

**BUSINESS COURTS COMMITTEE**  
**REPORT PREPARED FOR THE MARCH 1, 2018 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

No meeting is currently scheduled.

**2. Council Approval.**

No matters require Council approval.

**3. Membership.**

The Committee is intentionally small (four members including Judge Christopher P. Yates.)

**4. Accomplishments Toward Committee Objectives.**

The Committee's objectives are to serve as a liaison between the Business Court Judges and the Business Law Section, to serve as a resource for the Business Court Judges, and to assist the Business Court Judges in whatever ways they and the Business Law Section deem appropriate.

**5. Meetings and Programs.**

The Committee has not met since the last Council meeting.

**6. Publications.**

The Committee has published no articles.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

The Committee monitors proposed changes in the business court statute or Michigan Court Rules that deal with the Michigan Business Courts.

**8. Miscellaneous.**

The Oakland County Business Court has amended its Case Management Protocol to include initial disclosures (copy attached).

Judge Christopher Yates is now the only Business Court Judge in the Kent County Business Court.

**Respectfully submitted,**

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**CASE MANAGEMENT PROTOCOL  
OAKLAND COUNTY CIRCUIT COURT  
BUSINESS COURT CASES**

1) Governance

- a) As provided in the Notice and Order to Appear, the Business Court Case Management Protocol shall be adopted as a Court Order by the Court for the governance of all cases assigned to the business court docket unless specific objections are filed by either party prior to the Case Management Conference.
- b) The Case Management Protocol shall be discussed by the parties and the Court at the initial Case Management Conference. If objections have been raised, the objecting party must show good cause as to why a particular case should be exempted, in whole or in part, from the Case Management Protocol or why the Case Management Protocol should be modified in relation to that particular case. Any deviation from the Case Management Protocol shall be specifically described by the objecting party and alternative procedures suggested.
- c) The Case Management Protocol, including any alternative procedures acceptable to both the parties and the Court, shall be incorporated into the Scheduling Order.

2) Standing Protocols

- a. Electronic Service. All counsel of record agree to accept service of all filings and other communication via email at the address identified by the State Bar of Michigan or a single email address as otherwise directed. Service is accomplished upon transmission absent knowledge by the sender that the email was not received (*e.g.*, it is returned as undeliverable). Delivery of materials by the Court's e-filing system also constitutes service effective as of the time stamp on the document.
- b. Case Management Conference. The Court will conduct a Case Management Conference early in the case. Lead trial counsel shall attend and be prepared to discuss the case. Prior to the conference, all counsel are expected to confer regarding the following (listed below). Plaintiff's counsel shall then file a Joint Case Management Plan, identifying areas of agreement and disagreement (and as to such matters, briefly setting forth the parties' positions), at least one week prior to the scheduled conference.
  - i. Any issues with the case being assigned to the Business Court.
  - ii. Requested relief, including a good faith estimate of the amount of damages, sought in the Complaint and any Counterclaim.
  - iii. Need and time to amend pleadings or add parties.

- iv. Any intention by the parties to file initial dispositive or injunction motions and, if so, proposed timing and impact upon discovery.
- v. Need for a protective order and consent to the Court's Model Protective Order ([https://www.oakgov.com/courts/businesscourt/Documents/mod-bc-pro\\_ord.pdf](https://www.oakgov.com/courts/businesscourt/Documents/mod-bc-pro_ord.pdf)).
- vi. Timetable for case, including the following, in addition to other dates desired by any party:
  - 1. Initial disclosures as set forth in Section 2(c)(ii).
  - 2. Date for preliminary witness lists.
  - 3. Date for expert witness disclosure and/or reports.
  - 4. Date for discovery cutoff (and whether discovery shall proceed in stages).
  - 5. Date for final witness and exhibit lists.
  - 6. Whether parties stipulate to exemption from case evaluation.
  - 7. The timing of early ADR processes and the selection of a mutually acceptable neutral.

The parties shall have discussed a mutually-acceptable facilitator prior to the Case Management Conference.

- vii. Any modifications of the standard discovery protocols, below.
- viii. Any existing or anticipated discovery or other disputes and any agreed upon process(es) for resolving those disputes. The Business Court encourages the parties to resolve all discovery disputes as efficiently and as quickly as possible.
- ix. The parties will be expected to discuss discovery of electronically stored information (ESI).
- x. The parties will be expected to discuss the adoption of the Case Management Protocol, subject to any objections and/or mutually agreeable alternative procedures, as a Court Order.
- xi. The parties and the Court will discuss the need and timing for any additional conferences.

c. Standard Discovery Protocols

**NOTICE:** The parties shall preserve all documents, including all electronically stored information relevant or potentially relevant to the case. Any logistical, cost or other issues presented by this requirement shall be addressed at the Case Management Conference.

**NOTICE:** Discovery shall be proportional to the complexity and amount of

**damages sought.**

- i. The following provisions are suggested to the parties as a starting point in order to streamline discovery, reduce costs, and engage in meaningful ADR processes as early in the litigation as practicable. The parties may agree to additional or different protocols as long as otherwise permitted by the Michigan Court Rules or upon Court Order. The Court will consider principles of proportionality with regard to all discovery disputes.
11. *Initial Disclosure.* Within 30 days of the Case Management Conference, the parties shall make certain initial disclosures, to the extent that such information is known.
  - (1) *In General.* Except as exempted by the court rules, stipulation, or court order, a party must, without awaiting a discovery request, provide to the other parties:
    - (a) The factual basis of the party's claims and defenses;
    - (b) The legal theories on which the party's claims and defenses are based, including, if necessary for a reasonable understanding of the claim or defense, citations to relevant legal authorities;
    - (c) The name and, if known, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
    - (d) A copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
    - (e) A description by category and location of all documents, electronically stored information, and tangible things that are not in the disclosing party's possession, custody, or control that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. The description must include the name and, if known, the address and telephone number of the person who has possession, custody, or control of the material;
    - (f) A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under MCR 2.310 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;
    - (g) A copy of any insurance, indemnity, or suretyship agreement under which another person may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and
    - (h) The anticipated subject areas of expert testimony.
  - (2) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must serve initial disclosures based on the information then reasonably available to the

party. A party is not excused from making disclosures because the party has not fully investigated the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

iii. *Written Discovery.*

1. The Court will entertain motions to expand or increase the following limitations upon good cause shown, either initially in the case or later in the discovery process once a defined need is established.
2. Discovery must be served sufficiently in advance of the discovery cutoff date so as to allow the opposing party sufficient time to respond prior to the discovery cutoff. Discovery may be conducted after the discovery cutoff date by written stipulation only if the extension of time does not affect dates for any motion cutoff, settlement conference, submission of joint final pretrial order, final pretrial conference, or trial. If an extension of discovery would affect such dates, or if a party seeks adjournment of such dates for other reasons, a written motion demonstrating good cause must be filed as soon as the need for an extension or adjournment becomes apparent. Written discovery shall be served in both a PDF and Word (or native) format.
3. For any type of written discovery under MCR 2.309, 2.310 or 2.312, the parties are encouraged to agree upon any limitation on the number of interrogatories, request for admissions, and request for production, including the timing and sequencing of written discovery that will best serve the speedy, just and efficient resolution of the matter.
4. Objections shall be clear and concise. Boilerplate or "general" objections are discouraged. Responses with objections shall clearly indicate the scope of the withholding of any information or document on the basis of an asserted objection.
5. Documents identified consistent with MCR 2.309(E) shall be identified by bates number or otherwise such that it is clear which produced documents correspond to each interrogatory.
6. Any document withheld on the basis of a claimed privilege, and generated before the initiation of litigation, shall be logged to allow the opposing party and the Court to assess the prima facie assertion of privilege. The log shall be produced at the same time as the document production. The document production shall be made at the same time as the written responses. The log shall (1) state the document number (e.g. Bates number) of the document, (2) describe the nature and general subject matter of the document not produced, (3) state the date and type of document (e.g., e-mail, notes, memo, etc.), (4) state the name(s) of the author/sender, recipient, and any third parties recipients copied, or, if known, who later received copies; and (5)

state the privilege(s) asserted as to the withheld document. A log for post-litigation communications may be agreed to by the parties or requested by motion.

7. When filing a motion pursuant to MCR 2.309(C) or 2.310(C)(3), a party must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

iv. *Depositions.*

1. The parties are encouraged to agree upon a limitation on the number and length of any depositions, including the timing, location and sequencing of those depositions that will best serve the speedy, just and efficient resolution of the matter.
2. Presumptively, depositions of Plaintiff's representatives shall take place in Oakland County at Plaintiff's counsel's office or other local location designated by Plaintiff's counsel, and Defendant's depositions shall take place in the location of the deponent's customary place of work (whether in or out of state) at Defendant's counsel's office or other local location designated by Defendant's counsel.
3. Inordinate breaks during depositions, gamesmanship, objections violative of MCR 2.306(C)(4) or uncivil behavior are inappropriate and will be subject to the imposition of sanctions by the Court.

v. *Electronic Discovery.*

Parties should be prepared to discuss e-discovery protocols and related issues in an educated manner at the Case Management Status Conference. Parties are free to agree to additional protocols governing e-discovery (e.g., the Model Order utilized by the U.S. District Court, E.D. Mich).

(<https://www.med.uscourts.gov/pdffiles/ParkerEs1OrderChecklist.pdf>).

Presumptively, all documents produced electronically shall be produced in native format and with the load files preserving all metadata.

**Failure to comply with the Business Court Case Management Protocol may subject the parties to sanctions.**