

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, EX REL.)
 AMERICAN GREETINGS CORP.,)
)
 Relators,)
)
 vs.)
)
 JUDGE NANCY A. FUERST, ET AL.,)
)
 Respondents.)

Case No. 2010-0582
 Original Action in Prohibition
 and Mandamus

JUDICIAL RESPONDENTS' MERIT BRIEF

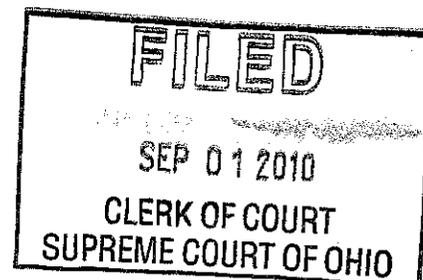
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STATEMENT OF THE FACTS

Despite settled decisional law that forbids using writs of prohibition and mandamus as substitutes for an appeal to argue that a case was not properly assigned to a judge, relators American Greetings Corporation and individual directors and/or officers of American Greetings (hereafter “relators”) invite this Court to misapprehend the Ohio Temporary Superintendence Rules establishing the “commercial docket” pilot project as being *jurisdictional* in nature such that an unfavorable judicial assignment ruling may be subject to collateral attack by extraordinary writ. The relators’ contentions are fundamentally flawed, however, because the Temporary Rules of Superintendence do not – and indeed cannot – extend or limit the jurisdiction of the Court of Common Pleas which, by the Ohio Constitution, is the exclusive province of the Ohio General Assembly.

And inasmuch as the Court of Common Pleas is a court of general jurisdiction, respondents Administrative Judge Nancy A. Fuerst and Judge Peter J. Corrigan (hereafter “judicial respondents”) do not patently and unambiguously lack jurisdiction to conduct proceedings in the underlying derivative action lawsuit and can accordingly determine their own jurisdiction to proceed. If they commit error in deciding whether or not a case should be assigned to a commercial docket judge, appeal provides an adequate remedy available in the ordinary course of the law to raise such claims, precluding any need for extraordinary relief in prohibition or mandamus pursuant to *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004. Because the relators have an adequate remedy at law to present their claim of improper judicial assignment, their request for extraordinary writs of prohibition and mandamus should be denied.

To put the issues in this case in proper perspective, this Brief will review briefly the course of judicial proceedings in the underlying matter of Electrical Workers Pension Fund, Local 103, I.B.E.W. vs. Morry Weiss, et al., Cuyahoga County Common Pleas Court Case No. 09 CV 687985. This Brief will then review the relevant provisions of the Temporary Rules of Superintendence creating the “commercial docket” and the related common pleas court proceedings that culminated in the matter that is now before this Court.

ELECTRICAL WORKERS PENSION FUND, LOCAL 103, I.B.E.W. VS. WEISS

Intervening respondent Electrical Workers Pension Fund, Local 103, I.B.E.W. (hereafter “intervening respondent”) filed a shareholder action derivatively on behalf of relator American Greetings Corporation on March 20, 2009, naming the relators as defendants. See Complaint at paras. 2, 13. The case was docketed in the Cuyahoga County Court of Common Pleas as Electrical Workers Pension Fund, Local 103, I.B.E.W. vs. Morry Weiss, et al., Case No. 09 CV 687985. See Complaint at para. 13 and Exhibit F. The case was randomly assigned to judicial respondent Judge Corrigan. See Complaint at para. 12.

On April 16, 2009, the relators removed the derivative action to the United States District Court for the Northern District of Ohio. See Complaint at para. 15.

On February 17, 2010, the United States District Court granted the intervening respondent’s motion to remand the derivative action back to the Cuyahoga County Court of Common Pleas. See Complaint at para. 15.

Upon remand to the Cuyahoga County Court of Common Pleas, the relators filed a motion on March 2, 2010 to have the derivative action transferred to the Common Pleas Court’s “commercial docket” pursuant to the Ohio Temporary Rules of Superintendence. See Complaint

at para. 22. Before reviewing those proceedings, it is appropriate to discuss the relevant provisions of the Temporary Superintendence Rules establishing the “commercial docket.”

COMMERCIAL DOCKET PILOT PROJECT AND THE RELATED COURT PROCEEDINGS

On July 1, 2008, the Supreme Court of Ohio adopted Temporary Rules 1.01 through 1.11 of the Rules of Superintendence for the Court of Ohio (hereafter “Temp.Sup.R.”). See Complaint at para. 17. Pursuant to Temp.Sup.R. 1.02, the Cuyahoga County Court of Common Pleas was designated as a pilot project court. See Complaint at para. 17. The following discussion will first review the procedures established under the Temporary Rules for case assignment and transfer to the commercial docket, followed by a review of the criteria for determining the specific types of cases that are and are not to be accepted into the commercial docket.

To begin, Temp.Sup.R. 1.04(A) provides that 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 Rule 36(B)(2) of the Rules of Superintendence for the Courts of Ohio.

Temp.Sup.R. 1.04(B) establishes the procedure for transferring a case to the commercial docket and provides as follows:

- (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.

Temp.Sup.R. 1.04(B).

Temp.Sup.R. 1.04(C) establishes procedures for determining commercial docket transfers and provides as follows:

(1) A non-commercial docket judge shall rule on a party's motion for transfer of a case filed under division (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.

Temp.Sup.R. 1.04(C).

Temp.Sup.R. 1.04(D) provides the scope for reviewing transfer requests and states as follows:

(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.

Temp.Sup.R. 1.04(D).

In order to maintain a fair and equal distribution of cases, Temp.Sup.R. 1.04(E) permits a commercial docket judge who is assigned a commercial docket case pursuant Temp.Sup.R. 1.04(B) to request the administrative judge to reassign a similar case to another judge.

While Temp.R. 1.04 sets forth the basic procedures to be followed, Temp.R. 1.03 sets forth the criteria the courts are to use when determining whether or not a case is eligible for transfer to the commercial docket.

In particular, Temp.Sup.R. 1.03(A) identifies cases that are to be accepted into the commercial docket and, according to relators, required granting their motion to transfer the underlying case into the commercial docket based on the following provision:

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:

(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 ***.

Temp.Sup.R. 1.03(A)(4).

Temp.Sup.R. 1.03(B) identifies cases that are not to be accepted into the commercial docket and, according to intervening respondent, required denying the relators' motion to transfer the underlying case into the commercial docket based on the following provision:

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:

(7) Cases in which a labor organization is a party ***.

Temp.Sup.R. 1.03(B)(7).

As they relate to the facts of this case, the record reflects that upon remand of the underlying case from the United States District Court to the Cuyahoga County Court of Common Pleas, the relators on March 2, 2010 moved pursuant to Temp.Sup.R. 1.04(B)(2) to transfer the case to the commercial docket based on Temp.Sup.R. 1.03(A)(4). See Complaint at para. 22. On March 3, 2010, the intervening respondent opposed the relators' motion to transfer the case to the commercial docket based on Temp.Sup.R. 1.03(B)(7). See Complaint at para. 23. On March 4, 2010, the relators filed a reply brief in support of their motion to transfer the case to the commercial docket. See Complaint at para. 24.

Pursuant to Temp.Sup.R. 1.04(D)(1), respondent Judge Corrigan considered the factors set forth in Temp.Sup.R. 1.03 before denying the relators' motion to transfer the case to the commercial docket on March 5, 2010. See Complaint at para. 28.

On March 10, 2010, the relators appealed Judge Corrigan's order denying their commercial docket transfer motion to respondent Administrative Judge Fuerst pursuant to Temp.Sup.R. 1.04(C)(1). See Complaint at paras. 11, 29 and Exhibit 2. The parties submitted

further legal briefs for the appeal to Judge Fuerst. See Complaint at para. 29 and Exhibits 2, 3, and 4.

On March 25, 2010, Judge Fuerst issued an order that said the following:

Upon review by Administrative Judge of [relators'] appeal of Judge Corrigan's 3/5/10 order denying [relators'] motion to transfer to commercial docket, the Court finds [relators'] appeal is without merit and Judge Corrigan's order is sustained.

See Complaint at para. 30 and Exhibit 5.¹ Under the express terms of Temp.Sup.R. 1.04(D)(2), Judge Fuerst's decision was final and not appealable.

Nevertheless, on April 2, 2010, the relators commenced this original action in prohibition and mandamus against judicial respondents Judge Fuerst and Judge Corrigan.

On June 23, 2010, the Supreme Court of Ohio granted an alternative writ that directed the parties to file evidence and legal briefs.

The matter is now before this Court for final determination.

¹ The relators' Complaint mistakenly alleges at para. 30 that Judge Fuerst's order was issued on March 26, 2010. An examination of the docket of proceedings submitted as Exhibit 5 to the relators' Complaint confirms that Judge Fuerst's order was actually issued on March 25, 2010.

ARGUMENT

APPELLEE'S PROPOSITION OF LAW:

Absent a patent and unambiguous lack of jurisdiction, appeal is an adequate remedy at law to address whether or not a case should be assigned to a commercial docket judge that will preclude extraordinary relief in prohibition or mandamus. *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004, approved and followed.

This case involves the question of whether extraordinary writs of prohibition and mandamus will lie to contest the ruling by the common pleas court that a case ought not be reassigned to a commercial docket judge under Temporary Rules of Superintendence establishing the commercial docket pilot project. Relying on those Temporary Superintendence Rules, the relators contend that the judicial respondents patently and unambiguously lack jurisdiction to proceed on the underlying derivative action which they insist is eligible for transfer to the commercial docket.

But contrary to the relators' contentions, the judicial respondents do not patently and unambiguously lack jurisdiction over the underlying matter and can accordingly determine their own jurisdiction to proceed. Beyond that, the Temporary Superintendence Rules do not, indeed could not, alter the lower court's constitutional and statutory jurisdiction to hear the underlying matter. The relators' attempt to misuse extraordinary writs of prohibition and mandamus as mere substitutes for their adequate remedy of appeal is contrary to this Court's decision in *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004, where the court held that appeal was an adequate legal remedy to address whether or not a case should have been assigned to a commercial docket judge absent a patent and unambiguous lack of jurisdiction and that writs of prohibition and mandamus could not be used as a substitute for the adequate

remedy of appeal. For the reasons discuss hereafter, the judicial respondents respectfully urge this Court to deny the relators' request for writs of prohibition and mandamus.

Before addressing the substantive issues in this case, the judicial respondents will first review the basic law applicable to these writs in order to place the substantive issues into their appropriate legal context.

WRIT OF PROHIBITION

“A writ of prohibition tests and determines solely and only the subject matter jurisdiction of the lower court.” *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 1998-Ohio-275, 701 N.E.2d 1002 (internal punctuation omitted) (quoting *State ex rel. Eaton Corp. v. Lancaster* (1988), 40 Ohio St.3d 404, 409, 534 N.E.2d 46).² See, also, *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 2001-Ohio-15, 740 N.E.2d 265 (“Proceedings on a petition for a writ of prohibition test the subject-matter jurisdiction of the lower court.”); *State ex rel. Staton v. Common Pleas Court* (1965), 5 Ohio St.2d 17, 21, 213 N.E.2d 164 (“Prohibition tests and determines solely and only the jurisdiction of the inferior tribunal.”)

To be entitled to a writ of prohibition, the relators generally must show that (1) the respondents were exercising or about to exercise judicial or quasi-judicial power; (2) the exercise of that power was unauthorized by law; and (3) denial of the writ would cause injury for which no other adequate remedy exists in the ordinary course of the law. See *State ex rel. Westlake v. Corrigan*, 112 Ohio St.3d 463, 2007-Ohio-375, 860 N.E.2d 1017, at ¶ 12.

² A writ of prohibition may issue for the lack of personal jurisdiction but that “is an extremely rare occurrence.” *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, 839 N.E.2d 911 at ¶ 28 (quoting *Clark v. Connor*, 82 Ohio St.3d 309, 315, 1998-Ohio-385, 695 N.E.2d 751.) There is no claimed lack of personal jurisdiction in the instant case.

“In the absence of a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal.” *Dzina v. Celebrezze*, 108 Ohio St.3d 385, 2006-Ohio-1195, 843 N.E.2d 1202, at ¶ 12. “Prohibition will not issue as a substitute for appeal to review mere errors in judgment.” *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002-Ohio-4907, 775 N.E.2d 522, at ¶ 28.

In such as case, this Court need not determine the merits of the underlying jurisdictional issue, for its review “is limited to whether jurisdiction is *patently and unambiguously lacking*.” *State ex rel. Shimko v. McMonagle*, 92 Ohio St.3d 426, 431, 2001-Ohio-301, 751 N.E.2d 472 (emphasis in original; internal punctuation omitted). See, also, *State ex rel. Mason v. Burnside*, 117 Ohio St.3d 1, 2007-Ohio-6754, 881 N.E.2d 224, at ¶ 12 “[O]ur duty in prohibition cases is limited to determining whether jurisdiction is patently and unambiguously lacking.”)

WRIT OF MANDAMUS

“The function of mandamus is to compel the performance of a present existing duty as to which there is a default.” *State ex rel. Willis v. Sheboy* (1983), 6 Ohio St.3d 167, 451 N.E.2d 1200, syllabus at paragraph two.

To obtain this writ, it must be shown that (1) the relators have a clear legal right to obtain performance of a judicial act; (2) the respondent is under a clear legal duty to perform the requested act; and (3) the relators have no plain and adequate remedy in the ordinary course of the law. See *State ex rel. MetroHealth Medical Center v. Sutula*, 110 Ohio St.3d 201, 2006-Ohio-4249, 852 N.E.2d 722, at ¶ 8.

A writ of mandamus does not lie where the relators have an adequate remedy available in the ordinary course of the law. R.C. 2731.05 declares: “The writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law.” See, also, *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 393, 1997-Ohio-72, 678 N.E.2d 549; *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 50, 1997-Ohio-244, 676 N.E.2d 109.

With these principles in mind, it is appropriate to consider the relators’ contentions in this case.

LEGAL DISCUSSION

The relators argue that respondent Judge Corrigan “is patently and unambiguously without authority to act” based on the Temporary Superintendence Rules that, according to relators, mandated transfer of the derivative action from Judge Corrigan’s docket to the docket of a commercial docket judge. See Merit Brief of Relators at p. 15. For this action in prohibition then, the fundamental issue this case presents is whether Judge Corrigan patently and unambiguously lacked subject matter jurisdiction over the derivative action based on the Temporary Rules of Superintendence creating the commercial docket.

But contrary to the relators’ contentions, Judge Corrigan did not patently and unambiguously lack jurisdiction over the case based on the Temporary Superintendence which did not – and indeed could not – affect the jurisdiction of the Common Pleas Court. To the extent the relators suggest here that the Temporary Superintendence Rules are jurisdictional in nature, their argument reflects a fundamental misunderstanding of the nature and source of the lower court’s jurisdiction. In sum, because the judicial respondents do not patently and unambiguously lack jurisdiction to conduct proceedings below, they can determine their own jurisdiction to proceed and relators may contest any erroneous rulings through the ordinary

remedy of appeal. Accordingly, the relators' request for extraordinary relief in prohibition should be denied.

Because this case tests the lower court's subject matter jurisdiction, it is appropriate to review the source and nature of the lower court's jurisdiction.

To that end, "jurisdiction" means a court's constitutional and/or statutory power to adjudicate a case. See *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992 at ¶ 11. The term encompasses jurisdiction over the subject matter and over the person. *Id.* Subject-matter jurisdiction in particular connotes the court's power to hear and decide a case upon its merits. See *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 290 N.E.2d 841, syllabus at paragraph one. Subject-matter jurisdiction "is determined as a matter of law and, once conferred, it remains." *Pratts v. Hurley*, supra, at ¶ 34.

Because subject-matter jurisdiction concerns the court's power to hear a case, it can never be waived and may be challenged at any time. *Id.* at ¶ 11. A judgment rendered by a court lacking subject matter jurisdiction is void. *Id.* See, also, *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, syllabus at paragraph three.

"Jurisdiction" is also used when referring to a court's exercise of its jurisdiction over a particular case. See *Pratts v. Hurley*, supra, at ¶ 12. The court explained that use of the term in the following manner:

The third category of jurisdiction [i.e., jurisdiction over the particular case] encompasses the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction. It is only when the trial court lacks subject matter jurisdiction that its judgment is void; lack of jurisdiction over the particular case merely renders the judgment voidable. Once a tribunal has jurisdiction over both the subject matter of an action and the parties to it, the right to hear and determine is perfect; and the decision of every question thereafter arising is but the exercise of the jurisdiction thus conferred.

Pratts v. Hurley, supra, at ¶ 12 (citations and internal punctuation omitted).

For example, in *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 851 N.E.2d 851, the court held that when a court possesses subject-matter jurisdiction, procedural irregularities in the transfer of a case to a visiting judge affect the court's jurisdiction over the particular case and render the judgment voidable, not void. Syllabus at paragraph one.

Distinguishing between subject-matter jurisdiction and jurisdiction over the particular case is critical in determining whether to issue an extraordinary writ of prohibition because “[a]ppeal, not prohibition, is the remedy for the correction of errors or irregularities of a court having proper jurisdiction.” *State ex rel. Jackson v. Miller*, 83 Ohio St.3d 541, 543, 1998-Ohio-4, 700 N.E.2d 1273.

So the threshold question that must be considered in this case is whether the judicial respondents, as judges of the court of common pleas, have subject matter jurisdiction to hear the underlying derivative action. For the reasons that follow, they do.

Article IV of the Ohio Constitution establishes the courts of common pleas and provides the following declaration as to their jurisdiction:

The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

ART. IV, SECTION 4(B), OHIO CONST.

In *Seventh Urban, Inc. v. University Circle Property Development, Inc.* (1981), 67 Ohio St.2d 19, 423 N.E.2d 1070, the court recognized that the Ohio Constitution itself confers no jurisdiction upon the common pleas courts but rather provides that their jurisdiction shall be that which is provided by law passed by the Ohio General Assembly, stating:

It is clear, therefore, that the power to define the jurisdiction of the courts of common pleas rests in the General Assembly and thus such courts may exercise only such jurisdiction as is expressly granted to them by the legislature.

Id. at 22, 423 N.E.2d 1070. See *State ex rel. Miller v. Keefe* (1958), 168 Ohio St. 234, 152 N.E.2d 113, syllabus at paragraph one (“The jurisdiction of the court of Common Pleas is, by virtue of Section 4, Article IV of the Constitution of Ohio, fixed by statute.”); *Mattone v. Argentina* (1931), 123 Ohio St. 393, 175 N.E. 603, syllabus (“In this state, pursuant to constitutional provision, Article IV, Section 4, the jurisdiction of the common pleas court is fixed by legislative enactment.”)

The express legislative grant of jurisdiction to the courts of common pleas is contained R.C. 2305.01, which provides generally that “the court of common pleas has original jurisdiction in all civil cases in which the sum or matter in dispute exceeds the exclusive original jurisdiction of county courts ***.” R.C. 2305.01. In *Schucker v. Metcalf* (1986), 22 Ohio St.3d 33, 488 N.E.2d 210, the court observed: “The court of common pleas is a court of general jurisdiction. It embraces all matters at law and in equity that are not denied to it.” *Id.* at 34, 488 N.E.2d 210 (quoting *Saxton v. Seiberling* (1891), 48 Ohio St. 554, 558-559, 29 N.E. 179).

As it relates to the instant case, the relators do not dispute that the Court of Common Pleas has the basic statutory jurisdiction to hear a shareholder derivative action. And Ohio court decisions confirm that shareholder derivative actions may be brought in the Court of Common Pleas. See, e.g., *State ex rel. Carr v. McDonnell*, 184 Ohio App.3d 373, 2009-Ohio-2488, 921 N.E.2d 251, affirmed, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004 (common pleas court did not patently and unambiguously lack jurisdiction to hear shareholder derivative action); *Boedeker v. Rogers* (2000), 140 Ohio App.3d 11, 746N.E.2d 625 (shareholder derivative action filed in common pleas court).

The question the instant case presents is whether the Temporary Rules of Superintendence creating the commercial docket pilot project affect Judge Corrigan's subject matter jurisdiction to hear the underlying derivative action. For the reasons that follow, they do not.

The source of the power to promulgate rules of court in Ohio is Article IV, Section 5 of the Ohio Constitution. While Article IV, Section 5(B) authorizes the Supreme Court of Ohio to prescribe rules governing practice and procedure in the Ohio courts which take effect unless the General Assembly timely adopts a concurrent resolution of disapproval, Article IV, Section 5(A)(1) authorizes the Supreme Court to have general superintendence over Ohio's courts and to promulgate rules of superintendence. See *State v. Steffen*, 70 Ohio St.3d 399, 408-409, 1994-Ohio-111, 639 N.E.2d 67. Article IV, Section 5(A)(1) provides as follows:

In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

ART. IV, SECTION 5(A)(1), OHIO CONST.

In *State v. Gettys* (1976), 49 Ohio App.2d 214, 360 N.E.2d 735, the court stated:

It will be noted that whereas rules of procedure adopted by the Supreme Court require submission to the legislature, rules of superintendence are not so submitted and, hence, are of a different category. They are not the equivalent of rules of procedure and have no force equivalent to a statute. They are purely internal housekeeping rules which are of concern to the judges of the several courts but create no rights in individual [litigants].

Id. at 243, 360 N.E.2d 735. See, also, *State v. Smith* (1976), 47 Ohio App.2d 317, 354 N.E.2d 699; *State v. Lacy* (1975), 46 Ohio App.2d 215, 348 N.E.2d 381. As one jurist observed,

[T]he Rules of Superintendence are merely directory in nature and guidelines for the conduct of the court emanating from the Supreme Court. They do not have the same legal standing as the rules of Practice and Procedure, which must be presented to the legislature and have the effect of law, nor do they have the same standing as legislative enactments. The Rules of Superintendence are neither the substantive nor procedural law of Ohio.

State v. Smith, supra, 47 Ohio App.2d at 329, 354 N.E.2d 699 (Krenzler, J., concurring).

At any rate, the Ohio Supreme Court's authority to promulgate rules of superintendence pursuant to Article IV, Section 5(A)(1) – like its authority to prescribe rules of practice and procedure in the courts of Ohio pursuant to Article IV, Section 5(B) – cannot alter the basic subject matter jurisdiction of the courts of common pleas, for the authority to prescribe that jurisdiction is vested exclusively in the Ohio General Assembly pursuant to Article IV, Section 4(B) of the Ohio Constitution. See *Seventh Urban, Inc. v. University Circle Property Development, Inc.*, supra.

Indeed, Article IV, Section 5(B) declares that the rules of practice and procedure “shall not abridge, enlarge, or modify any substantive right” and thus cannot alter the jurisdiction of the courts of Ohio. See, also, Civ.R. 82 (“These rules shall not be construed to extend or limit the jurisdiction of the courts of this state.”); Juv.R. 44 (“These rules shall not be construed to extend or limit the jurisdiction of the juvenile court.”)

In *Linger v. Weiss* (1979), 57 Ohio St.2d 97, 386 N.E.2d 1354, the court noted that the rules of juvenile procedure adopted pursuant to Article IV, Section 5 were intended to establish a uniform procedure for juvenile courts in Ohio but could “in no way be construed to affect the jurisdiction of the juvenile courts as established by statute.” *Id.* at 100, 386 N.E.2d 1354.

In a case that predated the Modern Courts Amendment, the Supreme Court of Ohio, acknowledging that the legislative power was vested not in the court but in the General Assembly, observed:

This court may make rules “with respect to the procedure in the supreme court not inconsistent with the laws of the state,” but it may not make rules enlarging its jurisdiction to hear cases beyond that which the Constitution gives it or beyond that given by the laws passed by the General Assembly pursuant to constitutional authority.

Goldman v. Harrison (1951), 156 Ohio St. 403, 404-405, 102 N.E.2d 848 (citation omitted).

And as an Ohio appellate court observed, “neither the Civil rules nor any other procedural rule promulgated by the Supreme Court can determine the jurisdiction of a court even if they purported to do so, since the Constitution does not permit the procedural rules to determine jurisdiction.” *Buckles v. Buckles* (1988), 46 Ohio App.3d 118, 120, 546 N.E.2d 965.

As it relates to the matter at hand, it is clear that the original jurisdiction of the common pleas court is conferred by the Ohio General Assembly pursuant to Article IV, Section 4(B) of the Ohio Constitution and R.C. 2305.01. And it is likewise clear that rules of superintendence promulgated by the Supreme Court of Ohio pursuant to Article IV, Section 5(A)(1) – including the Temporary Superintendence Rules creating the commercial docket pilot project at issue here – cannot alter the fundamental subject matter jurisdiction of the common pleas courts.

Indeed, one court participating in the commercial docket pilot project observed:

The jurisdiction of common pleas courts is established by Section 4, Article IV of the Ohio Constitution and, secondarily, by various statutes, including R.C. 2305.01. Courts of common pleas are ones of original and general jurisdiction. The temporary rules creating commercial dockets neither purport to alter this court’s jurisdiction, nor could they have such an impact under the Ohio Constitution.

GLIC Real Estate Holding, L.L.C. v. 2014 Baltimore-Reynoldsburg Road, 151 Ohio Misc.2d 33, 2009-Ohio-2129, 906 N.E.2d 517 at ¶ 8 (citation and internal punctuation omitted). The court added:

The temporary rules of superintendence do not demand that commercial cases only be decided by a commercial judge, failing which they are void or voidable. Instead, those rules are concerned with case-assignment and case-management procedures. They do not – indeed could not – alter the jurisdiction of the court.

GLIC Real Estate Holding, L.L.C. v. 2014 Baltimore-Reynoldsburg Road, 151 Ohio Misc.2d 33, 2009-Ohio-2129, 906 N.E.2d 517 at ¶6.

Thus, to the extent that the relators mean to suggest that the Temporary Superintendence Rules establishing the commercial docket are jurisdictional such that they operate to divest a court of jurisdiction notwithstanding a dispute as to their application, their argument is not well taken. Judge Corrigan has the basic statutory jurisdiction to hear the underlying derivative action and nothing in the Temporary Superintendence Rules could deprive the court of its general jurisdiction over the case, regardless of whether it may or may not be eligible for transfer to the commercial docket. Because Judge Corrigan does not patently and unambiguously lack jurisdiction to hear the underlying case, that court of general jurisdiction can determine its own jurisdiction to proceed, including whether or not the case should be transferred to the commercial docket.

Beyond that, Administrative Judge Fuerst has full responsibility and control over case assignments within the general division of the court, including case transfers to the commercial docket pursuant to Sup.R. 4(B) and 36(B). See *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004 at ¶ 2. See, also, *Brickman & Sons, Inc. v. National City Bank*, 106 Ohio St.3d 30, 2005-Ohio-3559, 830 N.E.2d 1151. Consequently, it cannot be said that the judicial respondents patently and unambiguously lack jurisdiction over the matter at hand.

Particularly instructive to the instant case is *State ex rel. Carr v. McDonnell*, 184 Ohio App.3d 373, 2009-Ohio-2488, 921 N.E.2d 251, affirmed, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004, which warrants an extended discussion here.

In that case, the defendants moved to transfer plaintiff Carr's case to the commercial docket but the non-commercial docket judge randomly assigned to preside over the case denied that motion. The defendants appealed that decision to the Administrative Judge (Judge Fuerst's predecessor), who sustained the appeal and ordered the case transferred to a commercial docket judge. Plaintiff Carr then sought writs of prohibition and mandamus in the Court of Appeals to prohibit the commercial docket judge from hearing the case and to order the case be returned to the originally assigned non-commercial docket judge. The Court of Appeals denied both the writ of prohibition and the writ of mandamus. See *State ex rel. Carr v. McDonnell*, 184 Ohio App.3d 373, 2009-Ohio-2488, 921 N.E.2d 251.

As to the writ of prohibition, the Court of Appeals held that the commercial docket judge to whom the case had been transferred did not patently and unambiguously lack jurisdiction to hear the case and, because the Cuyahoga County Court of Common Pleas was a court of general jurisdiction, the commercial docket judge could determine his own jurisdiction to proceed. *Id.* at ¶¶12-13. In particular, the Court of Appeals held that the commercial docket judge did not patently and unambiguously lack jurisdiction to conduct proceedings in the case based on both the Temporary Rules creating the commercial docket and the Administrative Judge's authority under Sup.R. 4(B) and 36 to reassign any case between different judges of the court of common pleas. *Id.* at ¶¶ 14-19. Beyond that, the Court of Appeals held that plaintiff Carr failed to establish the absence of adequate remedies at law inasmuch as claims of an improper judge assignment could be raised through the adequate remedy of appeal. *Id.* at ¶ 20.

As to the writ of mandamus, the Court of Appeals held that because the commercial docket judge had the basic jurisdiction to preside over Carr's case, there was no clear legal right or clear legal duty to transfer the case from the commercial docket judge back to the originally assigned non-commercial docket judge. *Id.* at ¶ 21. And to the extent that Carr's request for the writ of mandamus really sought a declaratory judgment and prohibitory injunction to prevent the case from proceeding before the commercial docket judge, the Court of Appeals lacked jurisdiction to render such relief. *Id.* at ¶¶ 22-24.

On further appeal, the Supreme Court of Ohio affirmed the judgment of the Court of Appeals. See *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004. The Court's opinion succinctly explained its holding as follows:

[Commercial docket] Judge O'Donnell does not patently and unambiguously lack jurisdiction to proceed in these cases. See Temp.Sup.R. 1.03 and 1.04; Sup.R. 4(B) and 36. Carr has an adequate remedy by way of appeal from Judge O'Donnell's rulings in the cases to raise his claim that Judge O'Donnell was improperly assigned to them. See *Keith v. Boddy*, 117 Ohio St.3d 470, 2008-Ohio-1443, 884 N.E.2d 1067, ¶ 14; *State ex rel. Key v. Spicer* (2001), 91 Ohio St.3d 469, 746 N.E.2d 1119 ("a claim of improper assignment of a judge can generally be adequately raised by way of appeal"); *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St.3d 28, 30, 6 OBR 50, 451 N.E.2d 225 (mandamus and prohibition are not substitutes for appeal to contest alleged improper assignment of judge).

State ex rel. Carr v. McDonnell, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004 at ¶ 2.

Under this Court's decision in *State ex rel. Carr v. McDonnell*, the Cuyahoga County Court of Common Pleas does not patently and unambiguously lack jurisdiction to hear a shareholder derivative action lawsuit. And to the extent there may be a dispute as to whether a case should be transferred to the court's commercial docket, *Carr* confirms that the Administrative Judge's decision cannot be challenged by writs of prohibition and mandamus but rather is subject to review by the ordinary and adequate remedy of appeal.

To be sure, the instant case differs slightly from *State ex rel. Carr v. McDonnell* inasmuch as that while in both bases the originally assigned non-commercial docket judge denied the defendants' motion to transfer the case to the commercial docket, the Administrative Judge sustained the defendants' appeal and thus transferred the case to the commercial docket in *Carr* while Administrative Judge Fuerst here denied the relators' appeal, sustained Judge Corrigan's ruling, and thus refused to transfer the case to the commercial docket. But the relators offer no principled reason to hold that a claim for improper judicial assignment is *not* subject to extraordinary relief when a case *is* transferred to the commercial docket, as in *Carr*, but *is* subject to extraordinary relief when the case is *not* transferred to the commercial docket, as is the instant case. Under *Carr*, the Administrative Judge's decision is final and writs of prohibition and mandamus may not be used as substitutes for the adequate remedy of appeal.

Moreover, granting the relators' request for extraordinary writs here would be inconsistent with the apparent intent of the Temporary Superintendence Rules. Temp.Sup.R. 1.04(D)(2) forbids interlocutory appeals to contest the Administrative Judge's decision whether or not to transfer a case to the commercial docket. That is consistent with Ohio's strong policy against piecemeal litigation with the possible injustice caused by interlocutory appeals. See *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 96, 540 N.E.2d 1381.

The relators' action here, however, eviscerates that policy in that they plainly seek extraordinary writs of prohibition and mandamus as substitutes for appeal. Well settled precedent establishes that "neither prohibition nor mandamus may be employed as a substitute for an appeal from interlocutory orders." *State ex rel. Sliwinski v. Burnham Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 201, at ¶ 22 (quoting *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 51, 1997-Ohio-244, 676 N.E.2d 109).

What is more, allowing this action for extraordinary writs as a substitute for the adequate remedy of appeal would undoubtedly cause other litigants whose cases were or were not transferred to the commercial docket to seek extraordinary relief in Ohio's supervisory courts. In those cases as in this one, the courts will be asked to monitor common pleas court case assignments based on factual disputes as to whether or not a case is eligible for transfer to the commercial docket. Those are matters that should be adjudicated in the first instance in the trial courts which are best equipped to allow for the development of a full factual record that may then be reviewed through the plain and adequate remedy of appeal. The relators can provide no justification for inundating supervisory courts with actions for extraordinary writs that will burden those courts and potential delay interminably further proceedings in the underlying matter.³

The judicial respondents respectfully submit that this Court should not be asked to decide without benefit of a fully developed trial court record the merits of whether the intervening respondent's derivative action was a case that was eligible for transfer to the commercial docket pursuant to Temp.Sup.R. 1.03(A)(4) as the relators' contend or, conversely, whether the case was not eligible for transfer to the commercial docket pursuant to Temp.Sup.R. 1.03(B)(7) as the intervening respondent contends. As noted previously, this Court need not determine the merits

³ Given the relators' repeated insistence in their Merit Brief over the enhanced efficiencies that the commercial docket promises, it is instructive to note that in the instant case, the intervening respondent's lawsuit was filed in the Common Pleas Court on March 30, 2009. The relators removed the case to federal court, which remanded the case back to state court on February 17, 2010. The relators then commenced proceedings to transfer the case to the commercial docket which, when denied by Judge Corrigan and Administrative Judge Fuerst, resulted in this original action in the Supreme Court of Ohio on April 2, 2010. And because of the alternative writ issued by the Court on June 23, 2010, the Common Pleas Court has been unable to conduct any proceedings on the case. Thus in a case that is eighteen (18) months old as of this writing, the relators' procedural maneuvers have prevented the trial court from conducting so much as a case management conference in this matter.

of that question but rather need only determine whether the judicial respondents court *patently and unambiguously* lacked jurisdiction to hear the matter. See *State ex rel. Mason v. Burnside*, supra; *State ex rel. Shimko v. McMonagle*, supra. The record for this case makes clear that the judicial respondents do not patently and unambiguously lack jurisdiction over the underlying case proceedings.

The authorities on which relators rely for granting extraordinary relief here are not persuasive. In *State ex rel. Dispatch Printing Co. v. Geer*, 114 Ohio St.3d 511, 2007-Ohio-4643, 873 N.E.2d 314, the court granted a writ of prohibition against a court that barred a newspaper from photographing a juvenile in an open court proceeding. In *State ex rel. Buck v. Maloney*, 102 Ohio St.3d 250, 2004-Ohio-2590, 809 N.E.2d 20, the court issued a writ of prohibition where a judge improperly barred an attorney from legal practice. Those and relators' other cases do not support their bid for extraordinary writs here, regardless of whether rules of superintendence constitute mandated or mere guidelines.

Because the Temporary Superintendence Rules do not alter the general subject matter jurisdiction of the court of common pleas, Judge Corrigan and Judge Fuerst can determine Judge Corrigan's jurisdiction to proceed in the first instance. Any claim of improper judge assignment may be raised through the adequate remedy of appeal. See *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004 at ¶ 2. Appeal is not inadequate just because it would have to await final judgment. See *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 50, 1997-Ohio-244, 676 N.E.2d 109 (rejecting contentions that appeal from subsequent adverse final judgment would be inadequate due to time and expense); *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.*, 76 Ohio St.3d 374, 379, 1996-Ohio-384, 667 N.E.2d

1189 (fact that postjudgment appeal contesting jurisdiction may be may be time-consuming and expensive does not render appeal inadequate so as to justify extraordinary writ of prohibition).

It should be recalled that prohibition “is an extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.” *State ex rel. Henry v. Britt* (1981), 67 Ohio St.2d 71, 73, 424 N.E.2d 297. In *State ex rel. Ellis v. McCabe* (1941), 138 Ohio St. 417, 35 N.E.2d 571, the court said:

A writ of prohibition will not be issued unless it clearly appears that the court or tribunal whose action is sought to be prohibited has no jurisdiction of the cause which it is attempting to adjudicate, or is about to exceed its jurisdiction.

Id., syllabus at paragraph three. Thus “[b]ecause of its nature, the writ of prohibition is to be used with care and caution. The right thereto must be clear, and in a doubtful or borderline case its issuance should be refused.” *State ex rel. Merion v. Court of Common Pleas of Tuscarawas Cty.* (1940), 137 Ohio St. 273, 277, 28 N.E.2d 641.

Extraordinary relief in mandamus must likewise be rendered judiciously. In *State ex rel. Liberty Mills, Inc. v. Locker* (1986), 22 Ohio St.3d 102, 103, 488 N.E.2d 883, the Supreme Court of Ohio said: “Mandamus is an extraordinary writ that must be granted with caution.” *Id.* at 103, 488 N.E.2d 883. And in *State ex rel. Tarpv v. Board of Ed. of Washington Court House* (1949), 151 Ohio St. 81, 84 N.E.2d 276, the court confirmed that mandamus should not issue if the grounds for relief are doubtful. *Id.* at syllabus.

In the instant case, there are no good grounds to issue extraordinary writs of prohibition or mandamus. Under *State ex rel. Carr v. McDonnell*, 124 Ohio St.3d 62, 2009-Ohio-6165, 918 N.E.2d 1004, the judicial respondents do not patently and unambiguously lack jurisdiction to determine whether the derivative action should be transferred to the common pleas court's commercial docket and appeal is an adequate remedy at law to address whether or not the case should have been assigned to a commercial docket judge. For the reasons stated, the judicial respondents respectfully urge this Court to deny the relators' request for writs of prohibition and mandamus.

CONCLUSION

Judicial respondents Judge Nancy A. Fuerst and Judge Peter J. Corrigan respectfully request that the Court deny the writs of prohibition and mandamus.

Respectfully submitted,

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APPENDIX

C

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

▣ Article IV. Judicial (Refs & Annos)

→ **O Const IV Sec. 4 Organization and jurisdiction of common pleas courts**

(A) There shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state. Any judge of a court of common pleas or a division thereof may temporarily hold court in any county. In the interests of the fair, impartial, speedy, and sure administration of justice, each county shall have one or more resident judges, or two or more counties may be combined into districts having one or more judges resident in the district and serving the common pleas courts of all counties in the district, as may be provided by law. Judges serving a district shall sit in each county in the district as the business of the court requires. In counties or districts having more than one judge of the court of common pleas, the judges shall select one of their number to act as presiding judge, to serve at their pleasure. If the judges are unable because of equal division of the vote to make such selection, the judge having the longest total service on the court of common pleas shall serve as presiding judge until selection is made by vote. The presiding judge shall have such duties and exercise such powers as are prescribed by rule of the supreme court.

(B) The courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and agencies as may be provided by law.

(C) Unless otherwise provided by law, there shall be a probate division and such other divisions of the courts of common pleas as may be provided by law. Judges shall be elected specifically to such probate division and to such other divisions. The judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of such probate division of the common pleas courts.

CREDIT(S)

(1973 SJR 30, am. eff. 11-6-73; 132 v HJR 42, adopted eff. 5-7-68)

Current through 2010 File 54 of the 128th GA (2009-2010), apv. by 8/25/10 and filed with the Secretary of State by 8/25/10.

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Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

↳ Article IV. Judicial (Refs & Annos)

→ **O Const IV Sec. 5 Powers and duties of supreme court; superintendence of courts; rules**

(A) (1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

CREDIT(S)

(1973 SJR 30, am. eff. 11-6-73; 132 v HJR 42, adopted eff. 5-7-68)

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These rules shall be known as the Rules of Superintendence for the Courts of Ohio and shall be cited as "Sup.R. ____."

(Adopted eff. 7-1-97)

Sup R 2 Definitions

As used in these rules:

(A) "Case" means a notice of appeal, petition, or complaint filed in the court of appeals and any of the following when filed in the court of common pleas, municipal court, and county court:

(1) A civil complaint, petition, or administrative appeal;

(2) A criminal indictment, complaint, or other charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions;

(3) A petition, complaint, or other instrument alleging that a child is delinquent, unruly, or a juvenile traffic offender based on conduct arising out of the same act, transaction, or series of acts or transactions or a petition alleging that a child is dependent, neglected, or abused;

(4) An estate, trust, guardianship, petition for adoption or other miscellaneous matter as defined in Sup.R. 50.

(B) "Court" means a court of appeals, court of common pleas, municipal court, or county court.

(C) "Division" means the general, domestic relations, juvenile, or probate division of the court of common pleas, any combination of the general, domestic relations, juvenile, or probate divisions of the court of common pleas, or the environmental or housing divisions of the municipal court.

(Adopted eff. 7-1-97)

Sup R 3 Presiding judge

(A) Selection and Term

(1) The judges of each multi-judge court, by a majority vote of the judges of the court, shall elect a presiding judge from the judges of the court. If the judges are unable because of equal division of the vote to elect a presiding judge, the judge having the longest total service on the court shall serve as presiding judge for one term. If two or more judges have equal periods of service on the court, the presiding judge shall be determined by lot from the judges with equal periods of service. In the event of a continued failure to elect a presiding judge, the judges of the court shall rotate the position based on the order of seniority as determined by the total length of service on the court.

(2) The term of the presiding judge shall be one year beginning on the first day of January. A presiding judge may be elected to consecutive terms and

may serve as administrative judge pursuant to Sup.R. 4. The presiding judge shall notify the administrative director of the Supreme Court of his or her election by the fifteenth day of January.

(3) In courts consisting of one judge, the judge shall be the presiding judge.

(B) Powers and Duties

In addition to the duties set forth in the Revised Code that do not conflict with the duties of the administrative judge set forth in Sup.R. 4, the presiding judge of the court shall do all of the following:

(1) Call and conduct an annual meeting, and other meetings as necessary, of the judges of the court for the purpose of discussing and resolving administrative problems common to all divisions of the court;

(2) Assign judges of the court on a temporary basis to serve in another division of the court as required by the business of the court.

(Adopted eff. 7-1-97)

Sup R 4 Administrative judge

(A) Selection and Term

(1) In each court of appeals, each multi-judge municipal and county court, and each multi-judge division of the court of common pleas, the judges of the court or division, by a majority vote of the judges of the court or division, shall elect an administrative judge from the judges of the court or division. If the judges of a court or division are unable to elect an administrative judge, the judge of the court or division having the longest total service on the court or division shall serve as administrative judge for one term. If two or more judges have equal periods of service on the court or division, the administrative judge shall be determined by lot from the judges with equal periods of service. In the event of a continued failure to elect an administrative judge, the judges of the court or division shall rotate the position based on the order of seniority as determined by the total length of service on the court or division.

(2) The term of the administrative judge shall be one year beginning on the first day of January. An administrative judge may be elected to consecutive terms and also may serve as presiding judge pursuant to Sup.R. 3. The administrative judge shall notify the administrative director of the Supreme Court of his or her election by the fifteenth day of January.

(3) In courts or divisions consisting of one judge, the judge shall be the administrative judge.

(B) Powers and duties.

The administrative judge shall have full responsibility and control over the administration, docket, and calendar of the court or division and shall be responsible to the Chief Justice of the Supreme Court in the discharge of the administrative judge's duties, for the

observance of these rules, and for the termination of all cases in the court or division without undue delay and in accordance with the time guidelines set forth in Sup. R. 39. The actions of the administrative judge may be modified or vacated by a majority of the judges of the court or division. The administrative judge shall do all of the following:

(1) Pursuant to Sup. R. 36, assign cases to individual judges of the court or division or to panels of judges of the court in the court of appeals;

(2) In municipal and county courts, assign cases to particular sessions pursuant to Sup. R. 36;

(3) Require timely and accurate reports from each judge of the court or division concerning the status of individually assigned cases and from judges and court personnel concerning cases assigned to particular sessions;

(4) Timely file all administrative judge reports required by the Case Management Section of the Supreme Court;

(5) Develop accounting and auditing systems within the court or division and the office of the clerk of the court that ensure the accuracy and completeness of all reports required by these rules;

(6) Request, as necessary, the assignment of judges to the court or division by the Chief Justice or the presiding judge of the court;

(7) Administer personnel policies established by the court or division;

(8) Perform other duties as required by the Revised Code, the Rules of Superintendence, local rules of the court or division, or the Chief Justice;

(9) Perform any other duties in furtherance of the responsibilities of the administrative judge.

(C) Relief From Case or Trial Duties

By local rule of the court or division, the administrative judge may be relieved of a portion of his or her case or trial duties to manage the calendar and docket of the court or division.

(Adopted eff. 7-1-97; amended eff. 7-1-09)

Sup R 5 Local rules

(A) Adoption of Local Rules

(1) Nothing in these rules prevents the adoption of any local rule of practice that promotes the use of any device or procedure to facilitate the expeditious disposition of cases. Local rules of practice shall not be inconsistent with rules promulgated by the Supreme Court.

(2) A local rule of practice shall be adopted only after the court or division provides appropriate notice and an opportunity to comment on the proposed rule. If the court or division determines that there is an immediate need for the rule, the court or division may

adopt the rule without prior notice and opportunity for comment, but promptly shall afford notice and opportunity for comment.

(3) Upon adoption, the court or division shall file a local rule of practice with its clerk and the clerk of the Supreme Court. On or before the first day of February of each year, each court or division of a court shall do one of the following:

(a) File with the clerk of the Supreme Court a complete copy of all local rules of the court or division in effect on the immediately preceding first day of January;

(b) Certify to the clerk of the Supreme Court that there were no changes in the immediately preceding calendar year to the local rules of the court or division.

(B) In addition to local rules of practice adopted pursuant to division (A)(1) of this rule and any other Rule of Superintendence, each court or division, as applicable, shall adopt the following by local rule:

(1) A case management plan for the purposes of ensuring the readiness of cases for pretrial and trial, and maintaining and improving the timely disposition of cases. In addition to any other provisions necessary to satisfy the purposes of division (B)(1) of this rule, the plan shall include provisions for an early case management conference, referral to appropriate and available alternative dispute resolution programs, establishment of a binding case management schedule, and a pretrial conference in cases where the trial judge determines a conference is necessary and appropriate. A municipal or county court may establish separate provisions or exceptions from the plan for small claims, traffic, and other types of cases that the court determines would not benefit from the case management plan.

(2) A jury management plan for purposes of ensuring the efficient and effective use and management of jury resources. In addition to any other provisions necessary to satisfy the purposes of division (B)(2) of this rule, the plan shall address the provisions of the Ohio Trial Court Jury Use and Management Standards adopted by the Supreme Court of Ohio on August 16, 1993.

(Adopted eff. 7-1-97)

Sup R 6 Attorney registration number

Each court shall require an attorney to include the attorney registration number issued by the Supreme Court of Ohio on all documents filed with the court. Each court shall use the attorney registration number issued by the Supreme Court of Ohio as the exclusive number or code to identify attorneys who file documents with the court.

(Adopted eff. 7-1-97)

Sup R 36 Designation of trial attorney; assignment system

(A) Designation of Trial Attorney

In civil cases the attorney who is to try the case shall be designated as trial attorney on all pleadings. In criminal cases, except felonies, the attorney who is to try the case, upon being retained or appointed, shall notify the court that he or she is the trial attorney by filing a written statement with the clerk of the court.

(B) (1) Individual Assignment System

As used in these rules, "individual assignment system" means the system in which, upon the filing in or transfer to the court or a division of the court, a case immediately is assigned by lot to a judge of the division, who becomes primarily responsible for the determination of every issue and proceeding in the case until its termination. All preliminary matters, including requests for continuances, shall be submitted for disposition to the judge to whom the case has been assigned or, if the assigned judge is unavailable, to the administrative judge. The individual assignment system ensures all of the following:

(a) Judicial accountability for the processing of individual cases;

(b) Timely processing of cases through prompt judicial control over cases and the pace of litigation;

(c) Random assignment of cases to judges of the division through an objective and impartial system that ensures the equitable distribution of cases between or among the judges of the division.

(2) Each multi-judge general, domestic relations, and juvenile division of the court of common pleas shall adopt the individual assignment system for the assignment of all cases to judges of the division. Each multi-judge municipal or county court shall adopt the individual assignment system for the assignment of all cases to the judges of that court, except as otherwise provided in division (C) of this rule. Modifications to the individual assignment system may be adopted to provide for the redistribution of cases involving the same criminal defendant, parties, family members, or subject-matter. Any modifications shall satisfy divisions (B)(1)(a) to (c) of this rule and be adopted by local rule of court.

(C) Assignment System

In each multi-judge municipal or county court, cases may be assigned to an individual judge or to a particular session of court pursuant to the following system:

(1) *Particular session.* A particular session of court is one in which cases are assigned by subject category rather than by the individual assignment system. The following subject categories shall be disposed of by particular session:

(a) Civil cases in which a motion for default judgment is made;

(b) Criminal cases in which a plea of guilty or no contest is entered;

(c) Initial appearance in criminal cases;

(d) Preliminary hearings in criminal cases;

(e) Criminal cases in which an immediate trial is conducted upon initial appearance;

(f) Small claims cases;

(g) Forcible entry and detainer cases in which the right to trial by jury is waived or not demanded;

(h) Cases where a party has made application to, or has been accepted into, a specialized court or docket.

To guarantee a fair and equal distribution of cases, a judge who is assigned a case by subject matter pursuant to Sup. R. 36(B)(2), or by virtue of a specialized court or docket pursuant to Sup. R. 36(C)(1)(h), may request the administrative judge to reassign a similar case by lot to another judge in that multi-judge common pleas, municipal, or county court.

(2) *Assignment.* Cases not subject to assignment in a particular session shall be assigned using the individual assignment system. Civil cases shall be assigned under division (C)(2) of this rule when an answer is filed or when a motion, other than one for default judgment, is filed. Criminal cases shall be assigned under division (C)(2) of this rule when a plea of not guilty is entered.

(3) *Duration of assignment to particular session.* The administrative judge shall equally apportion particular session assignments among all judges. A judge shall not be assigned to a particular session of court for more than two consecutive weeks.

(D) Assignment of Refiled Cases

In any instance where a previously filed and dismissed case is refiled, that case shall be reassigned to the judge originally assigned by lot to hear it unless, for good cause shown, that judge is precluded from hearing the case.

(E) Assignment—New Judicial Positions

After the date of election, but prior to the first day of the term of a new judicial position, the administrative judge of a court or division through a random selection of pending cases shall equitably reassign cases pending in the court or division between or among the judges of the court or division and shall create a docket similar to a representative docket. Reassignment shall be completed in a manner consistent with this rule and may exclude criminal cases and cases scheduled for trial. Any matters arising in cases assigned to the docket for the new judicial position prior to the date on which the judge elected

to that position takes office shall be resolved by the administrative judge or assigned to another judge. (Adopted eff. 7-1-97; amended eff. 11-1-06)

Sup R 36.1 Notice of appellate panels

No later than fourteen days prior to the date on which oral argument will be heard, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case. If the parties waive oral argument, the court of appeals shall make available to the parties the names of the judges assigned to the three-judge panel that will hear the case no later than fourteen days prior to the date on which the case is submitted to the panel. If the membership of the panel changes after the names of the judges are made available to the parties pursuant to this rule, the court of appeals shall immediately make the new membership of the panel available to the parties.

(Adopted eff. 7-1-02; amended eff. 11-1-06)

Sup R 37 Reports and information

(A) Report forms; responsibility for submission. Judges of the courts of appeals, courts of common pleas, municipal courts, and county courts shall submit to the Case Management Section of the Supreme Court the following report forms in the manner specified in this division no later than the fifteenth day after the close of the reporting period.

(1) Courts of appeal. The following reports shall be prepared and submitted quarterly:

(a) The presiding or administrative judge in each appellate district shall prepare and submit a Presiding Judge Report of the status of all pending cases in the court.

(b) Each judge of a court of appeals shall prepare and submit an Appellate Judge Report of the judge's work. The report shall be submitted through the presiding or administrative judge and shall contain the signatures of the reporting judge, the presiding or administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(2) Courts of common pleas. The following reports shall be prepared and submitted monthly, except that Form C shall be prepared and submitted quarterly:

(a) Each judge of a general, domestic relations, or juvenile division and each judge temporarily assigned to a division by the presiding judge is responsible for a report of the judge's work in that division. In a multi-judge general, domestic relations, or juvenile division, the reports shall be submitted through the administrative judge. In a multi-judge probate division, the judges shall sign and submit one report of the work in that division. The reports shall contain

the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(b) Each judge sitting by assignment of the Chief Justice of the Supreme Court shall submit a report of the judge's work. The reports shall be submitted through the administrative judge of the division to which the judge is assigned and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(3) Municipal and County Courts. The following reports shall be prepared and submitted monthly:

(a) Each administrative judge shall submit a completed Administrative Judge Report which shall be a report of all cases not individually assigned.

(b) Each judge shall submit a completed Individual Judge Report, which shall be a report of all cases assigned to the individual judge. The report shall be submitted through the administrative judge and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(c) Each judge sitting by assignment of the Chief Justice shall submit a report of the judge's work. The report shall be submitted through the administrative judge of the division to which the judge is assigned and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(4) Reporting Standards. The following standards shall apply in completing the statistical reports required by these rules:

(a) In domestic relations cases, motions filed prior or subsequent to a final decree of divorce or dissolution shall be considered part of the original case and reported under the original case number;

(b) A motion filed in delinquency and unruly cases shall be considered part of the case in which the motion is filed unless the motion is considered a separate delinquency case under division (B) of section 2151.02 of the Revised Code;

(c) A criminal case and a traffic case arising from the same act, transaction, or series of acts or transactions shall be considered separate cases.

(B) Capital case reporting. Each judge assigned a criminal case in which an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code shall include with the report submitted pursuant to division (A) of this rule notice, on a form prescribed by the Supreme

Supreme Court of Ohio on February 5, 2008, shall take effect on March 1, 2008.

(HH) The amendments to Sup. R. 10.04 and forms 10.04-A, 10.01-G, and 10.03-H adopted by the Supreme Court of Ohio on December 15, 2008, shall take effect on February 1, 2009.

(II) The amendments to Sup. R. 9 and Appendix C, adopted by the Supreme Court on November 18, 2008 shall take effect on March 1, 2009.

(JJ) Rule 48 of the Rules of Superintendence adopted by the Court on January 20, 2009 shall take effect on March 1, 2009.

(KK) The amendments to Sup. R. 44 through 47 adopted by the Supreme Court on December 15, 2008 shall take effect on July 1, 2009.

(LL) The amendments to Sup. R. 2, 4, 35, 37, 39, 40, 41, 42, and Temp Sup. R. 1.08 and 1.10 were adopted by the Supreme Court on March 9, 2009 shall take effect on July 1, 2009.

(Adopted eff. 7-1-97; amended eff. 10-1-97, 10-1-97, 10-1-97, 11-24-97, 1-1-98, 1-1-98, 3-24-98, 5-12-98, 10-1-98, 3-1-00, 6-1-00, 6-12-00, 7-1-01, 10-15-01, 3-25-02, 6-1-02, 7-1-02, 12-1-02, 1-6-03, 10-1-03, 4-8-04, 9-23-04, 3-23-05, 7-4-05, 11-1-06, 1-1-07, 2-1-07, 12-1-07, 3-1-08, 2-1-09, 3-1-09, 3-1-09, 5-1-09, 7-1-09, 7-1-09)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 1.03 Scope of the commercial docket

(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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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 commer-

cial 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 1.07 Rulings on motions and submitted cases

(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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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 Case Management 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.

(Adopted eff. 7-1-08; amended eff. 7-1-09)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Rule 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 dock-

et of each pilot project court. The Task Force may request the assistance of the Case Management Section of the Supreme Court and collect additional information from pilot project courts as needed.

(Adopted eff. 7-1-08; amended eff. 7-1-09)

Sup R Temp Rule 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.

(Adopted eff. 7-1-08)

Sup R Temp Prov Temporary provision (Hamilton County)

(A) Notwithstanding any rule to the contrary, the Hamilton County Regional Crime Information Center and any courts, county or municipal agencies, and local law enforcement agencies in Hamilton County are authorized to use electronic forms and electronic signatures as necessary to implement the pilot project outlined in the May 10, 2000 letter submitted to the Supreme Court of Ohio. This Temporary Provision applies to all forms, and the signature requirements applicable to those forms, prescribed by or pursuant to rules adopted by the Supreme Court of Ohio.

(B) For purposes of this Temporary Provision:

(1) The filing requirement of any rule shall be considered satisfied if a form containing all information required by a rule is submitted to the proper authority in an electronic format;

(2) The signature requirement of any rule shall be considered satisfied if the individual who is required by rule to affix a signature to a document properly authorizes the use of his or her electronic signature on the document.

(C) The Center shall not materially modify the electronic signature and security aspects of this project, as described in the proposal submitted to the Supreme Court of Ohio on May 10, 2000, without first notifying the Court and obtaining advance approval of the modifications.

(D) Any printed, microfilmed, or imaged copies of electronic documents shall conform to the applicable rules of the Supreme Court and maintained in accordance with the Rules of Superintendence and local records retention rules.

(E) As used in this Temporary Provision: