

Specialty Dockets
Pose Special Questions

By the Honorable David E. Cain

A new “specialty docket” is being tested in Common Pleas Court while other specialties may be going different directions.

Plans for an experimental “commercial docket” to be handled by two “commercial judges” went into effect at the first of the year.

It’s too soon to know if the desired improvements on speed and consistency will result from having the same two judges – John P. Bessey and Richard A. Frye – handle most of the litigation resulting from business disputes.

Meanwhile, a relatively new foreclosure mediation program is saving homes. But an older “drug court” may be dying on the vine.

In the Franklin County Municipal Court, the Mental Health Program Docket (MHPD) is going strong after almost five years of operation.

And in Domestic/Juvenile Court, a Family Drug Treatment Court is holding on.

Still, some judges are wondering why we need any specialty courts at all.

COMMERCIAL DOCKET

On January 2, Franklin County joined courts in Cleveland, Cincinnati and Toledo in a four-year pilot project to see if specialty dockets could get business lawsuits handled faster and more uniformly around the state.

Temporary Rules of Superintendence adopted by the Supreme Court say that new cases should be transferred to the commercial docket (unless originally assigned to one of the commercial judges) if they relate to rights or obligations among owners or shareholders, trade secrets or non-compete covenants, rights or obligations of directors, disputes among two or more business entities, transactions governed by the uniform commercial code, business related torts and so forth.

Cases not to be accepted into the commercial docket include personal injury, consumer claims, matters in eminent domain, employment law cases, cases in which a governmental entity or labor union is a party and so forth.

If the gravamen of a case filed with a pilot project court relates to any of the topics listed in the Rules as “commercial,” the attorney filing the case shall include with the initial pleading a motion for transfer of the case to the commercial docket. If not, then the attorney representing any other party shall file such a motion. If no attorney files it, then the assigned judge shall sua sponte request the administrative judge to transfer it. That judge then pops back to the top of the rotation for the next civil case.

Commercial judges have authority under the temporary superintendence rules to appoint special masters and grant them authority to conduct investigations, hold proceedings and/or enforce orders.

The rules also require commercial judges to decide all motions in commercial cases within sixty (60) days of their filings and to aspire to have each case to disposition within eighteen (18) months.

Chief Justice Tom Moyer appointed Bessey and Frye as the commercial judges. Bessey also co-chairs the Supreme Court's Task Force on Commercial Dockets.

The judges will keep regular dockets as well (both civil and criminal). The total case assigned to each will be the same as every other judge (except administrative).

Last summer, the CBA Board of Governors agreed to support the project. CBA President Kathleen Trafford wrote Bessey a letter of endorsement.

“Business parties frequently express disappointment with the progress, cost and efficiency of commercial litigation. Whether their concerns are real or merely perceived, they affect how businesses view Central Ohio,” she said. “The pilot program provides a good vehicle for testing whether the judicial branch can be more supportive of business litigants and can do so without impairing the administration of justice for all persons who have matters before the court.”

State officials are hopeful that the existence of commercial dockets will give them another tool to promote Ohio as a good place to grow a business.

FORECLOSURE MEDIATION

With foreclosure actions skyrocketing – up nearly 50 percent both statewide and locally over a five-year period – Moyer began pushing last year for mediation programs in this category of cases that has long been notorious for lack of communication.

Eileen Pruett, former coordinator of the Dispute Resolution Section of the Supreme Court, took on the task locally last November as manager of the Small Claims Division and Dispute Resolution Program of the Franklin County Municipal Court. She now runs one of only a few such programs in the country.

Foreclosure matters can be diverted to mediation anytime from pre-filing until the day of the sale, Ms. Pruett pointed out. The program received more than 100 referrals from November through January.

Using trained contract mediators, the program began seeing settlements late last year. In mid-February forms for requesting mediation and 60-day extensions for answers began going out with all the summons for new foreclosure complaints.

The program received \$540,000 in funding from the County Prosecutor and County Treasurer offices through delinquent tax and assessment collection to cover expenses for a two-year period. Legislation enacted last year allows use of such revenue for foreclosure prevention programs.

With about 9,000 new foreclosures filed in Franklin County in 2008, this program will probably be around for quite awhile.

DRUG COURTS

Former Judge Jennifer L. Brunner started a “drug court” in Common Pleas Court in 2004 for low-level felons (no sex or gun-related charges) with no history of violent offenses. The program provides a number of services as well as treatment oversight with weekly meetings in the courtroom for up to 18 months.

The program was transferred to Judge John A. Connor when Brunner left to campaign for secretary of state. Last fall, the supervision was transferred to Judge Patrick E. Sheeran after Connor was elected to the Court of Appeals.

The program built up to some 40 participants, and remained at that level for many months, but trailed off to about ten offenders before the last transfer,

Connor said the numbers went so low because attorneys are not asking other judges to refer cases to the drug court. “If they are going to get probation anyway, why jump through all the extra hoops (that drug court requires),” he explained.

He said he hopes the numbers will come back because of the useful services that are provided, including assistance for obtaining employment and housing. Liaisons from the Prosecutor’s Office, the probation department and various treatment agencies also offer assistance.

If the numbers do not increase, then funding could be in jeopardy. The program has been getting \$30,000 a year from ADAMH and \$70,000 a year from ODADAS to cover the salary of the program coordinator and part of the salary of a probation officer.

In the Domestic Juvenile Court, Judge Dana S. Priebe oversees the Family Drug Treatment Court for parents who have substance abuse problems and are in danger of losing their children due to abuse or neglect. The program, which aims to expedite reunification of children and parents, involves frequent court appearances, treatment and urine screens. It presently serves 25 parents with 61 children involved. Priebe is seeking sources to make up for partial loss of ADAMH funding.

MENTAL HEALTH

Judge Scott W. VanDeKarr presides over the Mental Health Program Docket (MHPD) in the Franklin County Municipal Court. People with open cases in the court

can ask for screening and assessment to determine whether they are appropriate for MHPD. The 18 to 24-month program has four phases – with court appearances decreasing as more advanced phases are entered. VanDerKarr said he is “very pleased” with the way the nearly five-year-old program is working. He said the number of persons on the mental health docket has stabilized at about 60.

The MHPD is funded by ADAMH, has a three-person management team and is intended to provide a mechanism to promote effective treatment as an alternative to incarceration. The judge can order progressive sanctions for participants who violate the rules.

CONSIDERATIONS

Some judges wonder if specialties like the commercial docket are appropriate. The vote to participate in the pilot project was less than unanimous with a couple judges downright unhappy about exchanging some of their cases for others they might not enjoy handling as much. All judges are presumed qualified to handle any kind of case within their jurisdiction, they assert. And why should certain kinds of cases get special treatment? they ask. Furthermore, it opens the door for judge shopping (although the transfers on commercial cases are supposed to be mandatory). Furthermore, the voters did not elect any “commercial” judges, they argue.

