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## INDIANA COMMERCIAL COURTS AIM FOR LEGAL CONSISTENCY IN BUSINESS DISPUTES; INDIANA STARTS A COMMERCIAL COURT SYSTEM



Posted by: Margaret Christensen and Brian W. Welch on Wednesday, August 31, 2016 at 10:00:00 am

### Background

On Jan. 20, 2016, the Indiana Supreme Court issued an Order establishing the Indiana Commercial Court Pilot Project, and on April 27, 2016, the Court adopted Interim Rules for the administrative handling of cases. Citing “legal consistency” at the time it published Interim Rules, the Supreme Court indicated its view that establishing commercial courts in Indiana “will keep our business environment competitive.” The Pilot Project is to last for a period of three years beginning June 1, 2016.



The Pilot Project has six participating courts as follows:

- Allen Superior, Judge Craig Bobay
- Elkhart Superior, Judge Stephen Bowers
- Vanderburgh Superior, Judge Richard D'Amour
- Floyd Superior, Judge Maria Granger
- Lake Superior, Judge John Sedia
- Marion Superior, Judge Heather Welch

The Supreme Court established a Commercial Court Working Group by order dated June 2, 2015. The Working Group is comprised of lawyers, trial court judges, an academic and the president of the Indiana Chamber of Commerce, and is charged with recommending guidelines for establishing and administering the Commercial Court system. The Working Group developed the Interim Rules adopted by the Supreme Court, which govern administration of the Commercial Courts.

### Administration

**Eligible Cases:** Broadly, eligible cases can involve disputes between or among business entities or their owners/shareholders, transactions governed by the UCC, the purchase and sale of securities, patents/trademarks/service marks/copyright, non-consumer bank or brokerage accounts, franchise relationships, anti-trust issues, insurance contracts/coverage disputes, environmental claims involving a breach of contract or indemnity obligation. Interim Rule 2.

**Ineligible Cases:** Include personal injury, consumer claims, wage and hour claims, eminent domain, employment discrimination, administrative agency actions, residential real estate disputes, domestic relations matters and small claims matters. Interim Rule 3.

**Seeking Assignment to Commercial Court:** A fundamental tenant of the pilot program is that all parties must consent to jurisdiction by the Commercial Court. Plaintiff must file an “Identifying Notice” at the time the case is filed. A party not consenting to the assignment to the Commercial Court is required to file a “Refusal Notice” not later than 30 days after service, or 30 days after the non-consenting party first appears in the case. The Rule further provides that if a Refusal Notice is filed timely, the Clerk “shall transfer and assign the case to a non-commercial court docket.” Interim Rule 4.

**Appointment of Masters:** Interim Rule 5 provides that the Court may appoint a court master only if all the parties agree. Parties may benefit from the appointment of special masters who can advise the court with respect to technical questions outside the Court’s expertise, such as accounting or engineering. The Court may also appoint a special master to facilitate resolution of discovery disputes, stipulations, and settlement discussions. Judge Welch of the Marion Superior Court commented in a recent seminar about the Commercial Court that Rule 5 was the one Interim Rule that the drafters were unable to agree upon unanimously. The debate apparently centered around the ability of the Court to appoint a court master over the objection of a party.

### Handbook Guide

The Court published a Handbook that describes the Commercial Court process in more detail. Last modified on June 10, 2016, the Handbook can be found at [www.in.gov/judiciary](http://www.in.gov/judiciary). The preamble indicates that the Handbook was adopted by the Working Group and is based largely on the National Judicial College publication “Resource Guide on Complex Litigation.” The Handbook covers the Interim Rules, case management, pretrial matters and trial procedure. Certain provisions of the rules governing discovery are similar to the federal rules, incorporating the concept of proportionality, requiring initial disclosures and limiting the number of interrogatories and depositions.

To learn more about Margaret Christensen and her practice, please visit her profile.

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