**

If a commercial docket judge has not disposed of a commercial docket case assigned to the judge within eighteen months of the date on which the case was filed, the judge shall notify the Court Statistical Reporting Section of the Supreme Court as to the cause for delay for the purpose of providing the information to the Supreme Court Task Force on Commercial Dockets.

**Temp. Sup. R. 1.09.**

**Publication of Opinions and Orders**

Opinions and dispositive orders of the commercial docket judges shall be promptly posted on the website of the Supreme Court.

**Temp. Sup. R. 1.10. Pilot Project Evaluation**

The Supreme Court Task Force on Commercial Dockets shall collect, analyze, correlate, and interpret information and data concerning the commercial docket of each pilot project court. The Task Force may request the assistance of the Court Statistical Reporting Section at the Supreme Court and collect additional information from pilot project courts as needed.

**Temp. Sup. R. 1.11.            Term of Temporary Rules 1.01 through 1.11**

Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Courts of Ohio adopted by the Supreme Court on May 6, 2008 shall take effect on July 1, 2008 and shall remain in effect through July 1, 2012, unless extended, modified, or withdrawn by the Supreme Court prior to that date. Any commercial docket case pending after the term of these temporary rules shall continue pursuant to the requirements of the rules until final disposition thereof.

**SAMPLE PLAINTIFF'S MOTION TO TRANSFER**

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IN THE COURT OF COMMON PLEAS OF

\_\_\_\_\_ COUNTY, OHIO

\_\_\_\_\_,  
Plaintiff(s)

v.

\_\_\_\_\_,  
Defendant(s)

: CASE NUMBER: \_\_\_\_\_

: JUDGE: \_\_\_\_\_

: **MOTION TO TRANSFER**

**MOTION TO TRANSFER CASE TO COMMERCIAL DOCKET**

Now comes the Plaintiff and respectfully moves this Court to transfer the above mentioned case to the Commercial Docket in accordance with Temporary Provision 4 of the Rules of Superintendence for Courts of Ohio. The Plaintiff hereby certifies that the gravamen of the case does relate to any of the topics set forth in division (A) of Temporary Rule 1.03 of the Rules of Superintendence for Courts of Ohio.

Respectfully Submitted,

\_\_\_\_\_  
Attorney for the Plaintiff  
Supreme Court of Ohio  
Registration Number: \_\_\_\_\_

**SAMPLE JOURNAL ENTRY**

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IN THE COURT OF COMMON PLEAS OF

\_\_\_\_\_ COUNTY, OHIO

Plaintiff(s)	:	CASE NUMBER: _____
	:	
	:	JUDGE: _____
	:	
v.	:	<b>JOURNAL ENTRY</b>
	:	
Defendant(s)	:	

**ORDER GRANTING MOTION TO TRANSFER CASE TO COMMERCIAL DOCKET**

The Court hereby finds that the Motion to Transfer the above mentioned case to the Commercial Docket in accordance with Temporary Rules 1.03 and 1.04 of the Rules of Superintendence for Courts of Ohio is well taken and hereby **GRANTS** the same.

The Clerk of Courts is hereby **ORDERED** to transfer the above mentioned case to the Commercial Docket.

\_\_\_\_\_  
Assigned Judge

\_\_\_\_\_  
Administrative Judge

\_\_\_\_\_  
Commercial Docket Judge

# SAMPLE PRETRIAL ORDER

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IN THE COURT OF COMMON PLEAS OF  
\_\_\_\_\_ COUNTY, OHIO

_____	:	CASE NUMBER: _____
Plaintiff(s)	:	
	:	JUDGE: _____
	:	
	:	
v.	:	<b>PRETRIAL ORDER</b>
	:	
	:	
_____	:	
Defendant(s)	:	

1. **Case Management Meeting.** Within thirty (30) days of filing of this order, the parties shall meet to discuss case management issues, as well as the content of their Case Management Report. Unless the parties agree otherwise, counsel for the first plaintiff listed in the complaint is responsible for initiating the scheduling of the Case Management Meeting. In initiating the scheduling of the Case Management Meeting, plaintiff's counsel shall contact each attorney that he or she knows or anticipates will appear in the case, even if that attorney has not yet entered a formal appearance.

The parties' Case Management Meeting **[should or shall]** cover at least the following subjects:

- (a) Problems with service or process, venue, joinder of additional parties, designation of the case as a matter of complex litigation, and the likelihood of counterclaims, cross-claims, or third-party claims;



(b) The length of the discovery period, the number of fact and expert depositions to be permitted, and, as appropriate, the length and sequence of such depositions;

(c) A preliminary schedule for depositions of such persons and entities as the parties are able to identify;

(d) Anticipated areas of expert testimony, timing for identification of experts, responses to expert discovery, and exchange of expert reports;

(e) The identity and number of any motions to dismiss or other preliminary or pre-discovery motions which shall be filed and the time period in which they shall be filed, briefed, and argued;

(f) The time period after the close of discovery within which post-discovery dispositive motions shall be filed, briefed, and argued and a tentative schedule for such activities;

(g) A tentative date by which the parties will be prepared for trial and an estimate of the number of days for such trial;

(h) The timing of any mediated settlement conference and the selection of a mediator or group of mediators if other than the court's mediator;

(i) An estimate of the volume of documents and/or electronic information likely to be the subject of discovery in the case from parties and nonparties and whether there are technological means, including but not limited to production of electronic images rather than paper documents and any associated protocol, that may render document discovery more manageable at an acceptable cost;

(j) The number of interrogatories which shall be allowed each party;

(k) An identification of any disputes concerning personal jurisdiction, subject matter jurisdiction, or venue, or a stipulation that no such controversies exist at the time of the Case Management Meeting;

(l) A preliminary listing of the principal legal and factual issues which counsel believe will need to be decided in the case;

(m) A preliminary listing of any issues in the case that any party believes are governed by law other than Ohio law or federal law;

(n) The need for retention of potentially relevant documents, including but not limited to documents stored electronically, and the need to suspend all automatic deletions of electronic documents or overwriting of archived or backed-up media which may contain potentially relevant information. The parties shall also discuss the need for a document preservation order.

(o) The need for cost-shifting of expenses related to discovery of information stored electronically, including the restoration of archived or backed-up media and forensic examination of computers, and the possibility of obtaining the desired information from alternate sources at reduced expense;

(p) The format in which the electronic records are to be produced and procedures to avoid unnecessary burden and expense associated with such production. If metadata is to be produced, the parties shall discuss a protocol for producing such information, including the format for production (e.g., native, copy, original), and the ability to search such information.

(q) The need for security measures to be adopted to protect any information that is produced in electronic format or that will be converted into electronic format and stored on counsel's computer systems. Such discussion should encompass whether and

under what circumstances clients will be afforded access to the information produced by another party and what security measures should be used for such access.

(r) **[Such other matters as the court may assign to the parties or upon which the parties agree for their consideration.]**

2. **Case Management Report.** The views of each party on the matters set forth in Section 1 above, as expressed through counsel or any pro se litigant(s), shall be reduced to writing, circulated for amendment or modification by each party, and filed with the court in the form of a Case Management Report. Unless the parties agree otherwise, counsel for the first plaintiff listed in the complaint is responsible for preparing and circulating the initial draft of the Case Management Report to all counsel, who shall have five days within which to propose revisions to the report or raise issues about which the parties disagree. If the parties disagree on any issues in the Case Management Report, they shall nonetheless file a single Case Management Report that, in any areas of disagreement, states the views of each party. The final Case Management Report shall be signed by counsel for each party and shall be filed with the court within fifteen (15) days of the Case Management Meeting.

3. **Case Management Conference.** The Case Management Conference shall be at **[date and time approximately 50 days after pretrial order is filed]**. Counsel for all parties and their clients (or in the case of a business entity, such representative as has authority to make all binding litigation-related decisions) will attend the Case Management Conference unless the court shall, in its discretion, excuse the attendance of clients. Such conference will be conducted with as much informality as possible and with the active participation of clients encouraged. The court will hear the views of counsel and/or clients on such issues listed in Section 1 above as are pertinent to the case and/or on which there are material differences of opinion.

4. **Case Management Plan.** Following the Case Management Conference, the court shall issue a Case Management Plan. The Case Management Plan will deal with such issues developed in the Case Management Meeting and/or the Case Management Conference as may be determined at the time, given the nature and status of the case. The provisions of the Case Management Plan may not be deviated from without notice, grant of a hearing which is discretionary with the court, good cause shown and entry of an order by the court. The Case Management Plan shall also specify a schedule of status conferences to assess the functioning of the Case Management Plan, assess the progress of the case, and enter such further orders or revisions in the Case Management Plan, including a trial date, as the court may deem necessary or appropriate.

**IT IS SO ORDERED.**

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Judge