Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group Meeting #3
July 9, 2008

The third meeting of the Business Courts Study Group was called to order on Wednesday, July 9, 2008 at 11:15 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A roster of members attending in person or by telephone, along with the Secretary of State personnel in attendance, is included as Exhibit A.

Assistant Secretary of State, Policy and Research, Cheryn Baker welcomed the Committee and called the roll of those members attending by telephone. Baker asked for a motion that the minutes from the June 11, 2008 meeting would be adopted as recorded. The motion was made and seconded and the minutes were adopted. Next, Baker asked for the sub-committee reports.

Judicial Selection Sub-Committee Report

This sub-committee met and discussed primarily whether to elect or appoint Business Court judges. No consensus was reached; some members favor election while others favor appointment. The sub-committee also discussed having circuit judges appoint special masters to facilitate business litigation, with the circuit court judge signing final orders. This was objectionable to most of the committee in that business litigation would ultimately be returned to the circuit courts, not accomplishing the Committee's goals.

The sub-committee also discussed the constitutionality of judicial appointment as a threshold issue. The group planned to meet Chief Justice to discuss procedure in determining this issue. A Committee member objected to the group meeting with the Supreme Court on this issue and recommended requesting an Attorney General opinion as an alternative. A different Committee member voiced agreement with this proposal. Some discussion ensued, including a discussion of statutory authority for designating retired judges to facilitate dockets in emergency situations, recusal, or overcrowded dockets. One member noted that in Hinds County, the Chief Justice had used this authority to designate a circuit judge to hear criminal cases exclusively.

Jurisdiction Sub-Committee Report

Chair James Holland distributed materials concerning jurisdiction in the Nevada Business Court; more specifically the definition of "business matters." He noted that Nevada categorized certain matters as being within the purview of the Business Court and "carved-out" other matters as being specifically outside the purview of this court. Chair Holland then noted matters discussed by the sub-committee:

1) The constitutional and statutory provisions the sub-committee would have to navigate in granting jurisdiction.

2) Whether a new court or a pilot program was in the best interest of the Committee's goals.
3) Whether jury trials should be allowed in the Business Court, and how to avoid the constitutional right to a trial by jury if jury trials were not desired.
4) The authority of the judiciary and/or the legislature to create an inferior court.
5) Whether to make the Business Court mandatory or optional for certain types of cases. And finally;
6) The type of cases to be considered.

Chair Holland noted that the sub-committee had thought it best to discard issues such as appointment and jury trials that would become obstacles and stop the process. He concluded by noting that the group would be circulating a checklist of the types of cases to include and exclude to the entire group. He asked the members to respond with positive or negative feedback on the ideas.

Procedure and Technology Sub-Committee Report

Chair Amanda Jones noted that most of the sub-committee members preferred implementing a separate docket within the existing court system through a pilot program and had discussed whether it should be instituted judicially or legislatively. Next, she acknowledged the existence of a proposed electronic filing system with state funding. The Supreme Court and the judiciary have been working to develop and implement an electronic filing program. The sub-committee's recommendation would be to use the existing system rather than create a new one. She stated that the sub-committee had plans to meet with a company that provides electronic filing for two Mississippi counties. Jones noted that the sub-committee was in favor of written opinions by the future Business Court.

Fees and Funding Sub-Committee Report

Tom Grantham noted that the sub-committee had decided to proceed on multiple fronts until decisions were made about creating a new court or a pilot program and about jurisdiction. He noted several areas of focus:
1) Funding the Business Court through existing funds.
2) Special filing fees.
3) A "loser-pays" approach.
Concerning the "loser-pays" approach, he noted that the sub-committee had no interest in recommending such a system as it regarded attorney's fees and other court costs, but thought it may be viable to study for filing fees only. One member commented on the effectiveness of Mississippi Rules of Civil Procedure, Rule 11 sanctions and some discussion ensued. Another member expressed opposition to a "loser-pays" system, opining that Rule 11 and other available sanctions were more than sufficient to prevent frivolous litigation. Additional information on funding in Maine and North Carolina was requested. Grantham stated that the sub-committee was contacting representatives from Maine, North Carolina and Delaware as possible participants in the next sub-committee

meeting. He noted that the group's next meeting was scheduled for July 21 by teleconference.

Other Business

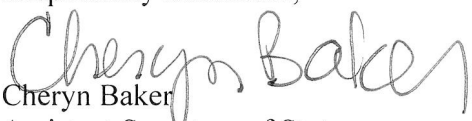
Baker stated that the Division was working on additional research, particularly adding Connecticut's and Arizona's business courts to the business courts survey. She noted that both states charge additional filing fees in their business courts. She also noted that the Division was working on additional research on the constitutional and statutory concerns of the Committee. Baker concluded by referencing the handout of member comments in the materials and invited members who had not done so already to email their comments to the Division.

Further Discussion

Chairman Justice Pittman made some brief comments favoring a pilot program using the existing court system. Secretary of State Hosemann discussed some pilot program options and locations if the Group recommends a pilot program.

With no further business to discuss, the meeting was adjourned at 12:20 P.M.

Respectfully Submitted,



Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A
to the Minutes of Business Courts Committee Meeting 3

Attending:
Ed Pittman
James Holland
Amanda Jones
Carolyn Boteler
Henry Chatham
Dodds Dehmer
Tom Grantham
Christopher Graves
Joel Hill
David Landrum
Shane Langston
John Laws
David Mockbee
James Mozingo
David Paradise
Ron Peresich
Joy Phillips
Charlie Ross
Lex Taylor
Christopher Van Cleave
Dan Waring

By telephone:
Larry Edwards
Bill Painter
Dale Persons
Tom Rhoden

Secretary of State Personnel Attending:
Delbert Hosemann, Secretary of State
Cory Wilson, Chief of Staff
Cheryn Baker, Assistant Secretary of State, Policy and Research
Doug Jennings, Senior Attorney, Policy and Research
Phillips Strickland, Division Coordinator
Jeff Lee, Intern