

In the
Indiana Supreme Court



Cause No. 94S00-1601-MS-31

**ORDER ADOPTING INTERIM COMMERCIAL COURT RULES FOR THE
INDIANA COMMERCIAL COURTS PILOT PROJECT**

On January 20, 2016, the Indiana Supreme Court issued an order establishing the Indiana Commercial Court Pilot Project and charging the Indiana Commercial Court Working Group with “provid[ing] guidance throughout the Pilot Project.” Our order further provided that “the Pilot Project will operate pursuant to guidelines adopted by the Working Group addressing case eligibility, assignment, and transfer; caseload and workload; commercial court masters; the publication of commercial court orders and statistics; and other relevant matters.”

Pursuant to that order, the Working Group has recommended interim guidelines for operation of the Pilot Project. In light of those recommendations, we now adopt the following Interim Commercial Court Rules for the Indiana Commercial Courts Pilot Project:

Interim Commercial Court Rules

The Indiana Supreme Court adopts these Interim Commercial Court Rules for the Indiana Commercial Courts Pilot Project. The purpose of these rules is to (1) promote the efficient resolution of commercial disputes; (2) improve court efficiency for all court users; (3) employ and encourage early alternative dispute interventions; (4) enhance the accuracy, consistency, and predictability of judicial decisions in commercial cases; and (5) enhance economic development in Indiana by furthering the efficient resolution of commercial law disputes.

Interim Rule 1. Introduction and Definitions

Consistent with the Indiana Supreme Court Order establishing the Indiana Commercial Court Pilot Project (issued January 20, 2016), the following Interim

Rule shall apply to all the cases on the Commercial Court Docket. As used in this Interim Rule:

(A) Business entity. “Business entity” means a for-profit or nonprofit corporation, partnership, limited partnership, limited liability company, limited liability partnership, professional association, professional corporation, business trust, joint venture, unincorporated association, or sole proprietorship, or any other legal entity recognized by any state and doing business in the State of Indiana.

(B) Commercial court. “Commercial court” means a court with a specialized Commercial Court Docket as described, organized, and administered under these Interim Commercial Court Rules and any applicable Indiana Supreme Court Order.

(C) Rule. “Rule” as used in these Interim Commercial Court Rules means any rule promulgated by the Indiana Supreme Court, or by administrative district rule or local rule.

Commentary: Commercial Courts employ and encourage electronic information technologies, such as e-filing, e-discovery, telephone / video conferencing, and also employ early alternative dispute resolution interventions, as consistent with Indiana law.

Interim Rule 2. Cases Eligible for the Commercial Court Docket

Any civil case, including any jury case, non-jury case, injunction, temporary restraining order, class action, declaratory judgment, or derivative action, shall be eligible for assignment into the Commercial Court Docket pursuant to Interim Commercial Court Rule 4 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, officers, directors, managers, trustees, 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 employee, owner, shareholder, officer, director, manager, trustee, partner, or member of the business entity;

(D) The rights, obligations, liability, or indemnity of an owner, shareholder, 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 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 claims described in Interim Commercial Court Rule 3(B) and 3(O);
- (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, whether by merger, acquisition of shares or assets, or otherwise;
- (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 or intangible personal property 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 antitrust laws;
- (11) Cases relating to securities or relating to or arising under securities laws;
- (12) Commercial insurance contracts, including coverage disputes;
- (13) Environmental claims arising from a breach of contractual or legal obligations or indemnities between business entities;
- (14) Cases with a gravamen substantially similar to the foregoing (1 - 13) and not otherwise encompassed by Interim Commercial Court Rule 3.

(F) Subject to acceptance of jurisdiction over the matter by the Commercial Court Judge, cases otherwise falling within the general intended purpose of the Commercial Court Docket wherein the parties agree to submit to the Commercial Court Docket.

Interim Rule 3. Cases Not Eligible for the Commercial Court Docket

A civil case shall not be eligible for assignment into the Commercial Court Docket pursuant to Interim Commercial Court 4 if the case does not relate to any of the topics provided under Interim Commercial Court Rule 2, or 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 breach of warranty, product liability, and personal injury cases and cases arising under consumer protection laws;
- (C) Matters involving only wages or hours, occupational health or safety, workers' compensation, or unemployment compensation;
- (D) Environmental claims, except as described in Interim Commercial Court Rule 2(E)(13);
- (E) Matters in eminent domain;
- (F) Employment law cases, except those as described in Interim Commercial Court Rule 2(C);
- (G) Discrimination cases based upon the federal or state constitutions or the applicable federal, state, or political subdivision statutes, rules, regulations, or ordinances;
- (H) Administrative agency, tax, zoning, and other appeals;
- (I) Petition actions in the nature of a change of name of an individual, mental health act, guardianship, or government election matters;
- (J) Individual residential real estate disputes, including foreclosure actions, or non-commercial landlord-tenant disputes;
- (K) Any matter subject to the jurisdiction of the domestic relations, juvenile, or probate divisions of a court;
- (L) Any matter subject to the exclusive jurisdiction of a city court, a town court, or the small claims division of a court;
- (M) Any matter required by statute or other law to be heard in some other court or division of a court;

(N) Any criminal matter, other than criminal contempt in connection with a matter pending on the Commercial Court Docket;

(O) Consumer debts, such as debts or accounts incurred or obtained by an individual primarily for a personal, family, or household purpose; credit card debts incurred by individuals; medical services debts incurred by individuals; student loans; tax debts of individuals; promissory notes not primarily associated with purchasing an interest in a business; personal automobile loans; legal fees incurred for family or household purposes (such as probate, divorce, child custody, child support, criminal defense, negligence, and other tortious acts); and other similar types of consumer debts.

Interim Rule 4. Assignment of Case to the Commercial Court Docket

Notwithstanding the case assignment requirements of any applicable Rule, the following shall apply to cases in a court that has a Commercial Court Docket.

(A) If a case is eligible for assignment to a Commercial Court Docket pursuant to Interim Commercial Court Rule 2, and a party seeks to have the case assigned to the Commercial Court Docket, the attorney representing that party shall identify the case as a “Commercial Court Docket Case” by filing with the clerk of the court a “Notice Identifying Commercial Court Docket Case” (“Identifying Notice”).

(B) If a party does not consent to assigning the case to the Commercial Court Docket, the attorney representing that party shall file with the clerk a “Notice of Refusal to Consent to Commercial Court Docket” (“Refusal Notice”).

(C) A “Refusal Notice” must be filed not later than the latter to occur of the following: (1) thirty (30) days after service of the Identifying Notice; or (2) the thirty (30) days after the date the non-consenting party first appears in the case.

(D) If an Identifying Notice is filed by the party initiating the case and no other party has appeared in the case: (1) the clerk of the court shall assign the case to the Commercial Court Docket, which assignment is deemed a provisional assignment; (2) if no Refusal Notice is timely filed by any party that has appeared in the case, the assignment of the case is deemed permanent; and (3) if a Refusal Notice is timely filed, the clerk shall transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rule.

(E) If more than one party has already appeared in a case when an Identifying Notice is filed: (1) the clerk shall notify the court in which the case is

pending that an Identifying Notice has been filed and the case is subject to transfer and assignment to the Commercial Court Docket if no Refusal Notice is timely filed; (2) if no Refusal Notice is timely filed, the clerk shall transfer and assign the case to the Commercial Court Docket, which assignment is a permanent assignment; and (3) if a Refusal Notice is timely filed, the clerk shall notify the court in which the case is pending that a Refusal Notice has been filed and the case will not be transferred to the Commercial Court Docket.

(F) If, after a case has been permanently assigned to a Commercial Court Docket pursuant to subsections (D)(2) or (E)(2), a new party appears in the case as a result of a cross-claim, counterclaim, third-party complaint, amendment, or otherwise: (1) the assignment of the case to the Commercial Court Docket becomes provisional, subject to the new party's right to file a Refusal Notice pursuant to subsections (B) and (C)(2); (2) if no Refusal Notice is timely filed by the new party, the assignment of the case is permanent; and (3) if a Refusal Notice is timely filed, the clerk shall transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rule.

(G) Special Situations.

(1) Temporary restraining orders and other emergency matters. As to any case described in subsections (D), (E), and (F) that the clerk is required to transfer, the original court and judge retains jurisdiction to hear and determine requests for temporary restraining orders and other emergency matters until the transferee court has assumed jurisdiction.

(2) New Trial; After Remand. If, in a case assigned to a Commercial Court Docket, the trial court or a court on appeal orders a new trial, or if a court on appeal otherwise remands the case such that a further hearing and receipt of evidence are required to reconsider all or some of the issues heard during the earlier trial, (a) the clerk shall again assign the case to the Commercial Court Docket, which assignment is deemed a provisional assignment; (b) if no party files a Refusal Notice on or before thirty (30) days after the date the case is assigned to the Commercial Court Docket, the new assignment of the case is deemed permanent; and (c) if a Refusal Notice is timely filed, the clerk shall transfer and assign the case to a non-Commercial Court Docket in accordance with applicable Rule.

(3) Review of assignment to the Commercial Court Docket. If a Commercial Court Judge determines at any time that a case is or was not eligible for assignment

to a Commercial Court Docket, the judge shall order the case assigned, and the clerk shall transfer the case to a non-Commercial Court Docket in accordance with applicable Rule. The judge's determination shall not be subject to appeal.

(H) Any and all decisions of a party to file an Identifying Notice or not to file timely a Refusal Notice are binding and irrevocable except upon the agreement of all parties and the court. A party that files an Identifying Notice or does not file timely a Refusal Notice waives (a) any right to apply for a change of judge or county under Trial Rule 76 except as provided in Trial Rule 76(A) or (C)(6) and (b) any right to contest, at any time during the proceedings or on appeal, the eligibility for assignment of the case to the Commercial Court Docket.

Commentary:

1. *A crucial feature of Interim Rule 4 is that any party can seek to have a case placed on the Commercial Court Docket at any time, even after the case has been pending on a non-Commercial Court Docket for an extended period of time. Since every other party has an absolute veto, no transfer of a well-underway proceeding can occur unless all parties agree.*

2. *Permitting any party to seek to have the case placed on the Commercial Court Docket at any time accommodates the case that is not initially eligible for assignment to the Commercial Court Docket but subsequently becomes eligible as a result of a cross-claim, counterclaim, third-party complaint, amendment, or otherwise.*

3. *These Interim Commercial Court Rules are limited to cases filed after June 1, 2016. Cases already pending on this Interim Rule's effective date cannot be transferred to the Commercial Court Docket, even if all parties consented.*

4. *Interim Commercial Court Rule 4(B) is an "opt-out" provision. The default is that a case identified by one party as a Commercial Court Docket case is assigned to the Commercial Court Docket unless another party timely objects to the assignment (or, as provided elsewhere in the Interim Commercial Court Rules, the judge determines that the case is not eligible for the Commercial Court Docket).*

5. *Interim Commercial Court Rule 4(C)(2) accommodates a new party who is added to the litigation later as a result of a cross-claim, counterclaim, third-party complaint, amendment, or otherwise.*

6. *The language of Interim Commercial Court Rule 4(C)(2) "first appears in the case" is the same as used in Trial Rule 3.1(B) governing the filing of the appearance form by responding parties.*

7. *The provisions of Interim Commercial Court Rule 4(G)(1) concerning emergency*

matters are intended to operate in the same way as Trial Rule 79(O), which provides: “Emergencies. Nothing in this rule shall divest the original court and judge of jurisdiction to hear and determine emergency matters between the time a motion for change of judge is filed and the appointed special judge accepts jurisdiction.”

8. The provisions of Interim Commercial Court Rule 4(G)(2) concerning assignment to the Commercial Court Docket after remand are intended to operate in the same way as Trial Rule 76(C)(3), which provides: “[I]f the trial court or a court on appeal orders a new trial, or if a court on appeal otherwise remands a case such that a further hearing and receipt of evidence are required to reconsider all or some of the issues heard during the earlier trial, the parties thereto shall have ten days from the date the order of the trial court is entered or the order of the court on appeal is certified.”

9. Interim Commercial Court Rule 4(H) references Trial Rule 76(A) and (C)(6), which provide a limited change of venue and judge right for cause.

Interim Rule 5. Commercial Court Masters

(A) Appointment and Compensation. A Commercial Court Judge may appoint a Commercial Court Master in a pending Commercial Court Docket case, if all parties to the case consent to the appointment of the Commercial Court Master. As used in these rules, the term “Commercial Court Master” includes without limitation an attorney, a senior judge, or a non-attorney agreed upon by the Commercial Court Judge and the parties who has special skills or training appropriate to undertake to perform the tasks that may be required. The compensation to be allowed to a Commercial Court Master shall be reasonable, and in an amount paid by the parties as agreed by all parties and the Commercial Court Master. However, if the parties seek appointment of a senior judge as a Commercial Court Master, that appointment must be with the concurrence of the Indiana Supreme Court, and compensation for that Commercial Court Master shall be as provided in Trial Rule 53(A). Nothing in this rule restricts a Commercial Court Judge from appointing a Commercial Court Master in a Commercial Court Docket case under Trial Rule 53 without the need for the consent of the parties; such an appointment shall be governed by Trial Rule 53 and not this rule.

(B) Powers. The order of reference to the Commercial Court Master shall specify the Commercial Court Master’s powers and may direct the Commercial Court Master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning

and closing the hearings and for the filing of the Commercial Court Master's report. Subject to the specifications and limitations stated in the order, the Commercial Court Master has and shall exercise the power to regulate all proceedings in every hearing before the Commercial Court Master and to do all acts and take all measures necessary or proper for the efficient performance of the duties assigned under the order. The Commercial Court Master may require the production of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto, including electronic media. The Commercial Court Master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses under oath and may examine them and may call the parties to the action and examine them under oath. When a party so requests, the Commercial Court Master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided for a court sitting without a jury.

Commentary: The Commercial Court Judge must issue an Order specifying the powers delegated to the Commercial Court Master. The Court may direct counsel for the parties to submit a proposed order setting forth those proposed powers, and/or the Court may wish to craft the Order in conference with counsel. However, the ultimate scope of the Order is dictated by that which is necessary and appropriate under the circumstances, and is left to the sound discretion of the Court.

(C) Proceedings.

(1) *Meetings.* When a reference is made, the clerk shall forthwith furnish the Commercial Court Master with a copy of the order of reference. Upon receipt thereof, unless the order of reference provides otherwise, the Commercial Court Master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within twenty (20) days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the Commercial Court Master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the Commercial Court Judge for an order requiring the Commercial Court Master to expedite the proceedings and to make a report. If a party fails to appear at the time and place appointed, the Commercial Court Master may proceed ex parte or, in the discretion of the Commercial Court Master, may postpone the proceedings to a future day, giving notice to the absent party of the postponement.

(2) *Witnesses.* The parties may procure the attendance of witnesses before the Commercial Court Master by the issuance and service of subpoenas as provided in Trial Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished for contempt by the Commercial Court Judge and may be subjected to the consequences, penalties, and remedies provided in Trial Rules 37 and 45.

(3) *Statement of Accounts.* When matters of accounting are in issue, the Commercial Court Master may prescribe the form in which the accounts shall be submitted, and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the Commercial Court Master may require a different form of statement to be furnished, or the accounts or specific items thereof to be provided by oral examination of the accounting parties or upon written interrogatories or in such other manner as directed.

(D) Report.

(1) *Contents and Filing.* The Commercial Court Master shall prepare a report upon the matters submitted by the order of reference and, upon request of any party or the Commercial Court Judge, shall submit the report prior to hearing or the taking of evidence. The Commercial Court Master shall file the report with the clerk of the court; and in an action to be tried without a jury, shall file with it a transcript of the proceedings and of the evidence and the original exhibits, unless otherwise directed by the order of reference. The clerk shall forthwith mail to all parties notice of the filing.

(2) *In Nonjury Actions.* In an action to be tried without a jury, the Commercial Court Judge shall accept the Commercial Court Master's decision or findings of fact unless clearly erroneous. Within ten [10] days after being served with notice of the filing of the report, any party may serve written objections thereto upon the other parties. Application to the Commercial Court Judge for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Trial Rules 5 and 6. After hearing, the Commercial Court Judge may adopt the report, reject it in whole or in part, receive further evidence, or recommit it to the master with instructions.

(3) *In Jury Actions.* In an action to be tried by a jury, the Commercial Court Master shall not be directed to report the evidence. The Commercial Court

Master's findings upon the issues submitted are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the Commercial Court Judge upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. When the parties stipulate that a Commercial Court Master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) Draft Report. Before filing the report, a Commercial Court Master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

These Interim Rules shall take effect on the date of this Order.

Done at Indianapolis, Indiana, on 4/27/2016.



Loretta H. Rush
Chief Justice of Indiana