



Eye on the Profession: Attorneys, change is here but you will eventually like it

John Trimble June 14, 2017

I was at a bar association meeting within the last week that had a cross-section of lawyers of all ages and practice areas. There was one overriding theme of the conversations among the lawyers in attendance: They were hating change.

Within the last year, Indiana lawyers and our state judicial system have been dragged kicking and screaming into the mainstream of U.S. practice. We now have a pilot project that has brought commercial courts and commercial court rules to Indiana lawyers and their clients, and we have e-filing in many of our counties and in our appellate system.



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For lawyers who have practiced regularly in federal court, these changes are welcomed. E-filing was originally met with pushback and angst in the federal system, but once we got used to it, we loved it. Case management plans and firm deadlines have also long been part of the federal system, and federal practitioners know that a case is not going to sit untouched and undecided very long. Until now, the majority of Indiana trial attorneys could avoid e-filing and more vigorous case management by staying out of federal court. In general, that is no longer the case, and all of us are going to have to adapt or be left behind.

The commercial court pilot project is up and running, and most accounts of the project have been very positive. Cases are moving faster and with greater judicial oversight than most civil cases have been able to receive in the past. The rules that require case management plans have been largely self-executing, and parties have benefited from the relative certainty of knowing when specific things will occur. More importantly, cases that must be moved more rapidly such as employment disputes, non-compete violation claims, unfair business practice claims, and trade secret violations have been handled with greater dispatch.

There remain some misconceptions about the commercial court rules. For example, no one is forced to stay in the commercial court pilot project. Opt-out rules allow unwilling litigants to object to being in commercial court, and with a timely objection, a case will return to the regular plenary civil docket. Smaller businesses and individuals have protection from being bowled over by heavy-handed bullying behavior of a better-financed opponent because commercial court judges understand and can apply proportionality to the litigation.

It has been argued that the commercial courts are somehow “secret” in their practices, or that commercial courts have a different set of rules for applying injunctive relief. However, that is simply not true. While the rules may require greater attention to case management, there are no meaningful differences between the standard trial rules and the commercial rules when it comes to protecting the rights of litigants as we have always known them.

In summary, lawyers who represent businesses and the management, and employees of businesses should embrace commercial courts. Your clients will get good and economical case management and prompter, less expensive outcomes. Does that mean that you will always prevail? Of course not, but there is no cause to believe that commercial courts are a place to fear. They simply are not, and I urge you to try them.

E-filing is a slightly different matter. There are still kinks in the system. County filing practices vary widely, and the choice of vendors can cause head spinning. Some counties have not yet adopted e-filing, and some lawyers have not yet taken the steps to sign up to participate. In addition, for busy lawyers, the press of additional email can be crushing.

Despite the bugs in the system, e-filing is going to be wonderful. We are all going to save money on postage, envelopes and filing of paper. Access to newly filed pleadings is scary fast. Trips to the courthouse to file things will be unnecessary, and lawyers will have more time to work on productive business. Lawyers, their clients and the public will eventually have far easier access to court filings and orders.

I have a confession. I understand why some lawyers are worried right now about e-filing.

I have not yet personally learned how to do it. More seasoned lawyers who are less techie, like me, are going to be afraid of this for a while. I have the good fortune of having capable people to file for me, but not everyone has that assistance. However, we are all (including me) going to have to learn how to e-file. We have no choice. It is here to stay.

Commercial courts and e-filing are just two of the many changes we are facing. Keep an open mind. Adapt. Try it. Embrace it. Before long, you will see that all of these changes are good and that practicing law will be easier with these innovations, not more difficult. #WillYouBeThere?•

John C. Trimble (@indytrims) is a senior partner at the Indianapolis firm of Lewis Wagner LLP. He is a self-described bar association “junkie” who admits that he spends an inordinate amount of time on law practice management, judicial independence and legal profession issues. The opinions expressed are those of the author.