LITIGATION NEWS

ABA Litigation Section

TOP STORY

We're Clearing the Docket, Whether You Like It or Not

By Leah E. Trahan – January 29, 2025

In *E.E.O.C. v. Hooters of America, LLC,* a federal court in North Carolina declined to extend discovery deadlines and continue a trial despite the parties' agreement that more time was needed. The court found the parties had not proceeded diligently to push the case forward and refused to let the parties' delays affect the other cases on the docket. ABA Litigation Section leaders suggest federal courts' focus on moving dockets is a trend that requires attorneys to be attentive to discovery early in the case rather than waiting until deadlines loom to resolve issues.

Agency Investigation Leads to Federal Court Case

A former restaurant employee filed a charge with the Equal Opportunity Employment Commission (EEOC), alleging she had been discriminated against on the basis of race when the restaurant selectively recalled white or light-skinned employees after COVID-19 layoffs. The EEOC is the federal agency responsible for enforcing Title VII, which prohibits employment discrimination. The EEOC found good cause to believe discrimination against the employee and other co-workers had occurred. The agency then tried to settle through the EEOC's voluntary conciliation process. When that failed, it filed suit against the restaurant in the U.S. District Court for the Middle District of North Carolina.

The district court issued a Rule 16 scheduling order giving the parties ten months for discovery and setting a trial date. In its order, the court reminded the parties that they should build in time for delays which are normal parts of litigation. The court also cautioned that the press of other business would not be a valid basis for extension of deadlines.

Court Refuses to Postpone Trial

Discovery in the case was delayed at multiple points. First, the restaurant waited two months to send out initial discovery requests. The parties then took months to submit a protective order. Discussions on the proper electronically stored information protocol, which would govern how electronic information would be collected and produced in the case, were unproductive. And there were gaps between the parties' attempts to meet and confer over discovery issues, which the parties did not bring to the court's attention.

With court-ordered deadlines approaching, the parties agreed that deadlines should be extended and the trial date reset. The parties believed more time was necessary to complete discovery. But the court rejected the parties' joint request. The court reasoned that changes to deadlines and trial dates affect the efficiency and prompt resolution not only of this case, but other cases on the court's docket. Therefore, in the court's view, scheduling orders should be modified only when there is a good reason for delay. In this case, the court held, there was no good cause because the parties did not act with diligence. Ultimately "the inconveniences and difficulties arising from the parties' lack of diligence should fall on the parties, not the Court," the order concluded.

The court further imposed several additional deadlines to keep the parties on track for trial. For example, the court set a deadline for mediation and required the parties to meet and confer daily over the following weeks to reach agreement on outstanding discovery issues. A few weeks later, the restaurant agreed to pay $250,000 to settle.

Litigants Must Efficiently Raise Concerns and Prosecute Cases

Litigation Section leaders suggest the outcome may have been different had the parties brought their issues to the court's attention earlier in the litigation. "It always behooves you to raise something at the earliest opportunity with the court," notes Joseph V. Schaeffer, Pittsburgh, PA, Co-Chair of the Section's Pretrial Practice & Discovery Committee. "Would the judge have been less frustrated if the request had been made at month five or even month eight as opposed to towards the end? We won't know, but I suspect that the answer is 'yes,'" Schaeffer opines.

It is a "delicate balance" between extending professional courtesies and moving the case forward, explains Mark A. Romance, Miami, FL, Co-Chair of the Section's Pretrial Practice & Discovery Committee. "It's becoming more common that the courts are trying to move their dockets along," notes Romance. "The bottom line is that you have to move your case quicker earlier so that you don't run into these difficulties, and you still have the flexibility of providing the professional courtesies that we all would expect," he advises.

"Like anyone else courts don't appreciate being made the victim of your lack of due diligence," Schaeffer notes. As the expression goes, "lack of planning on your part does not constitute an emergency on my part," he quips.

Leah E. Trahan is a contributing editor for Litigation News.

Related Resources

- Attison L. Barnes III, Stephen J. Obermeier, & Krystal B. Swendsboe, "The Rocket Docket: Ensuring Clarity and Predictability in Civil Litigation," *Litig. J.* (Jan. 30, 2023).
- Dorian W. Simmons, "Managing Discovery: Be Proactive or Risk Being Sorry," *Pretrial Prac. & Discovery* (Aug. 28, 2018).
- Andrew M. Toft, "Don't Sit on Your Right to Enforce Discovery Obligations, or You May Lose the Remedy," *Pretrial Prac. & Discovery* (Nov. 28, 2018).
- Andrew M. Toft, "Discovery Disputes Don't Keep," *Pretrial Prac. & Discovery* (Sept. 13, 2021).