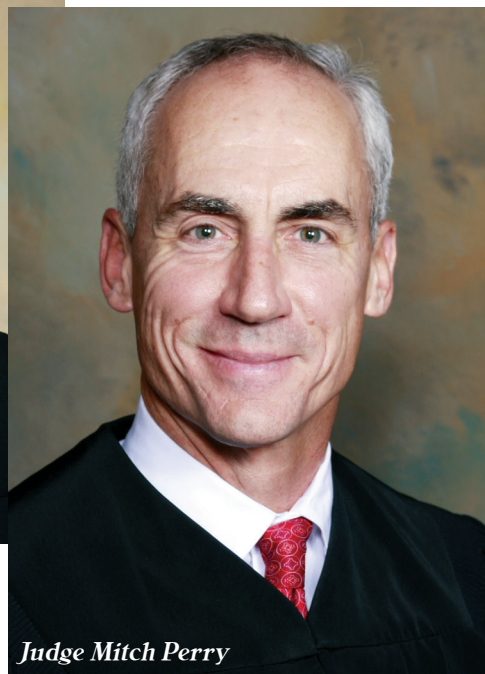


# — FROM THE — B E N C H

## *The Business Court from the Perspective of the Business Court Judges* By Elisabeth (Libby) Gray



Judge Eric Haner



Judge Mitch Perry

Starting in January 2020, Kentucky enacted a Business Court Pilot Project in Jefferson Circuit Court, the first of its kind in Kentucky. Since that time, the Business Court has handled more than 300 cases (80 in 2020; 61 in 2021; 87 in 2022; and 81 in 2023). The Business Court docket provides specialized attention for complex commercial cases, improving court efficiency for the litigants and creating a more attractive forum for doing business.

The Business Court Rules are available on the Business Court website, along with Opinions and Orders from Business Court cases <https://www.kycourts.gov/Courts/Business-Court/Pages/default.aspx>. The Rules promote enhanced case management by the Court and transparency between the parties, including the use of Initial Disclosures and Expert Disclosures. The Rules also permit the Court's use of e-mail communication with the attorneys, and for the litigants to avoid motion hour through the use of agreed upon motions and orders.

Notably, before filing in Business Court, attorneys should ensure that their clients have a dispute that is eligible for Business Court. BCR 2.1 provides the specific types of disputes that are eligible for Business Court, and BCR 2.2 provides specific types of excluded disputes. Attorneys should carefully review these rules before filing a case in Business Court to ensure the eligibility of the dispute.

The inaugural judges assigned to Business Court were then Judges Charles Cunningham and Angela Bisig, who served from 2020-2022 until their respective departures from the Circuit Court bench. Beginning on January 1, 2023, Judges Mitch Perry and Eric Haner became the new Business Court judges (although Justice Bisig continues to lead the Business Court Pilot Project Committee). We checked in with Judges Perry and Haner to learn about their first year as Business Court judges, and their suggestions to maximize the efficiency of the Business Court docket.

**Q. What have you liked best about the Business Court docket?**

*Judge Haner:* The best part of the Business Court docket is the case management process which allows the Court to be involved in the dispute from the beginning.

*Judge Perry:* The quality of the lawyering has been top-notch.

**Q. Do you think too many cases are being filed in Business Court? Are there any cases that you believe should not be filed in Business Court even though they technically may fit within the Rule?**

*Judge Haner:* There are probably more cases eligible for the business court that are not being filed there. If you have a business case you believe will require more court intervention, then Business Court could be a good option rather than the regular civil docket.

*Judge Perry:* Generally about the right number of cases are being filed or being reassigned to the Business Court (in Division Three, about 50 active cases). However, I believe that standard non-compete cases should be heard on the regular civil docket instead of the Business Court docket.

**Q. Have you found the Initial Case Management Conference to be helpful?**

*Judge Perry:* Yes, it helps to focus everyone involved on the end goal of litigation: how do we resolve this dispute?

*Judge Haner:* Absolutely, it helps the Court understand from the outset the nature of the dispute, and have more input on how the case should track.

**Q. The Rules allow the Court to require a party representative to attend the Case Management Conference in person. Do you require a party representative to attend in person in your Court?**

*Judge Haner:* No, it is not required, and Division One offers

video zoom participation so that parties can be present without unnecessary travel or expense. I do think anytime a party participates in court proceedings, it can promote faster resolution of disputes.

*Judge Perry:* Party representatives are always welcome but infrequently required.

**Q: Do you allow counsel to attend Case Management Conferences by zoom or telephone?**

*Judge Perry:* There is no substitute for in-person court proceedings. Often times, counsel have a chance to chat, both about the case and other matters with the Court and each other, that they would not otherwise have with remote proceedings.

*Judge Haner:* In-person attendance is required, unless a party requests accommodation by the court.

**Q. Do you use BCR 5.7 to communicate with counsel via e-mail?**

*Judge Haner:* Yes, mainly for scheduling. It is helpful to notify the Court that a motion will be submitted on the record after an agreed briefing schedule, or to notify the Court that an issue is now ready for a decision.

*Judge Perry:* Yes, for scheduling purposes.

**Q. Have you handled motions on the papers without a hearing or oral argument per BCR 5.3?**

*Judge Perry:* I have not, but would do so if requested or necessary.

*Judge Haner:* Yes, but it is beneficial if the parties will communicate with the Court when a motion can be ruled upon without oral argument.

**Q. Has it been helpful to have unopposed motions for enlargement of deadlines done through a proposed order per BCR 5.5 so that motion hour is not**

**necessary?**

*Judge Haner:* Absolutely, as long as the Court is made aware that it is "agreed" or "unopposed."

*Judge Perry:* Yes, very much so, it is always best and helpful when the lawyers can agree amongst themselves.

**Q. When is your Business Court Motion Hour?**

*Judge Perry:* Every Monday at 10 a.m. (following regular motion hour).

*Judge Haner:* Every Monday at 9 a.m. (following regular motion hour).

**Q. What is your favorite aspect of the Business Court Docket?**

*Judge Haner:* The case management aspect.

*Judge Perry:* The lawyers are always very well prepared, on-time, and bring their "A" game.

**Q. What is one thing you wish practitioners knew about the Business Court Docket?**

*Judge Perry:* It is always important to keep the big picture in mind rather than expending too much time and energy on tangential issues. This is an expedited docket with the goal of resolving disputes quickly. Let's get to the main underlying issue ASAP.

*Judge Haner:* One, that it is available, and two, that there are specific rules which the Court expects the parties to follow.

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