



**2008 BUSINESS REFORM COMMITTEES
MEETING OF THE BUSINESS COURTS
STUDY GROUP**

**JUNE 11, 2008
11:00 A.M.**

**Secretary of State's Office
700 North Street
Jackson, Mississippi**



700 NORTH STREET
POST OFFICE BOX 136
JACKSON, MISSISSIPPI 39205-0136

**STATE OF MISSISSIPPI
SECRETARY OF STATE
DELBERT HOSEMANN**

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**Mississippi Secretary of State
2008 Business Reform Committees
Business Courts Study Group
June 11, 2008**

Included in this packet are the following items:

1. 2008 Business Reform Committee Minutes of Business Courts Study Group May 20, 2008 Meeting (with exhibits)
2. A Survey of the Structure of Business Courts by State or Local Jurisdiction
3. Lessons Learned and Recommendations From the Panelists Concerning the Creation of Business Courts
 - Concerns, Problems and Issues in the Creation of a Business Court/Docket
4. Overview of Mississippi Court System for Civil Matters
5. Benefits of Creating a Business Court in Mississippi
6. Statistics Re: Business Cases in the Current Mississippi Court System
7. A list of constitutional provisions and statutes governing:
 - The establishment of new courts in Mississippi
 - The selection of judges in Mississippi
8. Business Law Today Articles Concerning Business Courts:
 - Lee Applebaum, *The "New" Business Courts*, BUSINESS LAW TODAY, March/April 2008.
 - Donald F. Parsons, Jr. & Joseph R. Slights III, *The History of Delaware's Business Courts*, BUSINESS LAW TODAY, March/April 2008.
9. Roster of Business Courts Study Group Committee Members
10. Business Courts Study Groups Sub-Committees: Discussion Issues



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STATE OF MISSISSIPPI
SECRETARY OF STATE
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2008 BUSINESS REFORM COMMITTEES
MEETING OF THE BUSINESS COURT STUDY GROUP

Wednesday, JUNE 11, 2008
11:00 A.M.

Secretary of State's Office
700 North Street
Jackson, Mississippi

AGENDA

1. Welcome – Cheryn Baker
2. Roll Call of Persons Attending by Teleconference
3. Appointment of Acting Chair – Judge Pittman
4. Approval of May 20, 2008, Minutes – Acting Chair
5. Discussion of Need for Business Court and Recommendations
6. Introduction and Discussion of Issues by Sub-Committee Chairs
 - a. Judicial Selection – Joey Diaz, Chair
 - b. Jurisdiction – James Holland, Chair
 - c. Procedure and Technology – Amanda Jones, Chair
 - d. Funding/Fees – Blake Wilson, Chair
6. Reminder of Upcoming Meeting Dates – Acting Chair
7. Scheduling of Sub-Committee Meeting Dates
8. Other Business
9. Adjourn 1:00 P.M.

**Mississippi Secretary of State
2008 Business Reform Committees
Minutes of Business Courts Study Group
May 20, 2008**

The first meeting of the Business Courts Study Group was called to order on Tuesday, May 20, 2008 at 11:30 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi.

A list of the persons who were present in person or by telephone is attached at Exhibit A.

Secretary Hosemann welcomed the group, thanked them for their attendance and recognized the legislators and judges who were present. He discussed the need for expedited, consistent judicial opinions for business cases to resolve disputes among businesses at the lowest cost. He also discussed the goals and mission of the Study Group:

He stated that this is an historic event and a giant step for Mississippi to establish a business court system. He also discussed that the goal of the Business Reform project was to make Mississippi the most business-friendly and competitive state. In keeping with that goal, the mission of the Study Group will be to make recommendations as to how to establish a business court system. Secretary Hosemann noted that some of the best minds in the State have been assembled to serve on the Study Group, including a cross-section of Mississippians, users of the court system, attorneys, judiciary and scholars.

Judge Ed Pittman, Chair, made introductory remarks concerning the goals of the committee, introduced the Committee Vice Chairs and announced the formation of four sub-committees: Jurisdiction and Venue; Judicial Selection; Procedure and Technology and Funding and Filing Fees. A list of the subcommittees, including the chairs for each, is attached at Exhibit B.

Judge Pittman stated that it would be the goal of the Study Group to make recommendations as to how to improve the judiciary. This would include creating a strong, desirable business court system. He noted that the judiciary recognizes there is a need and desire to improve the judicial system. He also stated Mississippi has prior experience with creating new court systems, including the Drug Court and the Court of Appeals. The Drug Court was created without requiring any new judges or courthouse space. The circuit courts in Mississippi are overburdened with criminal matters, which have created a backlog for civil cases as well. Judge Pittman stated that the Business Court Study Group would be a "thinking committee" with the Secretary of State staff assisting by doing legal research, legwork, and investigation as needed for the Study Group to make their recommendations.

Cheryn Baker introduced the Policy and Research Division staff. A list of Division staffing is attached at Exhibit C.

Cheryn Baker introduced Merrick (Rick) Gross who acted as the moderator of the call. Mr. Gross made introductions of the other panelists. Copies of the bios of the panelists are attached at Exhibit D. A copy of the ABA brochure on Establishing Business Courts (which was written by the panelists) is attached at Exhibit E.

Next, Lee Applebaum provided an update of the state of business courts/complex litigation courts in the United States and discussed the different types of business courts as follows:

He first explained the use of the terms “business court” and “commercial court” to connote the idea that modern “business courts” deal with both intra-corporate disputes or partnership disputes, of the kind typically associated with the Delaware Court of Chancery; and cases that involve commercial disputes between businesses. He also explained that these are not typically separate courts, but are programs or tracks within existing civil divisions in state trial courts; though they are sometimes divisions within a court. In the one case of the Delaware Court of Chancery, which has a jurisdiction limited, for the most part, to equity matters and not commercial disputes for money damages, it is a separate court.

He observed a distinction between the business court model and the pure complex litigation model, which is that the complex litigation courts hear cases based on whether they meet definitions of complexity, which may include non-business matters, as well as business and commercial disputes. Whereas in the business court model, judges hear only business disputes, which may be simple business disputes or could be considered to be complex litigation business disputes, depending on the model of business court established.

Mr. Applebaum noted that 14 states currently operate a business court in some fashion and that 4 states have pure complex litigation models. He stated that these business courts fall into four models. The first model is a court that has a jurisdiction of a laundry list of case types and if a case falls within this jurisdiction then it can be tried in the business court, so long as it meets the case type criteria and the minimum jurisdictional amount in dispute. The second model hears only complex business cases, no simple business litigation cases, usually along with a few mandatory categories of statutorily based disputes such as state antitrust or securities disputes. The judge or a judicial process plays more of a role in the determination of whether or not a case will be accepted into the complex business court. A third model hears complex tort cases in addition to complex business cases, in a two track system. Finally the fourth model, which would include the Delaware Court of Chancery as the leading example, but also the Circuit Court of Cook County Chancery Division as another example, hears only equity based business cases, such as intra-corporate disputes or employee

restrictive covenant cases, and doesn't hear cases involving money damages, with very limited exceptions in Delaware's Chancery Court.

Mr. Gross then presented a series of questions to the panelists. The questions and a summary of the responses are included at Exhibit F.

Secretary Hosemann introduced Chief Justice Jim Smith who spoke to the group and stressed the need for an adoption of a business court in Mississippi, which would help everyone in the court system. He mentioned the existing backlog of cases due to the number of criminal cases on the dockets and that having the ability to get through court faster is enough reason to adopt a business court in Mississippi. Chief Justice Smith also pledged to provide support from the MS Supreme Court to the Study Group.

During the question and answer session Christopher Van Cleave suggested that the committee be provided statistical information on business cases currently in the court system and on business cases in several of the busier circuit courts. He also requested documentation of the amount of time that taken up by the various types of cases on the dockets and what are the backlogs for various courts. Secretary Hosemann pledged to provide this information to the Committee.

Judge Pittman announced the committee assignments and Secretary Hosemann commented that each subcommittee will receive research on their topics. Judge Pittman also announced the upcoming meeting dates. A list of Study Group meeting dates is enclosed as Exhibit G. He commented that the Supreme Court can accomplish most of this business court project by rule. He noted that the drug court did not require new judges or courthouses, and that no new bureaucracy was needed when the court of appeals was created. Judge Pittman also stated that the legislature has funded the judiciary system in the past.

Cheryn Baker distributed copies of the Business Courts State Survey prepared by the Secretary of State's Office. A copy of the updated Survey with the addition of an Executive Summary is enclosed at Exhibit H. Ms. Baker also announced that copies of the meeting materials and minutes would be posted on the Secretary of State's website and sent to legislators.

There being no further business, the meeting was adjourned at 1:15 P.M.

Respectfully Submitted,

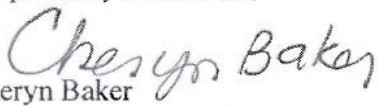

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A

The following persons were present in person or by telephone:

Committee Members:

Ed Pittman
James Holland
Joey Diaz
Blake Wilson
Guff Abbott
BB Hosch
Joy Phillips
Brian Sanderson
Lex Taylor
James Threadgill
Chris Van Cleave
James Wyly
Cathy Beeding
Carolyn Boteler
Rick Calhoon
Henry Chatham
Dodds Dehmer
Larry Edwards
Christopher Graves
Malcolm Harrison
Joel Hill
Amanda Jones
Les Lampton
David Landrum
Shane Langston
John Laws
David Mockbee
William Painter
David Paradise
Dale Persons
Tom Rhoden
Charlie Ross
Dan Waring
Lawrence Warren
Kelley Williams

Legislators and Judges:

Chief Justice Smith
Justice Charles Easley
Rep. Gary Chism
Rep. Mark DuVall
Rep. Harvey Fillingane
Rep. Andy Gipson
Rep. Ted Mayhall
Rep. Jimmy Puckett
Rep. Greg Snowden
Sen. David Baria
Sen. Hillman Frazier
Sen. Vincent Davis

Secretary of State Staff:

Delbert Hosemann
Cory Wilson
Cheryn Baker
Doug Jennings
Pamela Weaver
Phillips Strickland
Amy Foster
Brian Bledsoe
Andy Thomas
Jeff Lee

Other persons present included:

David Krause
Aileen McNeill
Charlotte Puckett
Kirk Nelson
Jim Poole for Tom Grantham
Ms. Celie Edwards

EXHIBIT B
Business Court Study Group Sub-Committees

Judge Ed Pittman, Chair of Business Courts

Judicial Selection

Joey Diaz, Chair
Rick Barry
Larry Edwards
Malcolm Harrison
Les Lampton
James Mozingo
Dale Persons
Tom Rhoden
Robert Tatum
Dan Waring
Kelley Williams

Jurisdiction/Venue

James Holland, Chair
Guff Abbott
Henry Chatham
B.B. Hosch
Shane Langston
John Laws
David Mockbee
Bill Painter
George Simmerman
Lex Taylor

Procedure/Technology

Amanda Jones, Chair
Carolyn Boteler
Chris Graves
Joel Hill
Joy Phillips
Carlton Reeves
Charlie Ross
Christopher Van Cleave
James Wyly

Funding/Fees

Blake Wilson, Chair
Cathy Beeding
Rick Calhoon
Glenda Glover
Tom Grantham
David Landrum
David Paradise
Brian Sanderson
James Threadgill
Lawrence Warren

EXHIBIT C

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EXHIBIT D

Biographies of Panelists Business Courts Presentation May 20, 2008

Lee Applebaum is a commercial litigation partner at Fineman, Krekstein & Harris in Philadelphia. He is co-chair of the American Bar Association's Subcommittee on Business Courts and was its the long-standing vice-chair. He has written, advised and spoken extensively on business courts. He is the past chair of the Philadelphia Bar Association's Business Litigation Committee and will become chair of the Philadelphia Bar Association's Business Law Section in 2010. He has authored or co-authored over 30 articles or book chapters, and his 1987 law review article on securities arbitration was cited and quoted in a U. S. Supreme Court Opinion.

Mitchell L. Bach is a Member of the firm of Eckert Seamans Cherin & Mellott, LLC, and Chair of the firm's Commercial Litigation Division in Philadelphia. He was Chair of the Business Law Section of the Philadelphia Bar Association in 2005, and also formerly chaired the Association's Business Litigation Committee. Mr. Bach is the immediate past Chair of the ABA Section of Business Law's ("SBL") Committee on Corporate and Business Litigation, and the immediate past Chair of its Business Courts Subcommittee. Mr. Bach currently is a member of the Council of the SBL, and Co-Chair of the SBL's Ad Hoc Committee on Judges Initiative. Mr. Bach played a key role in the organization and development of the Commerce Case Management Program of the Philadelphia Court of Common Pleas in 1999; and is actively involved in the creation of other specialized business courts throughout the United States, a subject on which he writes and speaks about frequently.

Rick Gross is a shareholder with Akerman Senterfitt, resident in the firm's Miami office. He practices in the area of Business and Commercial Litigation. Mr. Gross is the co-chair of the ABA Section of Business Law Business Courts Subcommittee and has been active in the creation of Business Courts throughout the State of Florida and the United States having written and lectured frequently on the subject. He is also the current chair of The Florida Bar Business Law Section and the immediate Past President of the Dade County (Miami, Florida) Bar Association.

Robert L. Haig is a partner in the law firm of Kelley Drye & Warren LLP in New York City. His practice includes commercial, products liability, and other types of civil litigation. Mr. Haig co-chaired the Commercial Courts Task Force which New York's Chief Judge appointed to create and refine the Commercial Division of the New York State Supreme Court. He recently organized and conducted a series of focus groups on the Commercial Division at the request of New York's Chief Administrative Judge which involved Commercial Division Judges and in-house and outside counsel for corporations and contributed to a report on the focus groups proposing improvements to the Commercial Division and other New York Courts. He has also been active in efforts to create business courts in many other states and countries. Mr. Haig is the Editor-in-Chief

of two multi-volume treatises on business and commercial litigation and is the author of numerous articles and book chapters.

Cory E. Manning is a partner of Nelson, Mullins, Riley, and Scarborough LLP in Columbia, South Carolina. Mr. Manning's practice includes a variety of litigation, negotiation, and counseling services in both civil and criminal matters. In addition to representing clients in federal and state courts and other forums, Mr. Manning regularly advises public and private companies and their officers and directors on a broad range of issues regarding litigation risk-reduction strategies, commercial contracts, fiduciary duties, and corporate compliance matters. Mr. Manning has spoken and written on various legal topics, including specialized business courts, civil motion practices, legal ethics, negotiations, and Sarbanes-Oxley compliance. He currently serves as Vice-Chair of the ABA's Business Law Section's Subcommittee on Business Courts.

Judge Steven Platt is retired from the bench, but is the current President of the American College of Business Court Judges. He is also the acknowledged architect of the Maryland Business & Technology Case Management Program. Judge Platt is recalled in all Eight Circuits in Maryland to provide ADR and preside over Business and other Complex litigation. He also provides mediation and arbitration services privately through his company, The Platt Group, Inc.

Judge Ben Tennille started the North Carolina Business Court in 1996. He is now Chief Judge of a three judge court there. In establishing the court Judge Tennille designed a model paperless court, which employs a free electronic filing system using the Internet. It was one of the first successful e-filing systems in the country. The Court was one of the first to maintain a website where all the opinions were accessible as soon as they were filed and all pleadings were accessible on the website. Judge Tennille currently maintains his chambers and his courtroom in the new Elon University School of Law, the only trial court in the country to be housed in a law school. He is immediate past president of the American College of Business court Judges and currently the ABA Judicial Division Liaison to the Business Law Section.

EXHIBIT E
ABA BROCHURE

[TO BE PROVIDED BY SEPARATE DOCUMENT]

EXHIBIT F
QUESTIONS AND ANSWERS FROM PANEL DISCUSSION

1. How do you justify creating what can be perceived as an elitist institution within the judiciary that diverts much-needed resources from other areas of the court system? – Mitchell Bach and Lee Applebaum responded that there is nothing elitist about the idea of a business court. There are all kinds of specialized courts which aren't considered to be elitist, such as bankruptcy, family, drug court, youth courts, etc. The idea that resources are being diverted is just not accurate. Resources are not being diverted; rather they are being reallocated from existing systems to handle business cases more efficiently in a specialized forum. The reallocation thereby reduces the caseload of the existing court system, which results in fewer resources being needed for the existing court system.

2. How much in the way of additional resources needs to be expended in creating business courts? – Robert Haig responded that by additional resources you are referring to money then the answer is zero. This is good because state legislatures may not be inclined to appropriate new money for a new court system. Instead, existing sitting judges can be reassigned to hear business cases. There is no need to appoint new judges or to build new courthouses or add on new courthouse space. The only additional resources that might be needed would be to hire additional law clerks (or reassign them from existing courts) to work on the increased number of complex motions or to pay for new technology that isn't currently being used. Again, this reassignment of complex cases would result in a decreased caseload and workload for the existing court system.

3. Do you have to create new judgeships? - Lee Applebaum replied that in most jurisdictions new judges have not been appointed. Instead existing sitting appointed or elected judges were reassigned to the business court dockets.

4. Find new courthouse space? – Mitchell Bach replied that business courts have either used existing courthouse space or other facilities.

5. What impact have business courts actually had on the rest of the court system? – Ben Tennille responded that having a business court makes the rest of the system work better. The court systems have been able to more quickly dispose of cases with the reduced caseload. Business Courts have also acted as technology incubators for the other courts. Business Courts have implemented electronic filings and electronic courtrooms, which technologies have then been expanded to the rest of the court system.

6. What has been the reaction of the business community to the creation of business courts? – Cory Manning responded that in South Carolina the business community welcomed the business court after it became operational with open arms. Business people are excited about the business court because of the expertise and written opinions which will result in predictability.

7. What constituencies have opposed business courts and why? – Bob Haig discussed three possible opponents. He stated that most of the opposition experienced was due to miscommunications or a misunderstanding of the business courts. He said this could have been prevented by providing more education on the front end to all possible constituencies that might have objections.

These were plaintiff lawyers who were concerned that business lawyers and clients were getting special treatment; some rank and file judges who believed the business court judges were selected because they were “better” or more “special;” and in some states the chief justice of the state’s supreme court opposed the business court because of the “elitist” concern.

8. And how have you dealt with their concerns? – Bob Haig replied that they explained to the plaintiff lawyers that having a business court frees up the rest of the court system so their cases get handled more quickly and efficiently. The concerns of rank and file judges were alleviated by explaining to them that business court judges are not “better” or “more special”, rather they are judges who are interested in complex type litigation and willing to hear complex litigation cases that are often motion-intensive. Not all judges like to hear these types of cases. The opposition by some judges because of the elitist argument has not been evident in connection with establishing business courts in the past few years.

9. What empirical evidence or statistics can you cite to as evidence that business courts have improved commercial litigation? – Cory Manning and Steve Platt responded that there weren’t many statistics available to provide actual evidence that business courts have improved litigation. However, there are many anecdotal stories in the various jurisdictions that business cases are being handled more quickly in the business court systems and there is a higher rate of settlement of cases because of the predictability of the business court systems (due in part to having written opinions). One panelist commented that to conduct a comprehensive statistical survey as to how business courts have improved commercial litigation would be cost-prohibitive.

10. We know that discovery in complex commercial matters can be very protracted and expensive. What has been the impact of business courts in terms of cutting down on the duration of discovery? – Ben Tennille responded that business courts have had a positive impact on the duration and costs of discovery. This is due in part to the improved management of business cases from beginning to end by the same judge who takes a hands-on approach to case management.

11. Are special case management procedures similar to Federal Rule of Civil Procedure Status Conferences used? – Cory Manning responded that procedures are similar to the Federal procedures and they have the same goals of intensive case management, especially in complex litigation cases.

12. What is it about business courts that have made them so successful?

- Mitchell Bach commented that in Pennsylvania the business court has revolutionized the way commercial litigators practice and has become the court of choice. While in the past litigators tried to stay out of state court (due to the uncertainty and lack of judicial expertise), now fewer parties are removing their cases to the federal courts. Some parties are even specifically including the Philadelphia Business Court as their choice of venue in their contracts for any contractual disputes. Cory Manning also mentioned that it is obvious that business courts are successful because all of them have grown beyond their original scope by expanding the number of cases they hear and by expanding the geographic jurisdictions to include a larger area.

13. Do they process and conclude business disputes quicker? -Lee Applebaum responded that business disputes are handled much more quickly in business courts, because of the case management process and other factors mentioned above.

14. How do business courts go about selecting judges? Is there a process? – Ben Tennille commented that most business court judges are first elected as judges of a larger court system and then selected by merit into the business court system by the chief judge of the system or some other similar process. He believes that this is the best combination, as opposed to single process of appointment or election. The combination process addresses the concerns from the pro-election/anti-appointment groups that using only an appointment process is the “camel sticking his nose under the tent” to lead to more appointed judges. It also addresses the concerns that a judge selected solely by election may not be qualified for the position.

16. Do business court judges need any specialized training? – Steve Platt responded that judges can obtain their specialized training while serving on the bench through various education programs designed specifically for business court judges and through experience. It is not necessary that they have specialized training before taking the position. The most important criteria are that business court judges need to be hard-working.

17. Does a business court judge need to have a background with business issues? - Lee Applebaum replied that while it is good for business court judges to have a business background, it is not a requirement. Many very effective business court judges did not have a business background when they took the bench.

18. Does working with the same types of cases on a frequent basis help judges who do not have a business background become better prepared to deal with the issues involved with business cases? – Mitchell Bach stated that business court judges who don't have prior business experience get better at hearing and deciding business cases due to the repetition.

19. What has been the reaction of the rank and file judges to business courts? What is the best way to respond to that reaction? – Ben Tennille remarked that in North

Carolina the Supreme Court created the Business Court without getting any input from the rank and file judges. This caused the rank and file judges to not initially support the business court. He recommends that the entire judiciary be consulted in the process of planning for and creating a business court.

20. What is the most effective way to create a business court? –Bob Haig stressed that the most effective way to create a business court was “minimalist” and “incremental.” He stated that a state doesn’t have to spend a lot of time and effort to plan a business court. The most important part of establishing a business court is to find a good judge and then start assigning cases to that judge. Selecting the right judge is immensely important and is the key to the success of the program. The judge needs to be hands on and proactive with case management. Judge Platt agreed with these points and said to get the best person who enjoys the work and will do it well. In Maryland the program started as a legislative effort and then became a joint effort with the judicial branch. He also stated that you need to involve everyone in the planning process. This helps prevent detractors (who may have misconceptions about the project) because they will be educated about the project and have input into the process.

Final Comments. The panelists next gave their final comments to sum up the presentation. These comments included the need to start small, make the process inclusive, and to look at your culture to determine whether to create the business court by court rule or by legislative action. Other comments were to pick the right judge and focus on what you want to accomplish. For example one state’s priority was to have written opinions and establish a body of case law. The court should be set up to accomplish your state’s particular priorities. They also offered to answer any questions that people may have and to provide any additional help or assistance as needed to our committee.

Cheryn Baker then posed the following questions to the panel:

1. For cases to be eligible for business court should there be a minimum amount in controversy? How much? Mitchell Bach responded that Philadelphia only took new cases so it did not get inundated by a backlog of cases from the beginning. He stated that this issue is handled in different ways in different states. Having a minimum amount in controversy requirement acts as a gatekeeping function to prevent a backlog of cases in business court. It is a judgment call to decide what the cut off point is. He mentioned that in New York the amount is often adjusted as needed. Judge Platt stated that this was a very controversial issue in Maryland so they did not put in place a minimum amount requirement. He recommended that legislators be consulted about this because they may have specific opinions on this subject. Rick Gross mentioned that in Florida the business court used the federal amount as a basis, but it later raised this amount as a gatekeeping measure. Judge Tennille cautioned that when you have a jurisdictional amount you create more areas for the attorneys to argue about. It also might keep out small businesses whose cases involve lesser amounts in controversy. Small businesses need to be in business court to get their cases resolved faster and at a lower cost. Therefore it might not be a wise idea to require a minimum amount in controversy.

2. We are considering adopting a rule to require the MS business court judges to defer to Delaware case law first if there is no MS case law on the subject. Rather than looking to case law in some other surrounding state or otherwise. Have any business courts adopted rules similar to this? Judge Platt stated that no state has done this by rule or statute. He is not sure this should be formally adopted because it is possibly injecting idealology into the court. Bob Haig responded that he was not sure this was a good idea because Delaware's statutory corporate law may not always correspond to the statutes in Mississippi. Judge Tennille objected to this concept. He said it would be hard to make this work unless the Mississippi statute is identical to the Delaware statute.

Secretary Hosemann asked the panel if the amount of the filing fee or court costs should be set in relation to the amount in controversy. Judge Platt remarked that this is an area of controversy. If the business court is going to include consumer cases then this can cause problems. He said to proceed with caution. Determine first what the jurisdiction will be, then make a decision on filing fees. Another panelist commented that you don't need additional filing fees if you are not using them to fund the court. In Florida, the legislature did raise filing fees, but it did it across the board. The panelists stated that no other courts use fees to fund their courts. The business courts that exist today are not distinct, self-sustaining money generating entities.

EXHIBIT G

Business Courts Committee

Meeting Schedule:

May 20th

June 11th

July 9th

July 23rd

August 6th

August 20th

September 3rd

All meetings will be held at the MS Secretary of State's Office located at 700 North Street, Jackson, MS in the 2nd floor conference room.

EXHIBIT H
SURVEY OF STRUCTURE OF BUSINESS COURTS

[TO BE PROVIDED IN SEPARATE DOCUMENT]



**A Survey of the Structure of Business Courts
by State or Local Jurisdiction**

Mississippi Secretary of State
Division of Policy and Research
June 2008

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Executive Summary of Business Courts by State or Local Jurisdiction

I. Introduction

A significant number of states have begun or are in the process of instituting specialized business courts or dockets in their respective jurisdictions. In addition, several counties throughout the United States in which metropolitan cities are located have created business courts or dockets to alleviate the overcrowded dockets of existing courts and help expedite cases involving business and corporate litigation. This summary is a compilation of information concerning existing business and complex litigation courts and dockets. A list of pilot programs is also included. Lastly, this summary discusses other issues surrounding a business or complex civil litigation court or docket including (but not limited to): fast tracking of cases; the selection of judges and the removal process of judges; technology within the courtroom; funding of the courts/dockets; jurisdiction of the courts and minimum amounts in controversy; and types of cases that are generally included and excluded from the court. While the summary section “Types of Business Courts” below does include an exhaustive list of states, counties and cities that have courts and dockets, the remainder of the summary only uses examples from states included in the “Survey of the Structure of Business Courts by State” which follows the Executive Summary.

II. Types of Business Courts

A. Separate Business Courts

Delaware and North Carolina are the only two states that have created a separate court for business related cases. Delaware’s business court, the Court of Chancery, was established in 1792. The Court of Chancery has always been and continues to be a court of equity; therefore, it does not hear monetary damage cases. North Carolina’s business court was established much more recently in 1995 by North Carolina Supreme Court rule. The North Carolina court is a more traditional court structure consisting of three full-time judges and three jurisdictions located in Greensboro, Charlotte, and Raleigh. The court is funded separately by the legislature and requires a \$200 filing fee for transfer of a case to the business court. Written opinions are mandated for all cases upon final disposition in non-jury matters decided by the business court. This requirement has allowed North Carolina to establish a large body of case law in the past twelve years¹, and, in turn, generates a favorable atmosphere for business by creating predictable legal outcomes in business disputes.² Additionally, Forbes Magazine ranked North Carolina as the third best state for businesses in 2007.³ While the article does not specifically mention North

¹ Mack Sperling, *North Carolina Business Litigation Report: History of the North Carolina Business Court*, NORTH CAROLINA BUSINESS COURT BLOG (Feb. 25, 2008), at <http://www.ncbusinesslitigationreport.com/2008/02/articles/about-the-business-court/history-of-the-north-carolina-business-court/> (since its inception, the North Carolina Business Court has issued “nearly 150 ‘published’ opinions . . . and numerous unpublished opinions”).

² Carrie A. O’Brien, *The North Carolina Business Court: North Carolina’s Special Superior Court for Complex Business Cases*, 6 N.C. BANKING INST. 367, 374 (2002).

³ Kurt Badenhausen, *The Best States For Business*, FORBES.COM (July 11, 2007), available at http://www.forbes.com/2007/07/10/washington-virginia-utah-biz-cz_kb_0711bizstates.html and http://www.forbes.com/2007/07/10/washington-virginia-utah-biz-cz_kb_0711bizstates-table.html; see also Mark

Carolina's Business Court as a reason for the states favorable ranking, one can only assume that a legal system which produces predictable legal decisions for businesses contributed to the states high ranking as one of the best states for business.⁴

B. Business or Commercial Dockets

Other jurisdictions have chosen a different route than Delaware and North Carolina. These other jurisdictions have created a specialized docket within an existing court either for business case designations or for complex litigation cases. The overwhelming majority of jurisdictions have chosen the business cases docket⁵ route. These jurisdictions include: Boston, Massachusetts; Cook County (Chicago), Illinois; Fulton County (Atlanta), Georgia; Maine; Maryland; Nevada; New York; Orlando, Florida; Miami, Florida; Tampa, Florida; Oregon (2nd Judicial District); and Philadelphia, Pennsylvania.

The majority of these states, counties, and/or cities have created their business courts by implementing separate business dockets within an existing court system. For example, the Second and Eighth Judicial Districts in Nevada created separate business dockets within their respective jurisdictions. Current district court judges were appointed by the district court Chief Judge to hear the cases assigned to the business docket. Another example is the Philadelphia Commerce Case Management Program. This program is a separate business docket instituted in the First Judicial District Court of Common Pleas. The Chief Administrative Judge for the district court appointed three sitting district court judges to hear cases assigned to the Commerce Case Management Program. One of the main differences between these separate dockets (as well as those listed above) and states that have separate courts is that separate courts usually require additional funding from the legislature, while separate dockets only require a reallocation of existing court funds. The separate dockets may still include simple business disputes as well as complex business litigation. The types of cases that may be included on a business docket depend on the jurisdictional limitations placed on the docket by the court rules or statutes under which the court is established.

C. Complex Civil Litigation Courts or Dockets

Several states and one county have opted to establish complex civil litigation courts or dockets as opposed to business courts or dockets. Complex civil litigation court programs

Arend & Adam Bruns, *North Carolina Keeps Its Spot Atop Site Selection's U.S. Business Climate Ranking: A Defense Contractor Explains Why He is Not Surprised*, SITE SELECTION (Nov. 2007), available at <http://www.siteselection.com/issues/2007/nov/cover/> (ranking North Carolina as number one in the United States for the best business atmosphere); *CEOs Weigh In On Best, Worst States To Do Business*, CHIEF EXECUTIVE (Jan. 22, 2008), available at <http://www.chiefexecutive.net/ME2/dirmod.asp?sid=&nm=&type=Publishing&mod=Publications%3A%3AArticle&mid=8F3A7027421841978F18BE895F87F791&id=825A023151814D3080CA036D026E6E69&tier=4> (CEOs ranking North Carolina as the third best state for business in 2007).

⁴ See O'Brien, *supra* note 2, at 372 (stating the predictability of judicial decisions is one way of attracting businesses to the state).

⁵ States use different names for their actual business case designations. For purposes of this summary, the term "docket" includes the use of a separate calendar, session, program and/or division designated only for business cases. States that have created a separate court are listed and discussed separately in, II. A., from those which employ a separate business docket.

generally have “concurrent jurisdiction over complex civil cases.”⁶ These cases usually include “many types of business cases and . . . mass torts and class actions.”⁷ That is, the cases require “exceptional judicial management [and] may involve such areas as antitrust, securities claims, construction defects, toxic torts, mass torts, and class actions.”⁸ States and counties which have chosen the complex litigation route include: Arizona; California; Connecticut (four counties); Broward County, Florida; and Allegheny County (Pittsburgh), Pennsylvania. Unlike business courts which hear simple and complex business disputes, complex civil litigation courts or dockets do not hear simple business disputes. Complex litigation courts hear cases based on whether such cases meet specified definitions of complexity, which definitions may include non-business matters, as well as business and commercial disputes. Either way, simple business disputes would not qualify because, by definition, they are not complex.

D. Business Court or Docket Pilot Programs

Several states and counties have developed pilot programs in their respective jurisdictions to test the need, usefulness and effectiveness of a business court or docket system. South Carolina and Gwinnet County, Georgia have recently established pilot business court/docket programs. South Carolina’s pilot program is modeled after North Carolina’s business court. The pilot program in South Carolina operates in three counties: Charleston, Greenville, and Richmond. The pilot program in Gwinnet County, Georgia is based on the ongoing program in Fulton County. The Gwinnet County program has one judge that hears business related cases one week of each month to help move those cases to trial or settlement more quickly.

III. Selection, Criteria and Removal of Judges

In the majority of states, business court judges are appointed by the Chief Judge of the circuit or district in which the business court or docket is located. The Chief Judge, who is generally elected⁹, has sole discretionary power in appointing judges from an existing pool of sitting judges in the circuit or district courts to hear cases on the business docket; however, some states (such as New York) directly elect business court judges. Nevada requires approval by the Supreme Court before the Chief Judge can appoint a sitting judge to the business court. In North Carolina, which has a separate business court, the Chief Justice of the Supreme Court is elected to an eight-year term and he/she designates a Superior Court judge¹⁰ to sit on the business court. This designation must be approved by the Governor before the appointment is complete. The Superior Court judges are also elected to eight-year terms and rotate every six months between the districts within their division.

⁶ Tim Dibble & Geoff Gallus, *Best Practices in U.S. Business Courts* 25, THE COURT MANAGER, vol. 10, no. 2 (2006).

⁷ *Id.*

⁸ *Complex Civil Litigation Program* (Jan. 2007), available at <http://www.courtinfo.ca.gov/reference/documents/factsheets/complit.pdf>.

⁹ Superior Court judges in Fulton County are elected to four year terms; this includes the Chief Judge. The Court of Common Pleas Commerce Program in Philadelphia is supervised by a President Judge who is elected for a five year term by the Judges of the Court of Common Pleas.

¹⁰ A Superior Court judge in North Carolina would be similar to a Circuit Court judge in Mississippi.

The criteria used by individual states in selecting judges for a business court or docket assignment varies. Some states have taken a specific experience approach, such as Nevada which requires that the person must have experience as a judge or practitioner in the subject matters listed in the Nevada Supreme Court Order establishing a business court.¹¹ Other courts, such as the Philadelphia Court of Common Pleas Commerce Program, have taken a generalized approach to the criteria and qualifications necessary to be a business court judge. The Philadelphia court only requires that attorneys have business-oriented experience, be eager to work in this environment and be able to handle paper-intensive cases. Still others (Orlando and South Carolina) have no specific criteria when considering who should serve as a business court judge. Judge Ben Tennille¹², the Special Superior Court Judge for the Greensboro, North Carolina Business Court, recently stated that the most important qualification for a business court judge is not business experience, but rather a hardworking mentality and the ability to handle complex and paper intensive cases.¹³ He suggested that the business experience can be gained “on the job” through serving on the business court bench, but the other qualities were needed from the beginning in order for the business court judge to be efficient at handling cases.

Like the criteria used by states in selecting business court judges, term length of business court judges also differs from state to state. Most jurisdictions have two to five year term limits for business court judges with the possibility of renewal. Some jurisdictions (Orlando, Florida) have a rotation policy in which judges rotate to different divisions within the court system. The judges appointed to the business court in Orlando have longer term limits than other judges (5 years instead of 3 years).

In most jurisdictions the removal process for business court judges is the same as for regular judges—they can be removed or impeached by the state legislature for certain types of misconduct. However, in certain jurisdictions (Atlanta and Philadelphia) where the business court or docket is a subdivision of a circuit or district court, the business court judges serve at the pleasure of the Chief Administrative Judge.¹⁴ The Chief Judge has the sole discretionary power to remove¹⁵ or transfer a business court judge subject to the needs of the court.

¹¹ The subject matter in the Order includes: anti-trust, complex class action, building and construction, construction defect, commercial instrument, contracts, defamation, employment contract, fraud, guarantee, liens, landlord/tenant, sale contract, specific performance, stockholder suits (the largest number of cases by type), U.C.C., unfair competition, trademark actions, shareholder disputes and business to business litigation.

¹² Judge Ben F. Tennille was appointed the first Special Superior Court Judge for Complex Business Cases in North Carolina and has presided over the growth and development of the North Carolina Business Court, which has served as a model for many other states in the attempt to create a more business friendly judicial system.

¹³ See NC Gen. Stat. § 7A-45.3 and 4 N.C. Const. 22 (1971) (stating that a person must be a Special Superior Court judge and must be authorized to practice law in North Carolina).

¹⁴ The Chief Administrative Judge is responsible for the administration and the expeditious disposition of issues of the court. In Philadelphia, the Chief Administrative Judge is appointed by the Supreme Court of Pennsylvania and serves at the pleasure of the Supreme Court. The Chief Judge in Fulton County handles the administrative tasks for that circuit. The Chief Judge is elected like all other Superior Court judges and then chosen to be the Chief Judge by the other elected Superior Court judges. Mississippi does not have an equivalent to a Chief Administrative Judge. The closest position in Mississippi to a Chief Administrative Judge would be the Chief Judge of the Court of Appeals. However, the Court of Appeals in Mississippi is a higher court than Superior Court in Fulton County or the Court of Common Pleas in Philadelphia.

¹⁵ “Remove” in this sense does not mean terminate altogether, but rather reassign to another position in the civil court or remove from the business docket.

IV. Funding and Filing Fees

The majority of business court and docket programs require no additional funds other than the judiciaries' annual appropriation from state legislatures. Most jurisdictions reallocate existing appropriated funds from their existing court system to the business court. Generally, the creation of a business court consists of two steps: (1) the removal of cases from general dockets to the business court docket and, (2) the appointment of judges to the business court. The addition of business court judges usually requires no extra expense to the state or jurisdiction because such judges are reassigned to the business court from other courts and no new judges are hired. Therefore, no new funds are needed. The exceptions to this general rule are North Carolina, Delaware, and Maine.

Unlike the majority of states that have created business courts with no additional funding, North Carolina required additional funding from the legislature for its business court because it was an entirely new court (new judges, courtroom, etc.). Delaware also has a separate court (Court of Chancery) for business cases; therefore, it requires separate funding. Although Maine does not have a separate business court, the state chose to hire two new judges for the business court. As a result, the state legislature appropriated additional funds for the two new judges and their staffs.

Filing fees for the business courts are generally the same as for regular courts. North Carolina charges a \$200 removal fee for cases to the business court, but that revenue is deposited into the general fund and does not specifically fund the court. No jurisdictions currently use special or increased filing fees for business court cases as a means to fund the business court itself.

V. Jurisdictions of the Court and Minimum Amounts in Controversy

Business courts usually have concurrent jurisdiction over selected types of business cases—meaning parties can choose to file or remove the case to the business court or they can elect to try the case in a regular civil court (in most jurisdictions civil court judges can also file for transfer of a case that has been assigned to them from civil court to the business court). In Fulton County, Georgia, Maine, Nevada, New York, North Carolina, Orlando, Florida, Philadelphia, and South Carolina, either party can file a motion to have the case transferred to the business court/docket. In North Carolina, Orlando, and Philadelphia, the plaintiff can file an initial designation to have the case placed in the business court/docket at the beginning of proceedings. The Chief Administrative Judge of the district or circuit in which the business court/docket is located usually decides if the case belongs in the business court/docket. However, there are a few exceptions.

In North Carolina and South Carolina, the Chief Justice of the Supreme Court decides which cases are appropriate for the business court. In Fulton County, the Chief Judge of the Superior Court, a member of the Business Court Committee, and a Senior Judge on the Superior Court decide together what cases will be assigned to the business court. Moreover, in Maine, the business court judge who receives the application for transfer makes the sole and final decision of whether the case is appropriate for the business court.

Jurisdiction in each of these courts or dockets is either mandatory, optional, or a combination of both. Orlando, Florida has mandatory jurisdiction requiring certain types of cases to be assigned to the business court by administrative order. Maine has optional jurisdiction allowing any superior court judge, district court judge, party, or attorney to recommend a case for transfer to the business court leaving the ultimate decision to the business court judge. The business court in Philadelphia, Pennsylvania has mandatory jurisdiction over a case if both parties are located in the jurisdiction and the case involves a commercial dispute; otherwise, jurisdiction is optional and at the discretion of the judge.

The minimum amount in controversy requirement, which is generally established by a court rule, varies greatly from one jurisdiction to another. Some jurisdictions including Delaware, Maine, Nevada, and North Carolina do not require a minimum amount in controversy. The highest amount in controversy required by a business court is in Fulton County (Atlanta), Georgia which requires a minimum of \$1,000,000 in controversy before a case will be assigned to its business docket.¹⁶ In New York, the Rules of the Commercial Division of the Supreme Court set the minimum amounts in controversy for each county from \$25,000 to \$125,000, depending on the county in which the case is brought.¹⁷ Cook County (Chicago), Illinois requires a \$30,000 minimum amount in controversy. Some courts have overtime adjusted the amount in controversy requirement from the original set amount as a gate-keeping measure to better manage the number of cases assigned to the business court docket and to prevent the overcrowding of the business court dockets.

VI. Types of Cases Included and Excluded From Business Courts and Dockets

The types of cases that can be heard in the various business courts vary. Generally, business courts will hear cases regarding business torts, breach of contract or fiduciary duty, securities, fraud, unfair competition, antitrust, and U.C.C. actions. Some interesting variances are Maine which hears family matters that do not involve children and North Carolina which hears cases involving the internet, electronic commerce, and biotechnology. Cook County, Delaware and Maine also specifically include cases involving disputes concerning real estate. Yet, some courts/dockets specifically exclude certain types of cases. Cook County excludes medical malpractice cases; however, the Orlando business court does not exclude medical malpractice claims. Rather, the Orlando court specifically includes medical malpractice claims. New York excludes cases involving individual cooperative or condominium housing units and actions for rent only. North Carolina does not allow claims based solely on unfair competition. Moreover, Orlando, Florida and Philadelphia, Pennsylvania both specifically exclude cases involving solely personal injury and product liability claims.

¹⁶ *Superior Court of Fulton County Business Court: Project Overview*, at http://sca.fultoncourt.org/superiorcourt/business_po.php (last visited May 29, 2008); *See* Rule 1004-Amended, available at http://sca.fultoncourt.org/superiorcourt/pdf/business_court.pdf (last visited May 29, 2008).

¹⁷ *See* Section 202.70 Rules of the Commercial Division of the Supreme Court, available at <http://www.nycourts.gov/rules/trialcourts/202.shtml#70> (law visited May 29, 2008) (listing the minimum amounts in controversy for each county in New York that has a Commercial Division court); Dibble & Gallus, *supra* note 6, at 35.

Business entity laws, such as the Model Business Code, Uniform Partnership Act, Uniform Limited Partnership Act, Limited Liability Act and shareholder disputes are included in the business court “types of cases” if those respective states have adopted those uniform acts or something similar. The courts in Fulton County, Maine, New York, North Carolina, Orlando, Philadelphia, and South Carolina all specifically include these types of cases. Maine, North Carolina, Orlando, and Philadelphia business courts also specifically include intellectual property disputes. Additionally, New York, Orlando, and Philadelphia business courts specifically include business and commercial insurance disputes.

Individual consumer actions are generally not specifically included in the jurisdictions of the courts but that does not mean that those actions are excluded. Maine includes actions by consumers whereas Orlando and Philadelphia Business Courts specifically include class actions by consumers as long as the class action does not involve personal injury or products liability claims. The consumer actions will usually depend on the discretionary reasoning of the judges in those states which allow the judges to make that decision regarding whether a borderline case does or does not fall within the court’s jurisdiction.¹⁸

Debt collection cases such as Uniform Commercial Code actions are included in the jurisdictions of business courts and dockets in Cook County, Maine, Nevada, New York, Orlando, and South Carolina. North Carolina does not specifically include debt collection or U.C.C. actions under its jurisdictions, but it does not exclude such actions either. Likewise, Philadelphia’s Commerce Program jurisdiction does not specifically include or exclude debt collection cases.

VII. Other Features of Business Courts

A. Case Management and Fast Tracking in Business Courts and Dockets

Many business courts have mechanisms in place to fast-track their cases. These mechanisms usually consist of a case management conference at the beginning of each case to decide the time-line of events such as discovery. An interesting anomaly is Maine which has procedural rules that limit the number of interrogatories, production of documents, requests for admissions, and notices of deposition that each party can serve upon other parties. New York has a court rule that stipulates expediency and attention to the court calendar in regards to the length of briefs, notice to the court when counsel must miss a trial, and scheduling of witnesses. Also, Philadelphia’s Commerce Program has three case-tracking assignments: expedited (13 months), standard (18 months), and complex (24 months).

B. Technology Used by Business Courts

One of the features of most business courts is their use of cutting edge technology in and out of the courtroom.¹⁹ Several states have advanced technological courtrooms that are used by

¹⁸ See Jurisdictions of the Court and Minimum Amounts in Controversy, *supra* at 5.

¹⁹ Some states have used their business courts as testing grounds for different technologies before the technologies are implemented in courtrooms throughout the state. See *History of the Commercial Division*,

the business courts. North Carolina, for example, probably has the most advanced courtroom for business cases. The court offers e-filing for all parties and the courtroom has touch-screen computers at the judge's bench and attorney rostrums which can display exhibits and other documents for everyone in the courtroom. Teleconferencing and videoconferencing are also available if needed for remote witnesses.

The Orlando Business Court has also utilized technology in the courtroom. The court has electronic filing and advanced courtrooms allowing for presentation of evidence through a laptop, document camera, VHS tape or DVD. It also allows for real-time annotation of electronically-presented evidence through the use of touch screens on plasma monitors and a complete surround sound system. Additionally, the courtroom has video-conferencing capabilities for remote witnesses.

VIII. Conclusion

While the specifics of business courts vary from jurisdiction to jurisdiction, several themes are common amongst the various business courts. These common themes include: a specialized forum to handle business-related cases; the assignment of judges (usually from within an existing court system) to hear only business court cases; no special or additional filing fees to enter business court; and various mechanisms to fast-track cases. Another common theme not discussed in-length above is the use of written opinions by business courts. Written opinions lead to well established bodies of case law in respective jurisdictions and provide predictability in the law for practitioners and, more importantly, for businesses. Delaware and, more recently, North Carolina have utilized the importance of written opinions to bolster their respective judicial reputations for providing predictable judicial services in their business court systems.

While business courts or dockets have not yet become the norm throughout the United States, they are quickly becoming important judicial fixtures in many states or counties across the country.²⁰ At least eighteen states or counties have implemented some type of business court or docket program within their respective jurisdictions and the reaction to these courts and dockets has been overwhelmingly positive.

<http://www.nycourts.gov/courts/comdiv/history.shtml> (last visited May 29, 2008) (discussing how the New York commercial division was the first in the state to use case management software and electronic filing).

²⁰ For a look at how Delaware's Court of Chancery has influenced other countries in their endeavor to create a specialized court for business litigation, see Maarten J. Kroeze, *The Dutch Companies and Business Court as a Specialized Court* (Aug. 1, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976277.

A Survey of the Structure of Business Courts by State

Cook County (Chicago), Illinois- <http://www.cookcountycourt.org/divisions/index.html>

Structure ↓	
Date & How Established	Established in 1992 as a pilot program
Rule(s) and/or Statute Governing Court	<ul style="list-style-type: none"> • Rules of the Circuit Court of Cook County- http://www.cookcountycourt.org/rules/index.html • Rule 2.1 (General Order establishing Law Division in which Commercial Calendar is located)- http://www.cookcountycourt.org/divisions/index.html
Separate Court or docket	A docket called the “Commercial Calendar” in the Circuit Court of Cook County.
Jury Trial	Available
Mediation or ADR	Mediation is available. Under Major Case Court-annexed Civil Mediation, a judge can order parties in civil cases to submit to mediation. If no settlement is reached, the case returns to court.
Is discovery fast-tracked?	There is scheduling priority for disposition of commercial disputes. One judge hears the case from start to finish.
Technology	The court use a computerized case management system that records court decisions and events; handles fines, bail bonds and other transactions; and provides the court system with support services such as record storage, microfilming and automation. No information about technological advances inside the courtroom is available.
New or transferred cases	New, docket assignment.
Appeals Expedited?	There are no expedited appeals. The appealed case remains in the Law division or Chancery division for the appeal.
Judges ↓	
Method of Selection	The Circuit Judges of the Circuit Court of Cook County appoint associate judges pursuant to Article VI, Sections 8 and 10, <i>Constitution of Illinois</i> , 1970, and Rule 39, <i>Rules of the Supreme Court</i> , as amended. Business Court/Commercial Calendar judges come from this existing pool of judges and are appointed by the Chief Judge of the Circuit Court of Cook County.
Number of judges and full-time or part-time	There are eight judges, but information regarding whether each judge only hears commercial cases is not available.
Criteria	Must have been a lawyer for six years; must reside in Cook County; must be licensed to practice law in Illinois and be in good standing.
Length of terms	Chancery Law rules apply to these judges.
Removal Process	<ul style="list-style-type: none"> • The <u>judicial inquiry board</u> files complaints with the <u>courts commission</u>. After notice and hearing, the commission may reprimand, censure, suspend, retire, or remove a judge. • Judges may be impeached by a majority vote of the House of

	Representatives and removed by a two-thirds vote of the Senate.
Jurisdiction ↓	
Types of cases	Breach of contract, including sale of goods (UCC), purchase of services, warranties and service contracts, sale of business, franchise, employment, indemnification, sale of real estate, commercial leases, construction, professional services; business torts and other tort claims including professional negligence (<u>except medical malpractice</u>), fraud and misrepresentation, Consumer Fraud Act, tortious interference, breach of fiduciary duty/oppression, retaliatory discharge, miscellaneous statutory, securities, corporate and business law, not for profit; and collections, including notes, guaranties, and other collections. <i>See Mitchell L. Back & Lee Applebaum, A History of the Creation and Jurisdiction of Business Courts in the Last Decade</i> , 60 BUS. LAW 147, 164, 239 (2004); http://198.173.15.31/Forms/pdf_files/CCL0520.pdf .
Mechanism to decide if it fits within jurisdiction	In law or chancery divisions, the type of case governs (limited jurisdiction). In the law division, a civil action cover sheet with choices selected by the parties completing the cover sheet is used to initially sort out commercial cases from other cases. In chancery, business cases are mixed with other equitable matters.
How is this decided?	The assigned judge decides based on the type of case.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Mandatory, in that it is a docket assignment within the existing court. There is a presumption that assignment to the commercial calendar is correct at the time of filing. The judge may transfer a case without standing out of the Division. <i>See also</i> , “Mechanism to decide if it fits within jurisdiction” above.
Threshold amount in Controversy	Amount must exceed \$30,000.
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	The court is a separate docket within the existing court system, so there is no need for additional funds – it is funded through existing legislative appropriations to Circuit Court. Filing fees are the same as the general court. The local bar assists in facilitating the docket, but does not assist monetarily.

Delaware- <http://courts.delaware.gov/Courts/Court%20of%20Chancery/>

Structure ↓	
Date & How Established	Established in 1792 by Constitutional mandate.
Rule(s) and/or Statute Governing Court	<ul style="list-style-type: none"> • Title 10, Ch. 3, is the general statute governing Delaware’s Court of Chancery. • 10 Del.C. § 341 (general jurisdiction statute): “The Court of Chancery shall have jurisdiction to hear and determine all matters

	<p>and causes in equity.”</p> <ul style="list-style-type: none"> • Court of Chancery Rules- http://courts.delaware.gov/Rules/?chanceryrules.pdf
Separate Court or docket	Separate Court of Chancery (“COC”)
Jury Trial	No jury trials available
Mediation or ADR	A “mediation only” docket is available which allows mediation in front of a judge instead of litigation—complex commercial and corporate disputes as well as technology disputes qualify for mediation if there is an amount in controversy of \$1 million and both parties consent to mediation. There is also a voluntary mediation program.
Is discovery fast-tracked?	Yes. There is a fast-track process available to expedite proceedings.
Technology	The COC courtroom has computers for the Chancellor and Vice Chancellors, their law clerks, and the Register in Chancery representative; laptop hookups for the attorneys; projection screens; document readers; microphones; video cameras; and e-filing. In addition, proceedings in the Court are often broadcast via streaming live web-feed through the “Courtroom Connect” system.
New or transferred cases	New cases
Appeals Expedited?	The Delaware Supreme Court hears direct appeals from the COC and appeals may be expedited.
Judges ↓	
Method of Selection	Judges are nominated by the Governor and are confirmed by the Senate—there is no requirement that the nominated persons be judges prior to sitting on the COC.
Number of judges and full-time or part-time	Five full-time chancellors (one chancellor and four vice chancellors).
Criteria	Must be Delaware citizens and “learned in the law.”
Length of terms	Two-year rotations among three counties statewide
Removal Process	<ul style="list-style-type: none"> • Judges may be impeached by a majority of the House of Representatives and convicted by two-thirds of the Senate. • Judges may be removed, retired, or disciplined by a two-thirds vote of the court on the judiciary.
Jurisdiction ↓	
Types of cases	Broad jurisdiction over disputes involving the internal affairs of Delaware business entities; disputes arising in corporate matters, trusts, estates, and other fiduciary matters, disputes involving the purchase and sale of land, questions of title to real estate, and commercial and contractual matters in general; technology disputes arising out of agreements involving at least one Delaware business entity. http://courts.delaware.gov/Courts/Court%20of%20Chancery/?jurisdiction.htm .

Mechanism to decide if it fits within jurisdiction	What cases will be heard in the COC is defined by statute – Title 10 of the Delaware Code dictates the jurisdiction of the COC. Section 341 provides the COC with jurisdiction to hear and determine all matters and causes in equity. The General Assembly may confer upon the COC additional statutory jurisdiction.
How is this decided?	There is a presumption that the case belongs in COC at time of filing; however, the Chancellor/Vice Chancellor has discretionary authority to transfer the case to Superior Court. Whether or not equitable jurisdiction exists is determined by an examination of the allegations of the complaint and a determination of what relief the plaintiff seeks by bringing his or her cause of action.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	A case must fall within the equitable jurisdiction of the Court to be heard in the Court, though the Court may decide to exercise discretionary jurisdiction over claims for which there is an adequate remedy at law and then decide the legal claims in the course of resolving the equitable claims. Otherwise, the COC may transfer those legal claims to the appropriate law court.
Threshold amount in Controversy	No dollar minimum.
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	The COC is appropriated funds from the legislature. In 2007, the COC was appropriated \$2,888,800, 3.46% of the general fund. Civil action filing fees begin at \$250; more info is found at http://courts.delaware.gov/how%20to/fees/ .

Fulton County (Atlanta), Georgia- http://sca.fultoncourt.org/superiorcourt/business_po.php

Structure ↓	
Date & How Established	Established on June 3, 2005, through Atlanta Judicial Circuit Rule 1004 and approved by the Supreme Court of Georgia
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> • Rule 1004-Amended (Business Case Division)- http://sca.fultoncourt.org/superiorcourt/pdf/business_court.pdf
Separate Court or docket	Division within the Superior Court
Jury Trial	Available
Mediation or ADR	Both are available and may be ordered by the judge.
Is discovery fast-tracked?	The division judges, in consultation with all parties and pursuant to applicable law, have the ability to modify the schedule for the administration of business cases, including the schedule for conducting discovery, filing dispositive motions, conducting pre-trial procedures, and conducting jury and non-jury trials. The parties must submit a proposed case management order to the division judge for consideration.

Technology	E-filing available; Nomad evidence presentation system with a document camera, laptop and projector; teleconferencing capabilities; and, a wireless courtroom; The division encourages the parties to use electronic presentations and technologically generated demonstrative evidence.
New or transferred cases	Transferred cases
Appeals Expedited?	No expedited appeals process.
Judges ↓	
Method of Selection	Chief Judge/District Administrative Judge of the Superior Court selects or re-selects all division judges from senior judges already elected to the Superior Court.
Number of judges and full-time or part-time	The rules allow for three judges; however, currently there are only two part-time judges that only hear business cases.
Criteria	Experience, training, and other relevant factors are considered in the selection process; judges must also volunteer for the position. To qualify as a superior court judge, a candidate must be at least 30 years old, be a citizen of Georgia for at least three years, and have practiced law for at least seven years.
Length of terms	Two years on the Business Court—Superior Court judges are elected for four-year general terms.
Removal process	<ul style="list-style-type: none"> • Chief Judge can reassign judges at any time in the best interests of the court and the division. • The <u>judicial qualifications commission</u> may discipline, retire, or remove a judge. Removal and retirement decisions must be reviewed by the Supreme Court. • Judges may be impeached by the House of Representatives and convicted by a two-thirds vote of the Senate.
Jurisdiction ↓	
Types of cases	Cases involving Georgia Securities Act of 1973; Uniform Commercial Code; Georgia Business Corporation Code; Uniform Partnership Act; Uniform Limited Partnership Act; Georgia Revised Uniform Limited Partnership Act; Georgia Limited Liability Company Act; a catch-all provision for large contractual and business tort cases as well as other complex commercial litigation. http://sca.fultoncourt.org/superiorcourt/pdf/business_court.pdf .
Mechanism to decide if it fits within jurisdiction	Cases may be transferred to the Business Court upon the request of the assigned judge, upon the motion of one party, or upon a joint request of both parties.
How is this decided?	The Chief Judge, a member of the Business Court Committee, and a senior judge to whom the case may be assigned decide on all potential transfer cases whether or not the case qualifies for the Business Court to ensure that each case satisfies the requirements of Atlanta Judicial Circuit Rule 1004. If the case is denied, it remains with the original assigned Superior Court judge. If the case is accepted as a Business Court case, the original assigned Superior Court judge will sign an order

	transferring the case.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Jurisdiction is discretionary depending on the decision of the Chief Judge, the member of the Business Court Committee, and the senior judge who determines whether or not that the case belongs in the Business Court. If they decide that it belongs in the Business Court, it shall be reassigned to the court. <i>See also</i> “Mechanism to decide if it fits within jurisdiction” above.
Threshold amount in Controversy	In excess of \$1 million
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	During the court’s first two years, it received \$100,000 grants to fund a staff attorney/director and for basic training and equipment costs. The senior judges are paid through the Council of Superior Court Judges (a statewide agency) that is funded through the legislature. There is no special earmark or budget item for Business Court under the general budget of senior judge time. The building space, secretary, and now staff attorney/director are funded through Fulton County (Fulton County Superior Court). Funding is currently in jeopardy due to underfunding of the Council of Superior Court Judges and thus the court is re-examining its funding sources for the future.

Maine- http://www.courts.state.me.us/maine_courts/specialized/business/index.shtml;
http://www.courts.state.me.us/court_info/opinions/adminorders/JB-07-1%20BCD.htm

Structure ↓	
Date & How Established	A pilot program was established June 1, 2007, by Supreme Judicial Court Administrative Order. The Order also created the Maine Rules of Business and Consumer Docket Procedure (M.R. BCD P.) or BCD Procedural Rules.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> • Administrative Order JB-07-1 (establishing court)- http://www.courts.state.me.us/court_info/opinions/adminorders/JB-07-1%20BCD.htm
Separate Court or docket	Statewide business/consumer docket in both the District and Superior Courts
Jury Trial	Available
Mediation or ADR	ADR, which may include mediation, arbitration or Judicially Assisted Settlement Conferences.
Is discovery fast-tracked?	Unless otherwise authorized by the provisions of the BCD scheduling order, each party may serve upon any other party no more than <ul style="list-style-type: none"> (a) one set of interrogatories, consisting of no more than 30 interrogatories, including all subparts; (b) one request for production of documents, consisting of no more than 30 requests, including all subparts; (c) one request for admissions, consisting of no more than 20 requests, including subparts; and (d) no more than five notices of deposition or subpoenas for deposition

	for persons other than experts.
Technology	No special technological advances; in the process of implemented electronic filing.
New or transferred cases	Transferred cases
Appeals Expedited?	Decisions are final, no appeals.
Judges ↓	
Method of Selection	In general, judges are nominated by the Governor to serve seven-year terms and are confirmed by the legislature. The Chief Justice of the Supreme Judicial Court appoints sitting judges of either the District Court or the Superior Court to sit on the Business Court.
Number of judges and full-time or part-time	Two full-time judges
Criteria	Must be a member of the state bar, be “learned in the law” and “of sobriety of manners.”
Length of terms	Seven years
Removal process	<ul style="list-style-type: none"> • Judges may be impeached by the House of Representatives and convicted by a two-thirds vote of the Senate. • Judges may be removed upon the address by the governor of both houses of the legislature.
Jurisdiction ↓	
Types of cases	<p>Pending and new jury and nonjury civil actions and family matters that do not involve children, in which (a) the principal claim or claims involve matters of significance to the transactions, operations or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity, and (b) the case requires specialized and differentiated judicial management. This includes breach of contract, breach of warranty, breach of fiduciary duty, class action, Rule 80B appeals involving a business entity, Rule 80C appeals involving a business entity, internal governance of a business entity, securities transactions, shareholder derivative actions, trade secrets, intellectual property, financial transactions, U.C.C. transactions, unfair trade practices, antitrust or other trade regulations, and commercial real estate. <i>See</i> http://www.courts.state.me.us/rules_forms_fees/pdf_forms/BCD_001_application.pdf & http://www.courts.state.me.us/maine_courts/specialized/business/faq.shtml.</p>
Mechanism to decide if it fits within jurisdiction	Any Superior Court justice or District Court judge may recommend that a case be assigned to the Business and Consumer Court . In addition, any party or attorney may apply for transfer to the Business and Consumer Court. Applications (and judicial recommendations) for transfer are filed with the court where the case is currently pending or to be filed. As with any other motion, the application must be served on all other parties. Until a transfer order has been signed and the case is assigned a BCD docket number, all filings must be made with the clerk of the court where the case

	is pending or to be filed. The Business and Consumer Court does not accept cases for filing in the first instance.
How is this decided?	The decision to accept or reject a case for transfer to the BCD shall be within the sole discretion of the BCD judge reviewing the transfer application or recommendation. The decision shall be made summarily, without hearing, and shall not be subject to review or appeal.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Jurisdiction of the court is within the sole discretion of the BCD judge who receives the transfer request by one of the parties. The judge's decision to accept or decline jurisdiction of the case is final: there are no appeals. He bases his decision on the types of cases recognized as business cases in Administrative Order JB-07-1. <i>See also</i> , "Mechanism to decide if it fits within jurisdiction" above.
Threshold amount in Controversy	No dollar minimum.
Venue ↓	
Same place or travel	Judges travel to different venues. It is the policy of the Business and Consumer Court to hold the trial of each case in the court in which it is filed unless the court approves another location based upon the agreement of the parties, or the court determines that unusual circumstances, including scheduling requirements, warrant conducting the trial at another location.
Costs, Funding & Fees	There is a \$150 filing fee for a general civil or real estate action or filing third-party complaint. Other actions have different filing fees. The Maine legislature passed appropriated additional funds for the hiring of two new full-time judges to sit on the business docket.

Nevada's Second & Eighth Judicial District's Business Courts

Structure ↓	
Date & How Established	2 nd District (Reno): November 2000 8 th District (Las Vegas): January 2001 The State legislature mandated the creation of a business docket in 1999, and the Nevada Supreme Court subsequently approved amendments to local court rules establishing the new business dockets.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> Supreme Court Order amending Rule 2.1 of 2nd District Court and Rule 1.33 of 8th District Court regarding business court cases- http://www.nvsupremecourt.us/documents/orders/ADKT398_Business_Court.order.pdf
Separate Court or docket	Docket within the District Court(s).
Jury Trial	Available
Mediation or ADR	Both available depending on the circumstances
Is discovery fast-tracked?	Through case management, the court specifies scheduling orders, time limits on discovery, and pretrial and trial matters. Business Court judges handle the discovery process in each case. In normal civil litigation, a

	discovery commissioner handles the discovery process.
Technology	Electronic filing
New or transferred cases	Both
Appeals Expedited?	No expedited appeals process.
Judges ↓	
Method of Selection	The District Court Chief Judge (with approval from the State Supreme Court) in which the business docket is located, appoints already-elected District Court judge(s) to hear the cases chosen for the business docket.
Number of judges and full-time or part-time	There are three part-time Business Court judges. All three hear Business Court cases as well as other civil or criminal cases.
Criteria	Must have experience as a judge or practitioner in the subject matters listed below in the “types of cases” category.
Length of terms	Two years with possibility of renewal
Removal process	<ul style="list-style-type: none"> • The <u>commission on judicial discipline</u> may discipline, censure, retire, or remove a judge. Commission decisions may be appealed to the Supreme Court. • Judges may be impeached by a majority vote of the assembly and convicted by a two-thirds vote of the Senate. • Judges may be removed by legislative resolution, passed by two thirds of the members of both houses. • Judges are subject to recall election. • There is no special removal procedure for the Business Court judges.
Jurisdiction ↓	
Types of cases	Antitrust, complex class action, building and construction, construction defect, commercial instrument, contracts, defamation, employment contract, fraud, guarantee, liens, landlord/tenant, sale contract, specific performance, stockholder suits (the largest number of cases by type), U.C.C., unfair competition, trademark actions, shareholder disputes, and business-to-business litigation. http://www.nvsupremecourt.us/documents/orders/ADKT398_Business_Court.order.pdf .
Mechanism to decide if it fits within jurisdiction	A plaintiff’s request for a hearing is automatically assigned to a Business Court judge, and a defendant’s suggestion that the case should be in the Business Court results in the random assignment to a Business Court judge to make that determination.
How is this decided?	The assigned Business Court judge makes the final determination.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by	Jurisdiction of the court is within the sole discretion of the Business Court judge who receives the transfer request by one of the parties. The judge’s decision to accept or decline jurisdiction of the case is final: there are no appeals. <i>See also</i> , “Mechanism to decide if it fits within jurisdiction” above.

judge	
Threshold amount in Controversy	\$10,000 minimum.
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	The funding for District Courts is split between the state and counties. District Court judges' salaries are paid by the state while the county pays for support staff and court facilities. There is no additional funding provided for the business courts.

New York - <http://www.nycourts.gov/courts/comdiv/>

Structure ↓	
Date & How Established	Started as a pilot program in New York County in 1993 by the Supreme Court Civil Branch. Later, the Commercial Division of the Supreme Court was created.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> Section 202.70 Rules of the Commercial Division of the Supreme Court- http://www.nycourts.gov/rules/trialcourts/202.shtml#70
Separate Court or docket	Docket as part of the Supreme Court of New York (the Supreme Court in New York is roughly equivalent to Mississippi's Circuit Court).
Jury Trial	Available
Mediation or ADR	The Commercial Division has its own ADR program.
Is discovery fast-tracked?	There is an option for limited-issue discovery. The court decides this in a preliminary conference and issues it in a preliminary conference order. The court rules stipulate expediency and attention to the court calendar in regards to many issues such as the length of briefs, notice to the court when counsel needs to miss a trial, and scheduling of witnesses.
Technology	Has electronic filing. Filing by electronic means in New York County decreases the amount in controversy and expands the types of cases the Division can hear.
New or transferred cases	Both
Appeals Expedited?	Expedition of appeals from the Commercial Division is handled like expedition of appeals from other trial courts –by permission of the appellate court.
Judges ↓	
Method of Selection	Election to Supreme Court Justice position. Their SC is roughly the equivalent to our Circuit Court.
Number of judges and full-time or part-time	There are 23 Commercial Division judges in ten counties.
Criteria	Must have been an attorney for ten years.

Length of terms	Fourteen-year terms; there is no fixed term for service in the Commercial Division.
Removal Process	<ul style="list-style-type: none"> • Judges in the commercial division serve at the pleasure of the Administrative judges. • Judges may be admonished, censured, retired, or removed from office by the <u>commission on judicial conduct</u>. The commission's disciplinary actions are subject to review by the Court of Appeals. • Judges of the Court of Appeals and justices of the Supreme Court may be removed by a two-thirds vote of both houses of the legislature. Other judges may be removed by a two-thirds vote of the Senate on the recommendation of the governor. • Judges may be impeached by a majority vote of the assembly and removed by a two-thirds vote of the court for the trial of impeachments. The court consists of the president of the Senate, the senators, and the judges of the Court of Appeals.
Jurisdiction ↓	
Types of cases	<p>Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices); transactions governed by the Uniform Commercial Code (<u>exclusive of those concerning individual cooperative or condominium units</u>); transactions involving commercial real property, including Yellowstone injunctions and <u>excluding actions for the payment of rent only</u>; shareholder derivative actions – without consideration of the monetary threshold; commercial class actions – without consideration of the monetary threshold; business transactions involving or arising out of dealings with commercial banks and other financial institutions; internal affairs of business organizations; malpractice by accountants or actuaries, and legal malpractice arising out of representation in commercial matters; environmental insurance coverage; commercial insurance coverage (e.g., directors and officers, errors and omissions, and business interruption coverage); dissolution of corporations, partnerships limited liability companies, limited liability partnerships and joint ventures – without consideration of the monetary threshold; applications to stay or compel arbitration and affirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues – without consideration of the monetary threshold.</p> <p>http://www.nycourts.gov/rules/trialcourts/202.shtml#70.</p>
Mechanism to decide if it fits within jurisdiction	A party seeking assignment of a case to the Commercial Division shall indicate on the Request for Judicial Intervention (RJI) that the case is "commercial." A party seeking a designation of a special proceeding as a

	commercial case shall check the "other commercial" box on the RJI, not the "special proceedings" box. The party shall submit with the RJI a brief signed statement justifying the Commercial Division designation, together with a copy of the proceedings. <i>See</i> , Section 202.70 Rules of the Commercial Division of the Supreme Court, <i>at</i> http://www.nycourts.gov/rules/trialcourts/202.shtml#70 .
How is this decided?	A party submits a brief signed statement justifying the Commercial Division designation with a copy of the proceedings. The Administrative Judge makes the final determination of whether the case belongs in the commercial division.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Either party may make a request for judicial intervention (RJI) to have the case heard in a commercial division court. The party shall submit with the RJI a brief signed statement justifying the Commercial Division designation, together with a copy of the proceedings. The assigned judge has the discretion to transfer a case from the Commercial Division if he/she determines that it does not belong in the court. Any party aggrieved by a transfer of a case to a non-commercial part may seek review by letter application (with a copy to all parties) to the Administrative Judge within ten days of receipt of the designation of the case to a non-commercial part. The determination of the Administrative Judge shall be final and subject to no further administrative review or appeal. <i>See also</i> , "Mechanism to decide if it fits within jurisdiction" above.
Threshold amount in Controversy	\$25,000 - \$100,000 depending on county.
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	There is no additional funding for the Commercial Division courts. Funds are reallocated as needed.

North Carolina – www.ncbusinesscourt.net

Structure ↓	
Date & How Established	Established by the N.C. Supreme Court as a pilot program in 1995 with one judge traveling to hear cases in venues across the state.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> • <u>Amended Local Rules of the North Carolina Business Court (2006)</u>- http://www.ncbusinesscourt.net/New/localrules/
Separate Court or docket	Separate court
Jury Trial	Available
Mediation or ADR	Mediation
Is discovery fast – tracked?	There is a case management conference at the outset which sets the discovery schedule on a case-by-case basis.
Technology	Video conferencing, touch-screen computers at judge's bench and attorney rostrums that can display exhibits and other documents for

	everyone in the courtroom, e-file capability, and technology training sessions free to the public.
New or transferred cases	Both
Appeals Expedited?	No. The appellate courts have resisted efforts to fast-track appeals. A suggestion that there be appeals court judges with special training on business issues was rejected.
Judges ↓	
Method of Selection	Each of the judges currently serving are Special Superior Court Judges appointed by the Governor. The Chief Justice may designate any sitting Superior Court judge as a Business Court judge. It takes approval of both the Governor and the Chief Justice to fill the position.
Number of judges and full-time or part-time	Three full-time judges.
Criteria	Must be a Special Superior Court judge. NC Gen. Stat. § 7A-45.3. Must be authorized to practice law in N. Carolina. 4 N.C. Const. 22 (1971).
Length of terms	Five years
Removal Process	<ul style="list-style-type: none"> • Judges may be impeached by the House of Representatives and convicted by a two-thirds vote of the Senate. • Judges may be removed for mental or physical incapacity by joint resolution of two thirds of the members of each house of the general assembly. • On the recommendation of the <u>judicial standards commission</u>, the Supreme Court may censure or remove a judge.
Jurisdiction ↓	
Types of cases	<p>Mandatory Complex Business Cases:</p> <p>1) The law governing corporations, <u>except charitable and religious organizations qualified under G.S. 55A-1-40(4) on the grounds of religious purpose [i.e. – those that qualify for IRS 501(c)(3) exemption]</u>, partnerships, limited liability companies, and limited liability partnerships, including issues concerning governance, involuntary dissolution of a corporation, mergers and acquisitions, breach of duty of directors, election or removal of directors, enforcement or interpretation of shareholder agreements, and derivative actions.</p> <p>(2) Securities law, including proxy disputes and tender offer disputes.</p> <p>(3) Antitrust law, <u>except claims based solely on unfair competition under G.S. 75-1.1.</u></p> <p>(4) State trademark or unfair competition law, <u>except claims based solely on unfair competition under G.S. 75-1.1.</u></p>

	<p>(5) Intellectual property law, including software licensing disputes.</p> <p>(6) The Internet, electronic commerce, and biotechnology.</p> <p>(7) Tax law, when the dispute has been the subject of a contested tax case for which judicial review is requested under G.S. 105-241.16 or the dispute is a civil action under G.S. 105-241.17.</p> <p>Pursuant to General Rule of Practice 2.1, the Chief Justice can designate a case as either an Exceptional Case or a Discretionary Complex Business Case, usually on the recommendation of a senior resident superior court judge, a chief district court judge, or a presiding superior court judge. These judges may make their recommendation at the request of a party. There are no criteria for these cases to meet, but the Chief Justice considers a variety of factors including: the interests of the parties, the amount and nature of pre-trial discovery and motions, whether the parties voluntarily agree to waive venue for hearing pretrial motions, the complexity of the evidentiary matters and legal issues involved in the case, and whether designation as a discretionary complex business case or an exceptional case will promote the efficient administration of justice. Exceptional cases may be heard by any special superior court judge but on a business court judge can hear a discretionary complex business case. <i>See</i> N.C. Gen. Stat. § 7A-45.4(a).</p>
Mechanism to decide if it fits within jurisdiction	A designation is filed by the party seeking to try the case in Business Court. The designation is served on the opposing counsel, the Senior Business Court Judge, and the Chief Justice of the NC Supreme Court. A party may challenge the other party’s designation to the court.
How is this decided?	The Chief Justice makes the final decision as to which cases are designated to the Business Court.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Any party filing the Notice of Designation may explain why and how the action falls within one of the specific categories set forth in N.C. Gen. Stat. § 7A-45.4(a) and that party may supply any additional information that may be helpful in determining whether the court should retain the action. If the court determines that the action falls within the jurisdiction of the Business Court, the Business Court has mandatory jurisdiction. <i>See also</i> , “Mechanism to decide if it fits within jurisdiction” above.
Threshold amount in Controversy	No dollar minimum.
Venue ↓	
Same place or travel	Judges do not travel to a different venue. However, they are allowed to travel and hear cases in other courts at the request of the parties.
Costs, Funding & Fees	All current funding is from the state. There is a removal fee of \$200 to remove a case to the Business Court, but those monies go into the General Fund and are not earmarked in any way for the Business Court.

	When the court first began, money was raised from private foundations for technology and to develop an e-filing system. There are no ongoing grants or outside support.
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Orlando, Florida- <http://www.ninja9.org/Courts/Business/Index-BC.htm>

Structure ↓	
Date & How Established	On January 4, 2004, the Chief Judge of the Ninth Judicial Circuit signed an Order establishing the Business Court subdivision.
Rule(s) and/or Statute(s) Governing Court	Rules Governing Business Court Procedures- http://ninja9.org/courts/business/index-BC.htm
Separate Court or docket	A subdivision of the Civil Division of the Circuit Court of the Ninth Judicial District of Florida
Jury Trial	Available
Mediation or ADR	Both are available
Is discovery fast-tracked?	There is a Case Management Order entered by the court at the start of the case that governs all discovery including e-discovery.
Technology	The court has electronic filing and advanced courtrooms allowing for presentation of evidence through a laptop, document camera, VHS tape or DVD; also allows for real-time annotation of electronically presented evidence through the use of touch screens on plasma monitors and complete surround sound system. Additionally, the courtroom has video-conferencing capabilities for remote witnesses.
New or transferred cases	Both
Appeals Expedited?	No.
Judges ↓	
Method of Selection	The judges are elected to the Circuit Court and then the Chief Judge of the Circuit Court chooses which judges to appoint to the Business Court.
Number of judges and full-time or part-time	Two full-time judges.
Criteria	No specific criteria.
Length of terms	Circuit judges in Florida run for election every six years. The Circuit also has a rotation policy for all judges so that they switch divisions between civil, criminal, juvenile, family etc every three to five years (the “Business Court” judges are within the Civil Division and have an extended rotation of five years).
Removal process	<ul style="list-style-type: none"> • On the recommendation of the <u>judicial qualifications commission</u>, the Supreme Court may discipline, retire, or remove a judge. • Judges may be impeached by a two-thirds vote of the House of Representatives and convicted by a two-thirds vote of the Senate.

Jurisdiction ↓	
Types of cases	<p>A. Actions relating to the internal affairs or governance, dissolution or liquidation rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises;</p> <p>B. Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises, including the following examples:</p> <ol style="list-style-type: none"> 1. Uniform Commercial Code transactions; 2. Purchases or sales of businesses or the assets of businesses; 3. Sales of goods or services by or to business enterprises; 4. Non-consumer bank or brokerage accounts, including loan, deposit, cash management and investment accounts; 5. Surety bonds; 6. Purchases or sales or leases of, or security interests in, commercial, real or personal property; and 7. Franchisor/franchisee relationships; <p>C. Actions relating to trade secret or non-compete agreements;</p> <p>D. "Business torts," such as claims of unfair competition, or interference with contractual relations or prospective contractual relations;</p> <p>E. Actions relating to intellectual property disputes;</p> <p>F. Actions relating to securities, or relating to or arising under the state securities laws or antitrust;</p> <p>G. Shareholder derivative actions and class actions based on claims otherwise falling within these types, and consumer class actions <u>other than personal injury and products liability claims</u>;</p> <p>H. Actions relating to corporate trust affairs;</p> <p>I. Malpractice claims involving business enterprises and attorneys, accountants, actuaries, architects, or other professionals in connection with the rendering of professional services to the business enterprise;</p> <p>J. Declaratory judgment actions brought by insurers, and coverage disputes and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a commercial general liability policy;</p> <p>K. Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Business Court, <u>not including claims where the underlying dispute is principally a personal injury claim</u>; and</p> <p>L. Such other cases where the primary issue(s) are commercial in nature. http://ninja9.org/courts/business/index-BC.htm.</p>
Mechanism to decide if it fits within jurisdiction	<p>Either party can designate the suit as a Complex Business Litigation suit. The party or the party's attorney shall sign the "Civil Cover Sheet" which is to be filed with the initial pleading and also indicate on the Addendum the applicable type or types of action that qualify the case for</p>

	assignment to the Complex Business Litigation Court. A copy of the Civil Cover Sheet and Addendum shall be served on all parties. Judges may also submit a request to the Administrative Judge of the Circuit Civil Division to assign/transfer a pending case that meets the required criteria to the Complex Business Litigation Court.
How is this decided?	The Administrative Judge of the Circuit Civil Division decides if the case is appropriate for the Complex Business Litigation Court.
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	Cases that come under one of the descriptions listed above in the “Types of Cases” sections shall be assigned to the Business Court pursuant to Administrative Order No.: 2003-17-1. The Administrative judge assigned to the case makes the determination. <i>See also</i> , “Mechanism to decide if it fits within jurisdiction” above.
Threshold amount in Controversy	In excess of \$75,000; however, there are other claims that have no threshold amount.
Venue ↓	
Same place or travel	Judges do not travel to a different venue.
Costs, Funding & Fees	No extra costs to the state; the court is funded from existing court resources because it is just a reallocation of existing resources to handle the new division’s docket. No special filing fees.

Philadelphia, Pennsylvania- <http://courts.phila.gov/common-pleas/trial/civil/commerce-program.html>

Structure ↓	
Date & How Established	Established in 2000 by Order of Administrative Judge.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> • Guidelines for cases assigned to the commerce program- http://fjd.phila.gov/common-pleas/trial/civil/commerce-program.html • Criteria for assignment of cases to the commerce program- http://fjd.phila.gov/pdf/cpcvcomprg/criteria.pdf • Philadelphia Civil Court Rules- http://fjd.phila.gov/pdf/rules/civil-rules-amended-5-20-04.pdf
Separate Court or docket	Docket – the “Commerce Case Management Program,” which falls within the existing Philadelphia Court of Common Pleas.
Jury Trial	Available
Mediation or ADR	Both mediation and ADR are available.
Is discovery fast-tracked?	There are three “case-tracking assignments” – expedited (13 months), standard (18 months), and complex (24 months). Each case is assigned to one of these assignments on an individual basis.
Technology	One courtroom provides a video evidence presentation system with distributed monitors, interactive plasma display, and touch-screen annotation at the podium and witness positions that allow witnesses to digitally point out evidence. There are document cameras at the podium and witness stands, as well as a video player at the podium which

	provides the ability to display video tapes and DVDs. Additionally, a teleconference system and videoconference system for remote witnesses and digital audio recording equipment and foreign language translation equipment are available. Not all cases are heard in the technologically advanced courtroom, however.
New or transferred cases	Both. Cases are either in or out of the program based on a specific list of criteria (<i>see</i> “Types of cases” below). A case not originally filed as a Commerce Program case may only be moved from the general docket into the Commerce Program if (i) it falls within the criteria and (ii) a timely request is filed. Likewise, if a case is filed as a Commerce Case, a party can request that it be moved out of the Commerce Program if it does not meet the criteria, or Commerce Program administrators/clerks will identify such cases and indicate to parties that the case will be transferred out absent some further explanation to the Court as to why the case falls within the Commerce Program.
Appeals Expedited?	No
Judges ↓	
Method of Selection	Judges are initially commissioned to serve on the Court of Common Pleas and then appointed to the Commerce Case Management Program by the Chief Administrative Judge of the Philadelphia Court of Common Pleas with input from the Philadelphia Supreme Court.
Number of judges and full-time or part-time	Three judges are assigned by the Administrative Judge to the Commerce Program. The number of Commerce Program Judges may thereafter be adjusted by the Administrative Judge consistent with the caseload of the Program.
Criteria	Attorneys with business-oriented experience who are eager to work in this environment and can handle paper-intensive cases.
Length of terms	No specific term limits.
Removal process	<ul style="list-style-type: none"> • Judges can be reassigned at anytime based on jurisdictional needs. • The <u>judicial conduct board</u> investigates complaints regarding judicial conduct filed by individuals or initiated by the board. The board determines whether probable cause exists to file formal charges, and presents its case to the <u>court of judicial discipline</u>. The court has the authority to impose sanctions, ranging from a reprimand to removal from office, if the formal charges are sustained. • Judges may be impeached by the House of Representatives and convicted by two-thirds of the Senate.
Jurisdiction ↓	
Types of cases	Internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts,

	<p>joint ventures or other business enterprises, including but not limited to any actions involving interpretation of the rights or obligations under the organic law (e.g., Pa. Business Corporation Law), articles of incorporation, by-laws, or agreements governing such enterprises; disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises; trade secret or non-compete agreements; business torts such as claims of unfair competition, or interference with contractual relations or prospective contractual relations; intellectual property disputes; actions relating to securities, or relating to or arising under the Pennsylvania Securities Act; derivative actions and class actions based on claims otherwise falling within these ten types, and consumer class actions <u>other than personal injury and products liability claims</u>; corporate trust affairs; declaratory judgment actions brought by insurers, and coverage disputes and bad faith claims brought by insureds, where the dispute arises from a business or commercial insurance policy, such as a Commercial General Liability policy, and; third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Commerce Program, <u>not including claims where the underlying dispute is principally a personal injury claim.</u></p> <p>http://fjd.phila.gov/pdf/cpcvcomprg/criteria.pdf.</p>
Mechanism to decide if it fits within jurisdiction	<p>Either party can designate the suit as a Commerce Program suit. The party or the party's attorney shall sign the "Civil Cover Sheet" which is to be filed with the initial pleading and also indicate on the Addendum the applicable type or types of action that qualify the case for assignment to the Commerce Program. A copy of the Civil Cover Sheet and Addendum shall be served on all parties.</p>
How is this decided?	<p>The Administrative Judge or the designee of the case decides which cases are assigned to the Commerce Program. If the Civil Case Manager conducting a case management conference or any party objects as to the Commerce Program assignment, the Case Manager will forward the dispute to the Administrative Judge hearing the case and he/she will make the final decision.</p>
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	<p>The court has mandatory jurisdiction if both parties are located in the jurisdiction and the case involved is a commercial dispute; otherwise, jurisdiction is optional and a judge will remove the case from the commercial program if it does not meet the necessary criteria. <i>See also</i>, "Mechanism to decide if it fits within jurisdiction" above.</p>
Threshold amount in Controversy	<p>In excess of \$50,000.</p>
Venue ↓	
Same place or travel	<p>The judges do not travel to different venues. The program is only located in Philadelphia.</p>

Costs, Funding & Fees	No extra cost or funding. The Commerce Program does have four case manager/law clerks assigned to it, rather than to an individual judge, and an administrator. This is part of the overall court budget and not paid for by a special assessment.
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South Carolina- <http://www.judicial.state.sc.us/busCourt/>

Structure ↓	
Date & How Established	Established on September 7, 2007, as a two-year pilot program by order of the Chief Justice of the S.C. Supreme Court.
Rule(s) and/or Statute(s) Governing Court	<ul style="list-style-type: none"> Administrative Order Establishing a Business Court 2007-09-07-01- http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=408
Separate Court or docket	Separate docket; it is a program within the existing state circuit court system in three different jurisdictions.
Jury Trial	Available
Mediation or ADR	Mediation and ADR are available.
Is discovery fast – tracked?	No
Technology	E-filing; telephonic and videoconferencing technology; electronic presentations and technology-oriented demonstrative evidence, such as video-recorded deposition testimony, is available.
New or transferred cases	Transferred cases
Appeals Expedited?	No expedited appeals—appeals are treated as regular civil appeals.
Judges ↓	
Method of Selection	Judges are appointed to serve as Business Court judges by the Chief Justice of the S.C. Supreme Court. The judges are first elected by the General Assembly to serve staggered six-year terms before their appointment to the Business Court.
Number of judges and full-time or part-time	Three judges are assigned to the program on a part-time basis. The judges hear other types of cases besides business litigation.
Criteria	No special criteria – all judges were considered for the court.
Length of terms	No special term length for business court judges. All judges in South Carolina are elected to six-year terms.
Removal Process	<ul style="list-style-type: none"> The <u>commission on judicial conduct</u> is authorized to investigate complaints of judicial misconduct and incapacity. Disciplinary counsel appointed by the Supreme Court evaluates each complaint and either dismisses the complaint or conducts a preliminary investigation. If evidence supports the complaint, a full investigation is authorized. If the investigation supports the filing of formal charges, a hearing is conducted, after which a recommendation is made to the Supreme Court for sanctions, dismissal, or transfer to inactive status, retirement, or removal.

	<ul style="list-style-type: none"> • Judges may be impeached by a two-thirds vote of the House of Representatives and convicted by a two-thirds vote of the Senate. • Judges may be removed by the governor upon the address of two-thirds of each house of the general assembly. • There is no special removal process for business court judges.
Jurisdiction ↓	
Types of cases	<p>The court’s jurisdiction is limited to types of cases falling under:</p> <p>a. Title 33—South Carolina Business Corporation Act of 1988;</p> <p>b. Title 35—South Carolina Uniform Securities Act of 2005;</p> <p>c. Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;</p> <p>d. Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;</p> <p>e. Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;</p> <p>f. Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks;</p> <p>or,</p> <p>g. for such other cases as the Chief Justice may determine.</p> <p>http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=408.</p>
Mechanism to decide if it fits within jurisdiction	<p>A party must request assignment of a case to the business court no later than 180 days after the action commences. The moving party submits the form motion to the Circuit Court judge, and the judge then issues a recommendation on the form to the Chief Justice. If the Chief Justice approves the request, the exclusive jurisdiction of the case is assigned to the Business Court. After that, the S.C. Rules of Civil Procedure govern. Additionally, assignment of cases to the Business Court may be made by the Chief Justice <i>sua sponte</i>.</p>
How is this decided?	<p>The Chief Justice determines whether business court jurisdiction is appropriate.</p>
Is jurisdiction (1) mandatory/exclusive; (2) optional by one or both parties; or, (3) discretionary by judge	<p>Either party may request that a case be heard in the Business Court. Once a party makes the request, it is sent to the Chief Justice who determines if it shall be heard in the Business Court. If the Chief Justice assigns the case to the Business Court, the Business Court shall have exclusive jurisdiction over the case. <i>See also</i>, “Mechanism to decide if it fits within jurisdiction” above.</p>
Threshold amount in Controversy	<p>No dollar minimum.</p>
Venue ↓	
Same place or travel	<p>Judges do not travel to different venues. Business Courts are located in three separate jurisdictions including Charleston, County; Greenville, County; and, Richland County.</p>
Costs, Funding and Fees	<p>No additional funding is provided.</p>

Other States and counties that have or are in the process of implementing business court/dockets or complex commercial litigation courts/dockets:

1. Arizona- <http://www.supreme.state.az.us/courtserv/ComplexLit/default.htm>
2. California- <http://www.courtinfo.ca.gov/programs/innovations/courtadmin-4.htm>
3. Colorado- <http://www.state.co.us/cjrtf/report/report.htm>
4. Connecticut-
<http://www.jud.state.ct.us/external/super/spsess.htm#ComplexLitigationDocket>
5. Florida-
 - a. Miami, Eleventh Judicial Circuit-
http://www.jud11.flcourts.org/programs_and_services/complex_business_litigation.htm
 - b. Tampa, Thirteenth Judicial Circuit- <http://www.fljud13.org/CBLD.htm>
 - c. Broward County-
<http://www.law.com/jsp/law/sfb/lawArticleSFB.jsp?id=1199786728841>
6. Georgia-
 - a. Gwinnet County-
<http://www.gwinnetcounty.com/cgi-bin/gwincty/egov/ep/gcNavView.do?path=Departments|Courts|Hidden|Business+Court>
7. Maryland- <http://www.courts.state.md.us/businesstech/about.html>
8. Massachusetts-
http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/03_01.pdf
9. Michigan (proposed Cyber Court but not implemented)-
<http://www.michbar.org/journal/pdf/pdf4article535.pdf>
10. New Jersey- <http://www.judiciary.state.nj.us/notices/n040624a.htm>
11. Ohio- <http://www.sconet.state.oh.us/boards/commDockets/default.asp>
12. Oregon- <http://www.ojd.state.or.us/lan/Commercial%20Court/Comm%20Court.htm>
13. Pennsylvania-
 - a. Pittsburgh- http://www.alleghenycourts.us/civil/commerce_complex_litigation.asp
14. Rhode Island-
[http://www.law.umaryland.edu/academics/writing/journals/jbtl/documents/RI%20Administrative%20Order%20\(00057671\)%5B1%5D.pdf](http://www.law.umaryland.edu/academics/writing/journals/jbtl/documents/RI%20Administrative%20Order%20(00057671)%5B1%5D.pdf)

Lessons Learned and Recommendations
From the Panelists¹ Concerning the Creation of Business Courts
Mississippi Secretary of State
Compiled by the Division of Policy & Research

DO: Include all interested parties/constituencies in the planning process.

There are multiple reasons for doing this.

- People usually support what they helped to create.
- Inclusion helps to eliminate the “fear of the unknown” concern among the groups.
 - Judges can be educated about what the business court will be like and won’t be like so they aren’t as reluctant to serve as business court judges.
 - Attorneys can be educated so they aren’t as reluctant to try cases in this court.
- Helps to eliminate controversy and opposition about different aspects of the program down the road by bringing together supporters and opponents and resolving opponents’ issues before the court is established.
 - Possible concerns that can be resolved during the planning process are:
 - Unequal treatment among different practice areas
 - Putative diversion of resources
- Helps to advertise and promote the business court before it opens by including the various bar groups in the planning process.
- Constituencies to include:
 - State Bar Association
 - Defense Bar
 - Plaintiffs’ Bar
 - Members of the judiciary (include not just the Supreme Court, but also rank-and-file judiciary and other judicial leadership)
 - Legislature
 - Academic communities

DO: Start with a pilot program.

- Allows the state and constituencies to see how beneficial a business court can actually be for the state and others.
- Helps to prove that there is a need for a business court. If it is successful then there must be a need for it.
- Allows parties to determine the best mix of types of cases that should be included or excluded from the business courts.
- Allows opponents to see how the court works before trying to defeat its implementation completely.
- Helps to alleviate dissatisfaction because it can be adjusted or scrapped based on the results of the program.

¹ The Panelists from the May 20, 2008, study group meeting were Lee Applebaum, Mitchell L. Bach, Rick Gross, Robert L. Haig, Cory E. Manning, Judge Steven Platt and Judge Ben Tennille. The biographies of each panelist were included in the May 20, 2008 meeting folder.

Avoiding controversy in judge selection

DO: Use merit selection. Make it based on merit, not just a political appointment (a political appointee may not be qualified).

DO: Require training. Require judges to complete training programs on law, economics, case management and technology.

Obstacles of finding persons to agree to serve as Business Court judges

DO: Educate judges on what the Business Court will be like. Fear of the unknown, including concern about the workload -- address this by educating judges on what the Business Court will and will not be like (do this by inclusion in the planning process).

DO: Provide adequate support for Business Court judges. Assure that the Business Court judges will have adequate support and not be overloaded by dedicating at least one law clerk to each Business Court judge to help with writing opinions. Judges will be more likely to volunteer if they know what to expect and there will be good support.

Avoiding controversy in determining types of cases to include or exclude

DO: Have all constituencies involved in the planning process.

DO: Exclude consumer cases.

DO: Start with non-controversial cases first. These might be types of cases that all constituencies participating in the court's creation can agree on. Additional case types can always be added later.

DO: Start court as a pilot program to alleviate dissatisfaction because it can be adjusted or scrapped based on the results of the program.

Obstacles to getting parties to use the Business Court after it opens

DO: Educate and include attorneys and potential litigants in the planning process. Parties and their attorneys will be reluctant at first to try cases in the business court due to "fear of the unknown." You can help to alleviate this issue by educating them and including them during the planning process.

DO: Select highly qualified and established judges to sit on the court which helps also helps to address fears of the unknown.

DO: Promote and advertise the Business Court to the Bar. Promote and advertise the new business court to the state bar before opening to make attorneys aware of this new option.

Establishing and maintaining a steady workload for the Business Court

DO: Make sure the jurisdiction is broad enough to keep the Business Court busy. If there aren't enough business cases in the beginning, the Business Court judge can hear other cases.

DO: Consider exclusive jurisdiction over certain types of cases to assure a minimum volume of cases for the business court.

DO: Have an overseer to monitor and adjust the caseload as needed, such as the Chief Justice to periodically review the Business Court's caseload to ensure the docket is not overburdened or too sparse. An overseer can also ensure that the Business Court hears only cases that are appropriate for it and that the remaining judges in the system are not being overloaded due to the reassignment of judges from the system.

Following the May 20, 2008, meeting, the Division of Policy and Research sent out a list of questions to the panelists concerning specific concerns, problems or issues that were encountered during the creation of business courts or dockets in their respective jurisdictions. The panelists' specific answers to those questions are on the following page.

Concerns, Problems and Issues in the Creation of a Business Court/Docket

- 1) What would states with existing business courts or dockets have done differently?
 - a) Some of the states would have been more inclusive regarding who they asked to help in creating the business court. More specifically, the State Bar (Plaintiff and Defense) should be included in the process. In Connecticut and California, where the state chose not to establish a specific business court/docket, the Plaintiff's Bar was concerned with unequal treatment between different practice areas and putative diversion of resources. The best means to address this is to determine early on if these are even going to be issues, and if so, to include this part of the bar in discussions about the process.
 - b) States would also have been more inclusive of members of the Judiciary, not only the Supreme Court but also of the lower court judges. In Oklahoma, the legislature passed a law in 2003 permitting the state Supreme Court to establish business courts in Tulsa and Oklahoma City, but that has not been acted upon. Whether this is a philosophical resistance to the idea of a business court, or whether it's a priority issue, etc., is unknown. The point is that the judiciary itself is a constituency that should be included in the discussion about creating and how to set up a business court. This includes both judiciary leadership (Chief Justice, President Judges of County Courts) and the rank and file judges.
 - c) In North Carolina, the Supreme Court unilaterally created a new business court. The legislature was not involved so there was a funding issue in the beginning. Judge Ben Tennille's recommendation is to be all inclusive in the planning process—people usually support what they help create. He also recommended starting out with a pilot program in several counties before trying to implement a business court system throughout the entire state. A pilot program will allow the state to see how beneficial a business court can actually be for the state and also allow opponents of the court to see how the court works before trying to defeat the court's implementation completely. There are few negatives associated with a business court unless there are not enough cases for the court to operate effectively. Therefore, operating a pilot program will allow the state to understand the potential benefits or drawbacks of having a statewide docket or court.
 - d) When considering whether or not to create a business court, the Maryland General Assembly established a Task Force consisting of appointees from the Maryland Judiciary, Maryland's House of Delegates and Senate, the Maryland State Bar Association, and members of Maryland's business and academic communities. In retrospect, this broad membership proved effective at bringing together those for and against the business court idea and resolving opponents' issues before the actual establishment of a specialized court.
 - e) Cory Manning, in South Carolina, suggested that the state should have done a better job of advertising the new business court to the state bar before the court was established in order to make attorneys aware that the business court was an option for litigation.
 - i) This problem could be addressed by including the Plaintiff's and Defense Bars in the creation process.
- 2) When the court began, were parties reluctant to try their cases in the business court?
 - a) In North Carolina, Judge Tennille said that parties were reluctant at first; however, this reluctance will happen everywhere and the party's reluctance to use the court can be addressed by selecting highly qualified and established judges to sit on the court.

- b) In South Carolina, only ten cases have been filed in the business court pilot program since its start in Oct. 2007; however, this low number can most likely be attributed to the lack of promotion and advertisement of the court as mentioned above.
- 3) Did the business courts have a sufficient number of cases to keep judges busy?
- a) This problem really depends on the extent of the court's jurisdiction. If the court is only given jurisdiction over a small amount of legal actions, then a small number of cases may become an issue. Nonetheless, if you have one really good judge you could design a way to get most of the complex business cases to him or her regardless of geography.
- i) In South Carolina, the court did not have enough strictly business cases. To remedy this problem, the judges assigned to the business court were also required to hear other civil or criminal cases when not hearing business cases so the judges still had enough work.
- b) In Fulton County, this has been a small issue because the business court does not have exclusive jurisdiction over cases. If one party objects to the transfer of a case to the business court, the case stays on the Superior Court's civil docket. Therefore, this jurisdictional caveat has kept some cases out of the business court that should otherwise have been heard in the business court.
- 4) Were the judges kept too busy so that the cases were taking longer to be disposed of than was originally hoped?
- a) This, again, depends on limits of jurisdiction and the mechanism used to assign cases and whether written opinions are mandatory. The written opinions are the real value of the Delaware Chancery Court and the North Carolina Business Court. Requiring mandatory written opinions adds significantly to the work load of the court, but it gives the state, court and litigants a body of case law to rely on—predictability in the law.
- b) This was not a problem in South Carolina. In addition, the state does not foresee that it will become a problem because the Chief Justice of the Supreme Court periodically reviews the business court docket to ensure that only business cases are transferred to the court and those cases are appropriated equally to all judges involved.
- 5) If judges were reassigned from other dockets, were the remaining judges overloaded due to this reassignment? Or, did the dockets actually clear up because the appropriate amount of cases were transferred to the business court?
- a) In North Carolina, the reassigning of judges actually resulted in better management of caseloads.
- b) In South Carolina this was not a problem due to the Chief Justice's role in reviewing the docket of the business court.
- 6) Was it difficult to find judges who wanted to be business court judges?
- a) Not necessarily, however, there have been staffing issues. The unknown is always a tricky obstacle. Therefore, an effort should be made to educate judges about what such a court will and will not be like (this could happen by including them in the creation process), so they can get a realistic picture of the task that will confront them. Generally, the business court judge positions are voluntary, so judges do not have to serve unless they choose to do so.
- b) Also, to combat the staffing issue and workload, it is ideal to have at least one dedicated law clerk per judge. This both helps the judge with the case flow, research, etc., and provides the opportunity to write opinions which is one of the goals of many business courts, i.e. it is part of improving predictability. It can be a hardship on a judge who does

not have sufficient support to maintain this kind of caseload, and may not only provide a less efficacious judicial product, but may discourage judges who are actually willing to take on the role of business court judge.

- c) In South Carolina, judges were eager to take part in the pilot program.
- 7) Was there much controversy over the types of cases that would be included or excluded in the business courts?
- a) This is one of the key issues in creating a business court/docket. This issue is one in which the answer benefits from having all parties interested in the process involved in the decision. If all parties are included, then it will be less likely that one area that should be included will be left out or vice versa.
 - b) It is easier if consumer cases are excluded and it is more business to business cases. However, other types of cases can always be added later if necessary.
 - i) North Carolina has expanded the business court to handle tax appeals.
 - c) In South Carolina there was a small amount of dissatisfaction between both proponents and opponents of the court as to what cases should be heard in the business court. Nonetheless, starting the business court as a pilot program has alleviated much of the dissatisfaction because it can be adjusted or scrapped later depending on the programs results.
- 8) Was the process of how judges were selected controversial?
- a) Judge Tennille recommended that it must not become a political issue. It must be focused on merit selection or it will never work.
- 9) Was there much controversy over any other issues?
- a) One important aspect of the Maryland Business/Technology Case Management Program (“BTCMP”) was the addition of a specialized multi-year, multi-day, and most significantly, multi disciplinary judicial education curriculum, including training in law, economics, case and docket management skills, as well as the use of technology in the management of both cases and dockets presenting complex business and technology issues. All designated BTCMP Judges were required to complete this program. This program was not controversial but was instrumental in educating judges chosen for the BTCMP.

MISSISSIPPI COURT SYSTEM FOR CIVIL MATTERS

Courts ↓	Jurisdiction:	Jurisdictional Amount	Established or created by	Jury or no jury	Appeals to	Method of Selection of judges
Supreme Court (MSSC)	Hears appeals from Circuit, Chancery, County, Drug and Youth courts all over the state.	None specified	Const. Art. 6, §144 MCA §9-3-1	No jury	US Supreme Court	Elected by people in MSSC districts. Art. 6, § 145
Court of Appeals	Hears cases assigned by the Supreme Court from all over the state. It was created to take some of the Supreme Court's case load. It hears cases where the law is already decided but the facts are in dispute.	None specified	Statute MCA §§ 9-4-1 - 17	No jury	MSSC, if they will hear it	Elected. MCA §9-4-5
Circuit Court	Has original jurisdiction over all civil matters not vested exclusively in another court. Hears appeals from County, Justice, and Municipal courts and Administrative Boards and Commissions.	Greater than \$200 in civil cases	Const. Art. 6, §§ 152 MCA §9-7-3	Jury, unless matter of law.	MSSC	Elected. MCA §9-7-1
Chancery Court	Has jurisdiction over disputes in matters involving equity, divorce, alimony, probate, guardianship, and sanity. If no County Court, Chancery has exclusive jurisdiction over juvenile matters.	Equity matters under 75,000 concurrent with County Court.	Const. Art. 6, §152	Parties may request a jury.	MSSC	Elected. Const. Art.6, §153
County Court	Has exclusive jurisdiction over matters involving eminent domain, partition of personal property, unlawful entry and detainer, and juvenile matters. Jurisdiction is concurrent with Justice Court in all civil matters. Jurisdiction is concurrent with Circuit and Chancery Courts in all matter of law and equity up to \$75,000.	Less than \$200,000 (by 2003 amendment) MCA §9-9-21	Statute MCA §9-9-1	Parties may request a jury, depends on County.	Circuit or Chancery depending on case type. Also MSSC	Elected. Const. Art. 6, § 153 Statute MCA §9-9-5

Courts ↓	Jurisdiction	Jurisdictional Amount	Established or created by	Jury or no jury	Appeals to	Selection of judges
Justice Court	Has jurisdiction over all civil cases involving amounts less than \$2,500.	Less than \$2,500 in small civil claims	Const. Art. 6, § 171 Statute MCA § 9-11-2	No jury	County Court if it exists. If not, Circuit or Chancery depending on type.	Elected. Const. Art 6, § 171
Municipal Court	Has exclusive jurisdiction over city ordinance violations. Under certain conditions, some may also exercise jurisdiction in cases involving juveniles.	None specified	Statute MCA §21-23-1	No jury	County Court if it exists. If not, Circuit or Chancery	Appointed by the governing authorities of the municipality at the time provided for the appointment of other officers. MCA §21-23-3
Drug Court (Chancery, Circuit, Youth, Municipal or Justice Courts can become certified Drug Courts)	Has jurisdiction over criminal cases where perpetrator is addicted to drugs or alcohol.	None specified	Statute MCA §9-23-1	No jury	MSSC MCA §11-27-29	Judge of court that is certified as Drug Court serves.

Youth Court (Division of Chancery Court)	Has jurisdiction over abuse and neglect of juveniles and offenses committed by juveniles.	None specified	Statute MCA §19-9-96	No jury	MSSC MCA §11-27-29	County Court Judge serves as Youth Court Judge. If no County Court, the Chancellor of the Chancery Court serves, or appoints a referee. MCA §43-21-107
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Notes:

The Courts specifically created by the MS Constitution (Supreme, Circuit, Chancery and County Courts) along with the Court of Appeals are funded through the general treasury fund administered by the Administration Office of the Courts (AOC).

Drug Court Fees remain in Drug Ct. Fund (MCA § 9-23-19). Fund is within the general fund, but kept separate from the general fund.
-by statute, Drug Court may also be funded by private grants, gifts donations.

Youth Court operations funded by Board of Supervisors of county in which it sits. (MCA § 43-21-119)
-also, YC Support Program (MCA § 43-21-801) This is the AOC element of Youth Court.
-salary for YC administrator
-office expenses budget
-Separate Youth Court Fund- designated portion of general state Treasury fund administered by AOC.

The Youth Court is a division of the Chancery Court (exclusive jurisdiction over minors), and is entitled to appeal to the Supreme Court directly as would the Chancery Court. The same seems to be true of the relationship between Drug Court and Circuit Court (given the criminal jurisdiction). Both Youth Court and Drug Court seem to be given the avenue of appeal to the Supreme Court by MCA § 11-27-29.

Some state agencies and commissions (most notably the Mississippi Workers' Compensation Commission) utilize administrative law judges (ALJs) to adjudicate disputes between the entity and third parties. Though ALJs serve in a quasi-judicial capacity, they are considered officers or employees of their respective agency or commission (see, e.g., MCA § 71-3-93), rather than members of the judiciary. Accordingly, the selection and removal mechanisms for ALJs are markedly different for ALJs than for members of the state judiciary. For these reasons, ALJs have been omitted from this chart.

*MCA § 91-21-11(2)

“Courts of the state, regardless of the name they bear, shall be proper local units or entities of government, to apply for and receive such assistance, aid, funds, monies, grants and sub-grants.”

-if created, business court would get same funding benefits of AOC as youth, drug, other specific jurisdiction courts.

Mississippi Secretary of State
Compiled by Division of Policy & Research

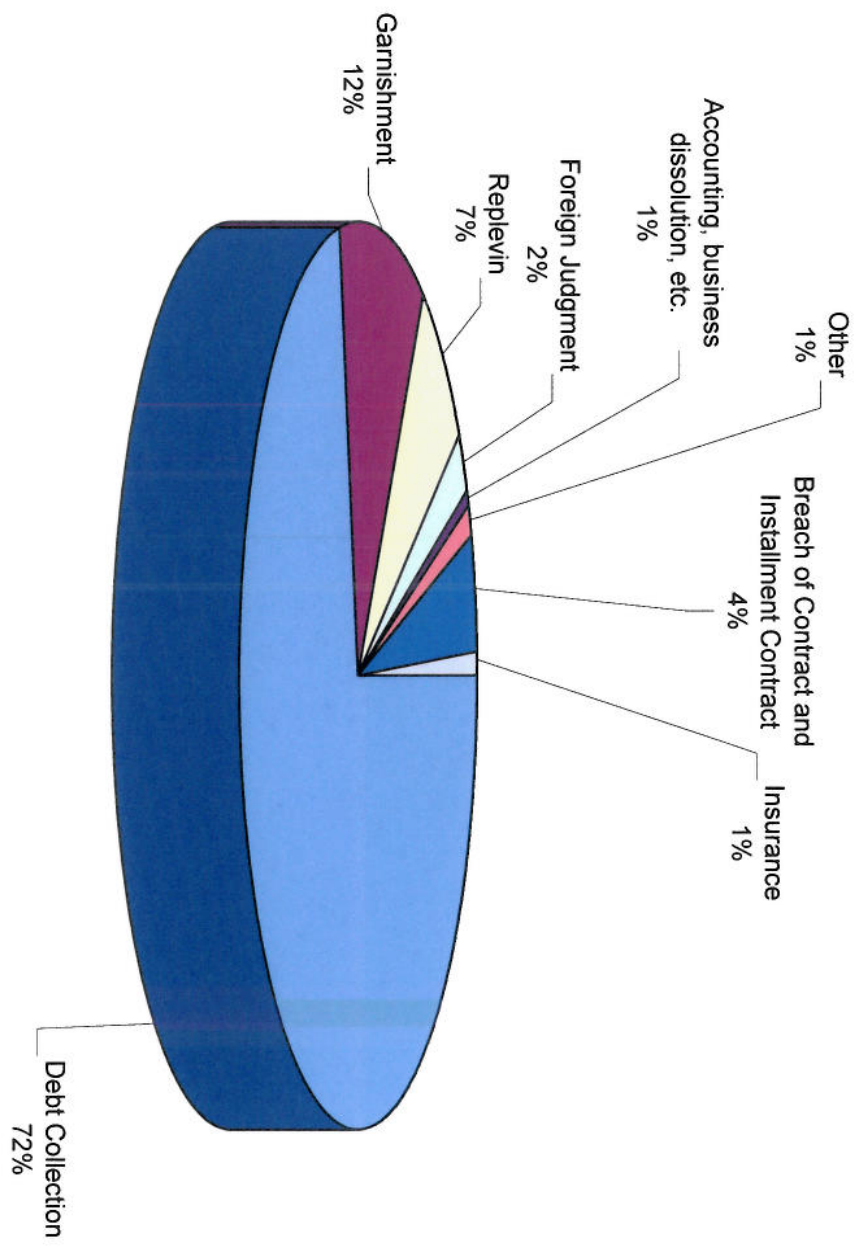
Benefits of creating a business court in Mississippi:

- **Judges Experienced in Laws of the Cases to Hear and Decide Cases.** Cases would be heard by judges experienced in the specific matter at hand making resolution of the cases faster and more efficient.
- **Faster Case Disposition.** Faster disposition of cases gives businesses and individuals the swift resolution they need to make business decisions in a timely manner.
- **Decreased Litigation Costs.** Litigation costs would decrease for both businesses and individuals making them more likely to do business in our state.
- **Establish Body of Case Law.** A body of case law would emerge that would provide guidance and precedent for businesses and attorneys to follow when doing business and litigating in our state. This would create a more stable market in which businesses could thrive. It would also, over time, minimize the number of law suits that are brought unnecessarily saving more resources for more pertinent matters.
- **Faster Disposition of other Civil Court Cases Due to Decreased Caseload.** Cases that usually take much more time within the traditional court systems would be taken out of that system leaving more time and resources for other types of cases such as criminal cases. This would aid in the effort to get more criminals off the street in a timely manner and help in the adherence to the Constitutional guarantee of a speedy trial.
- **Opportunity to Develop Efficiency Ideas that can be Expanded to Other Courts.** Other courts may take efficiency ideas from the business courts which would make all of our courts run more smoothly and efficiently.
- **Development of Technology for use in other Courts.** Nuances such as technology can be tried out on a smaller scale in the business court to assess suitability for use in our other courts saving the state money.
- **Familiarity with Judge Saves Time.** Since attorneys are coming before the same judge again and again, it causes them to be more careful in deciding what motions to bring and what to request in discovery. This saves time and reduces incidents of malpractice.
- **Strong Pro-Business Message to Business Community.** It would send a strong message to the business community that they are welcome in our state.

Objections to business courts and responses:

- Business courts will take the best judges.
 - RESPONSE. Some judges will not have an interest in a docket full of the complex cases that are usually assigned to a business court judge. Business courts will only attract judges who have an interest in the topic.
- Business courts are elitist and create an unfair advantage for commercial litigants.
 - RESPONSE. There are other types of specialized courts in Mississippi. For example, the Mississippi Legislature created Drug Courts in 1993. We also have Youth Courts. The Federal Court system also has specialized courts, such as Bankruptcy Court. The issue is not who is better than whom but what is the most efficient way to get the job done.
- Business courts are biased against individuals and consumers and favor businesses.
 - RESPONSE. Business courts are typically designed for disputes between businesses and do not involve individuals and consumers; however, there is no precedent to show that these courts choose to favor businesses.
- Business court judges will become insulated from new ideas.
 - RESPONSE. Actually, business court judges would be immersed in one particular area of the law making it more likely that they will come across and be required to strive to understand innovations.
- Creating a business court will cost the state too much money.
 - RESPONSE. Creating a business court does not have to cost the state any more money than it is already spending right now. The idea is to reallocate already existing resources. No new judges would need to be hired. No new court rooms would need to be built. The extra time and resources that would be freed up by creating the business court would more than make up for any reallocation of funds and personnel.
- There are not enough cases to fill an entire docket.
 - RESPONSE. According to research compiled by the Mississippi Administrative Office of the Courts, 58% of all civil cases filed in the Circuit court in 2006 were Business/Commercial and Contract cases. Even if there weren't enough cases to fill this docket, the judge could be assigned to take non-business cases if his/her schedule permits.

**Breakdown of Types of Business/Commercial and Contract Cases Filed in MS Circuit Courts -
FY 2004-2007**



NATURE OF CASES FILED IN MS CIRCUIT COURTS

	FY2007	FY2006	FY2005	FY2004
Business and Commercial				
Debt Collection	11724	9592	11340	11252
Garnishment	1649	1398	2122	1962
Replevin	778	761	1051	1552
Foreign Judgment	356	331	385	351
Employment	95	45	51	37
Accounting, business dissolution, examination of debtor, execution, injunction, pension, receivership, stockholder suit	89	75	100	139
Other (detailed information not available)	106	130	143	171
Total Business and Commercial	14797	12332	15192	15464
Contracts				
Breach of Contract and Installment Contract	720	511	621	666
Insurance	249	92	112	111
Other (detailed information not available)	56	60	64	70
Product Liability under Contract	9	8	11	8
Promissory Notes	2	9	10	7
Specific Performance	9	3	5	6
Injunction	0	0	0	0
Accounting (business)	0	0	0	0
Total Contracts	1045	683	823	866
Total Business Commercial and Contracts	15842	13015	16015	16332
Civil-Non Business, Non-Commercial				
Personal and Property Injury	4456	4946	7207	5698
Mass Torts	506	1894	863	212
Appeals	1310	1213	1270	1486
Civil Rights	916	844	978	970
Statutes	477	508	463	490
Probate and Real Property	294	192	211	227
Not Supplied	163	81	103	109
Domestic Relations	18	18	18	81
Total Non-Business, Non-Commercial	8140	9696	11113	9273
Total of all civil cases filed for the fiscal year	23982	22711	27128	25605
Total of all civil cases that are business or contract cases	66.1%	57.3%	59.0%	63.8%
Disposed Criminal Cases (filed unavailable)	N/A	19613	20961	21160
Total of all Circuit Court cases that are business or contract cases	N/A	30.8%	33.3%	34.9%

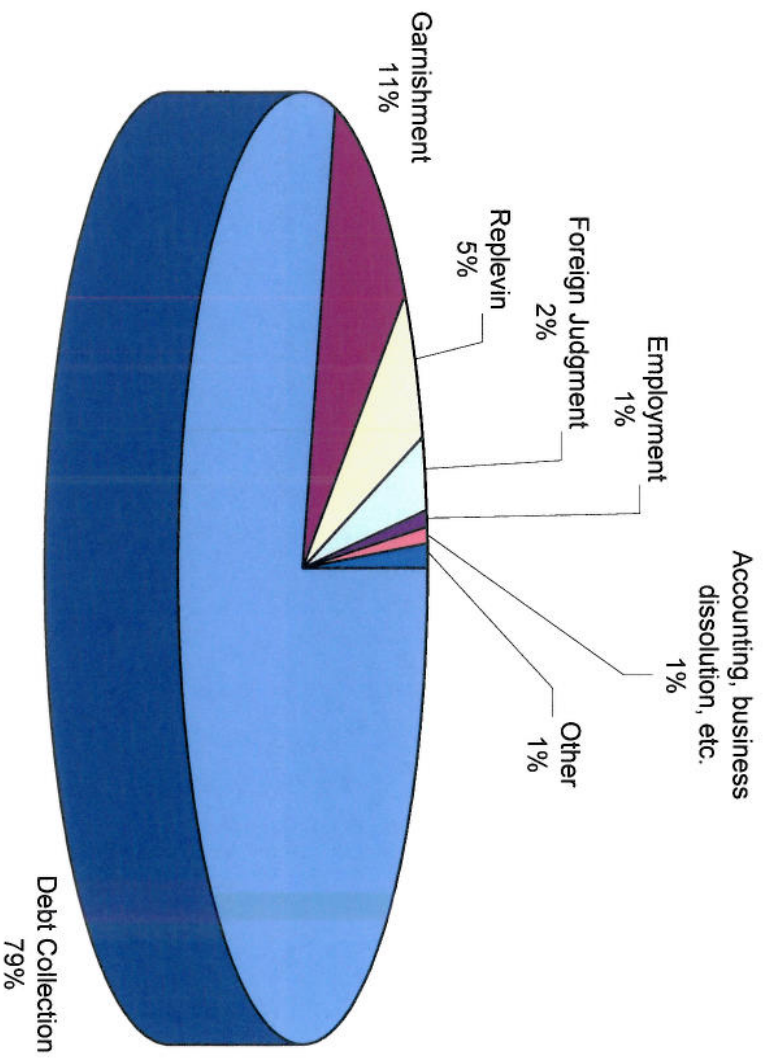
Note: Boxes listed as N/A are information that has not been provided by the AOC at this time.

NATURE OF CASES FILED IN MS CHANCERY COURTS

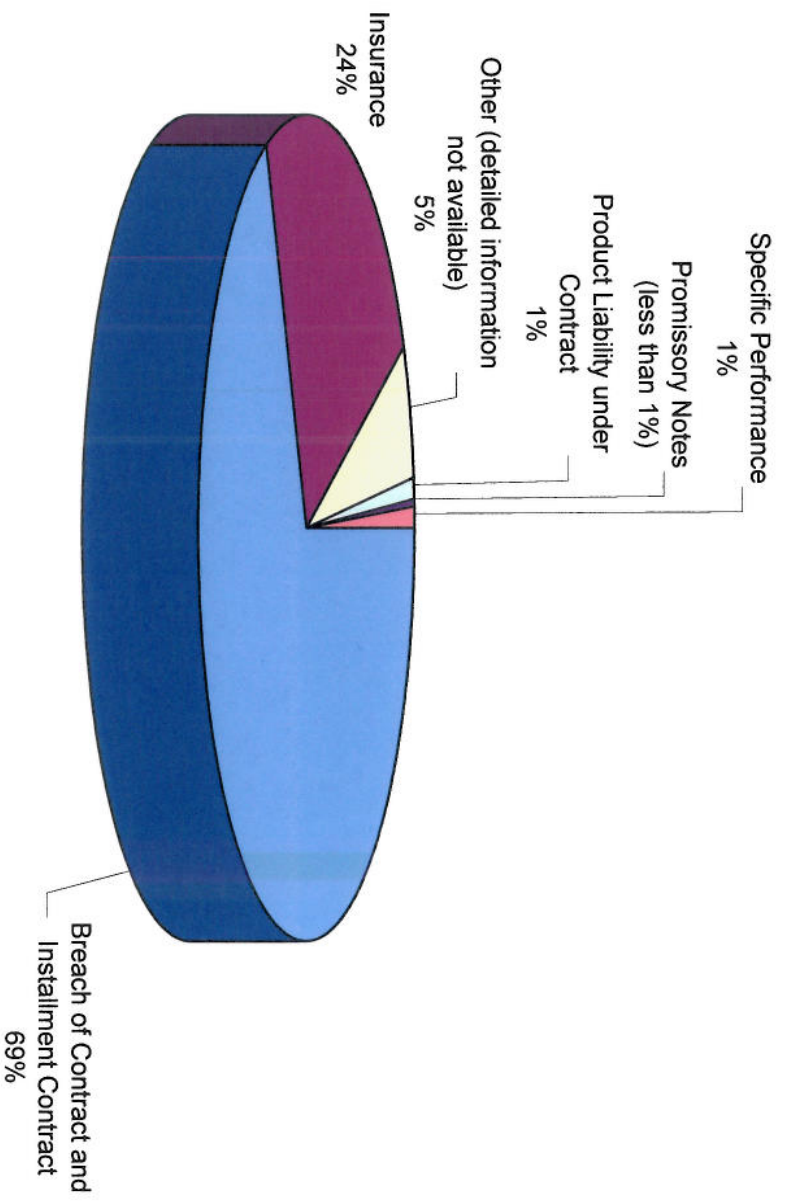
	FY 2007	FY 2006	FY 2005	FY 2004	FY 2003
Business and Commerical					
Accounting		25	53		47
Replevin		5	2		9
Injunction or Restraining Order		1	3		6
Bankruptcy, business dissolution, debt collection, employment, examination of debtor, execution, foreign judgment, garnishment, pension, receivership, stockholder suit		108	178		1
Other (detailed information not available)		148	233		0
Total		287	469		63
Contracts					
Breach of Contract and Installment Contract		174	232		243
Other (detailed information not available)		140	103		90
Specific Performance		52	63		50
Insurance		15	25		23
Injunction or Restraining Order		4	2		3
Product Liability Under Contract		0	0		3
Promissory Note		0	1		1
Accounting (Business)		1	1		0
Total		386	427		413
Total Business Commercial and Contracts		673	896		476
Civil Non-Business, Non-Commercial					
Domestic Relations		43388	63328		43314
Probate		16462	22317		18498
Real Property		1378	2309		1583
Children and Minors/Non-domestic		1336	1808		1455
Statute/Rules		1188	1030		909
Not Supplied		0	199		341
Personal Injury and Property Damage		125	140		194
Appeals		74	97		63
Civil Rights		42	43		30
Mass Torts		8	10		13
Total civil non-business, non-commercial		64001	91281		66400
Total of all cases filed for the fiscal year		64674	92177		66876

Note: Statistics for the FY 2004 and 2007 have not been provided by the AOC at this time.

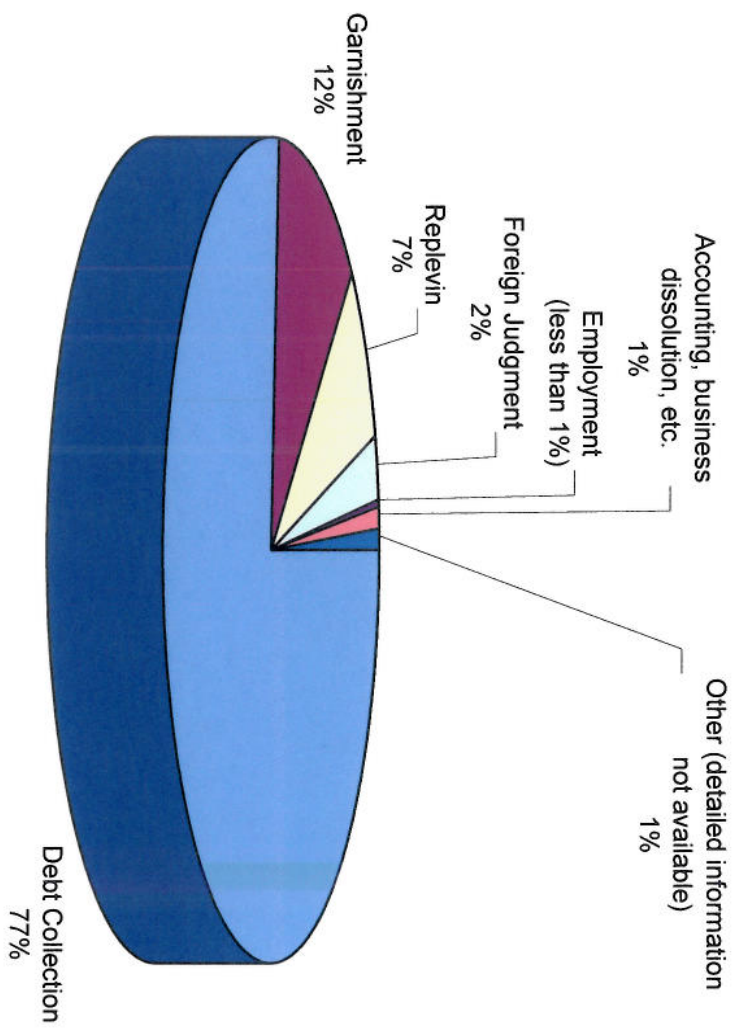
Breakdown of Types of Business and Commercial Cases Filed in MS Circuit Courts -- FY 2007



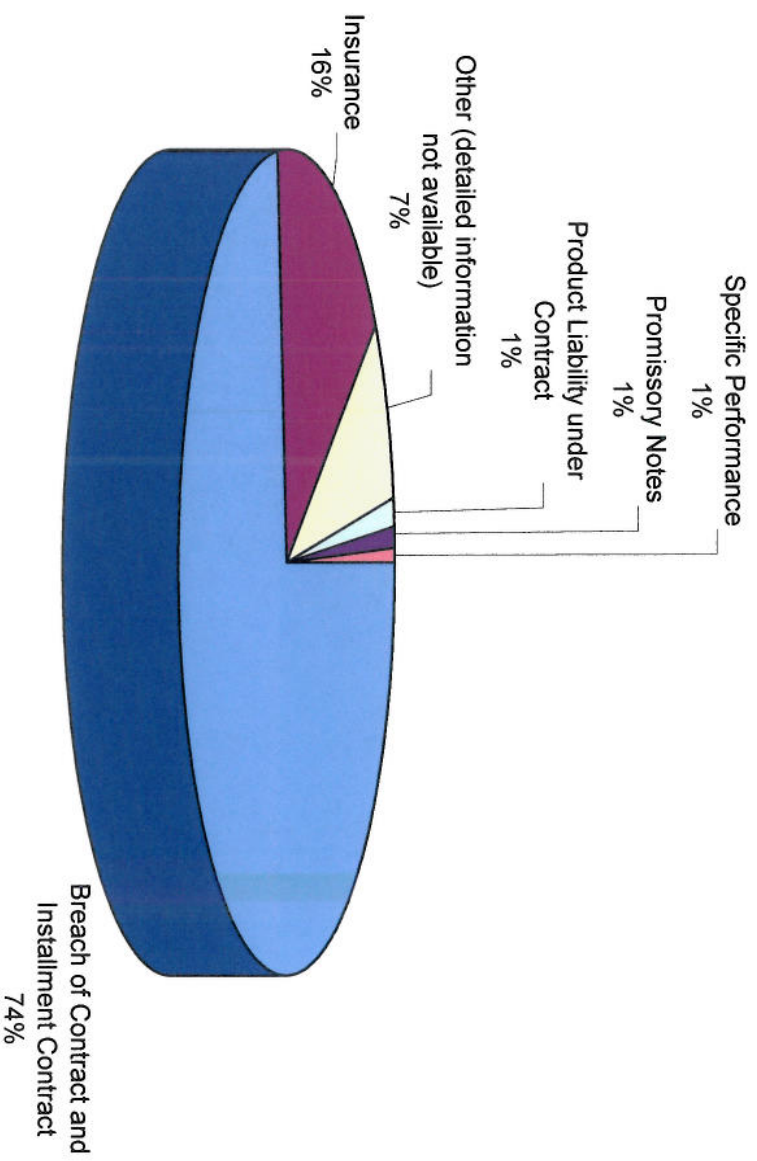
Breakdown of Types of Contract Cases Filed in MS Circuit Courts -- FY 2007



Breakdown of Types of Business and Commercial Cases Filed in MS Circuit Courts - FY 2004-2007



Breakdown of Types of Contract Cases Filed in MS Circuit Courts - FY 2004-2007



**Constitutional Provisions and Statutes that Govern the Ability to Establish New
Courts and the Selection of Judges in Mississippi.
Mississippi Secretary of State
Compiled by the Division of Policy & Research**

How inferior courts are established in Mississippi:

- **Art. 6, Sec. 172. Establishment and abolishment of inferior courts.**
The Legislature shall, from time to time, establish such other inferior courts as may be necessary, and abolish the same whenever deemed expedient.
- **Miss. Code Ann. § 9-4-1. Establishment of Court of Appeals.**
 - This statute states that the Court of Appeals is established by the Legislature.
- **Miss. Code Ann. § 9-23-1 through § 9-23-23 & § 9-23-51** govern the drug courts in Mississippi.

Note: There is no constitutional provision or statute that requires that if additional inferior courts are created, the judges for those courts must be elected.

How judges are selected in Mississippi:

- **Art. 6, Sec. 145. Composition of Supreme Court.**
. . . The Legislature shall divide the state into three Supreme Court districts, and there shall be elected one judge for and from each district by the qualified electors thereof . . .
- **Art. 6, Sec. 153. Election and terms of circuit and chancery court judges.**
The judges of the circuit and chancery courts shall be elected by the people . . . and the judges shall hold their office for a term of four years.
- **Miss. Code Ann. § 9-4-5. Selection of judges of court; qualifications; terms of office; Court of Appeals Districts.**
 - Court of Appeals judges are elected to eight-year terms.
- **Miss. Code Ann. § 9-5-1. Chancellors; elections, holding of court terms, terms of office and residency.**
 - Chancellors are elected.
- **Miss. Code Ann. § 9-9-5. County judge; qualification, election, term of office, and filling of vacancies.**
 - County judges are elected by qualified electors of the county.

- **Miss. Code Ann. § 9-11-2. Additional justice; delivery of dockets and papers on expiration of section.**
 - The sections states in § 9-11-2(2)(1) that Justice Court judges are elected.

- **Art. 6, Sec. 177-A. Commission on Judicial Performance.**
 - This provision establishes a Commission on Judicial Performance which oversees judges in the state and may make recommendations that judges be removed from from the bench. All commission members are appointed by the judiciary of the state of Mississippi.

- **Miss. Code Ann. § 9-19-1 through § 9-19-31 governs the Commission on Judicial Performance.**
 - **Miss. Code Ann. § 9-19-1. Membership.**

The Commission on Judicial Performance shall consist of the following members:

 - (a) One (1) circuit court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Governor;
 - (b) One (1) chancellor to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Lieutenant Governor;
 - (c) One (1) county court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi upon the recommendation of the Speaker of the House;
 - (d) One (1) justice court judge to be appointed by the Chief Justice of the Supreme Court of Mississippi;
 - (e) One (1) practicing attorney to be appointed by the Chief Justice upon the recommendation of the Governing Board of The Mississippi Bar; and
 - (f) Two (2) lay persons who shall not be residents of the same Supreme Court District to be appointed by the Chief Justice of the Supreme Court of Mississippi.

An alternate for each member shall be selected at the time and in the manner prescribed for initial appointments in each representative class to replace those members who might be disqualified or absent.

- **Miss. Code Ann. § 9-1-103. Vacancy in Office.**

Whenever a vacancy shall occur in any judicial office by reason of death of an incumbent, resignation or retirement of an incumbent, removal of an incumbent from office, or creation of a new judicial office in which there has not heretofore been an incumbent, the Governor shall have the authority to appoint a qualified person to fill such vacancy to serve for the unexpired term or until such vacancy is filled by election as provided in section 23-15-849, Mississippi Code of 1972. When a vacancy shall occur for any of the reasons enumerated in this section, the clerk of the court shall notify the Governor of such vacancy immediately.

- **Miss. Code Ann. § 9-1-105. Physical disability or sickness; absence of judicial officer from state, etc.; appointment of special judge to serve on emergency basis.**
 - This statute governs the special circumstances where a judge can be appointed in Mississippi.
 - This statute contains no authority, other than in specified cases, for the appointment of a "special judge" to handle cases of the circuit court district, thus, the drug court judge may not be appointed as a "special judge" absent any of those specified conditions being present.
Op.Atty.Gen. No. 2002-0431, DeLaughter, August 9, 2002.

- **Miss. Code. Ann. § 9-1-107. Senior judges.**
 - This statute governs senior (retired) judges.

Business Law Today

Volume 17, Number 4 March/April 2008

The "New" Business Courts

Responding to Modern Business and Commercial Disputes

By Lee Applebaum

Lawyer 1: "I'll say a phrase and you name the first court that comes to mind."

Lawyer 2: "Ok, go."

Lawyer 1: "Business Court."

Lawyer 2: "Delaware Court of Chancery."

Fifteen years ago, the over 200-year-old Delaware Court of Chancery would have been the only response, but today other possibilities exist. If this same word association test was conducted in New York, Chicago, Philadelphia, Boston, or Charlotte, to name a few cities, the subconscious link from the phrase "business court" would no longer inexorably lead to Delaware.

During the last 15 years, various states' trial courts have incorporated specialized business and commercial tracks within their dockets, often starting as pilot programs. Some of these experiments have become institutionalized, with business courts operating for over a decade in Manhattan, Chicago, and North Carolina. Other business courts--in Rhode Island, Philadelphia, Las Vegas, Reno, and Boston--are on their way to the 10-year mark, and a new generation of courts has arisen in the last few years.

Delaware's Court of Chancery remains the bright star in this firmament, and it sets the standard to which other courts aspire: to institutionalize the qualities that make Chancery a great court. Hard work, long development and study of legal issues, intelligence, and integrity are the foundation of its excellence, forming the qualitative archetype for the new business courts.

Chancery's "aspirational model" goes more to the essence than the attributes of these "new" business courts, however, which have taken a distinctly different form. They are not courts of equity focusing on corporate governance and constituency issues, though these issues form part of their jurisdiction. Rather, their jurisdiction covers non-equity actions for money damages, as well as intra-corporate matters that come under traditional equity jurisdiction. Thus, some call these new courts "commercial courts" or "commercial and business courts," reflecting a jurisdictional model that includes both law and equity matters.

Along with not fully capturing this commercial distinction, the rubric "business court" does not precisely describe each state's jurisdictional development. In most states, the word "court" itself is a misnomer. Rather, specialized dockets or programs with a defined jurisdiction have been created within many states' trial courts or their civil divisions. For example, Philadelphia's colloquially known "Commerce Court" is actually designated the Philadelphia Court of Common Pleas' Commerce Case Management Program; a case track created by an administrative order assigning two (later three)

judges to hear a specific subset of cases taken from the trial court's general docket.

Whatever the name, manner of creation, or breadth as a program or court division, however, the new business courts have one central common ground: a specific set of judges, assigned to hear a body of business and commercial cases, individually handling a case from beginning to end.

Why Business Courts Now?

The modern business courts' popular history goes something like this. The business court phenomenon arose because business litigants and their counsel wanted to avoid court--more specifically, state trial courts. In the early 1990s, commercial litigants' frustration independently reached boiling points in New York City and Chicago, among other places. Unlike federal courts, cases were placed in master calendar systems with the possibility of multiple judges handling different aspects of the same case as the litigation wended its way through the system. This limited optimal case management, and it also limited the development of judicial expertise in the procedural and substantive aspects of commercial and business disputes. Many believed, whether true or not, that this led to an unpredictable, uninformed, and unreliable process. Doubt and disrespect were said to be evidenced by lawyers advising their clients to litigate in other venues if at all possible.

In 1993, New York City and Chicago began pilot programs assigning business and commercial disputes to an individual judge for a case's duration. In New York, this has become known as the New York County Supreme Court's Commercial Division, and in Chicago it is the Circuit Court of Cook County Law Division's Commercial Calendar. Even earlier, in 1990, California's state bar established an ad hoc committee to study the creation of specialized business courts. That effort ended in 1997, with California eventually opting to create pilot programs to address varied forms of complex litigation, whether or not involving business or commercial law. Notably, California created a specialized case management court rather than a specialized subject matter court. This article focuses solely on those jurisdictions taking the specialized business court route.

As of today, post-1993 business courts are located chiefly on the East Coast, from Maine to Florida. There is some form of business court statewide, county specific, or in a major city in Maine, Rhode Island, Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina, Georgia, and Florida. Other business courts are located in Chicago, Reno, Las Vegas, and Eugene, and business courts are or have been the subject of serious study and effort in at least Colorado, Michigan, Ohio, and Wisconsin.

How Do the "New" Courts Differ?

The Delaware Court of Chancery is a trial court of equity. During the last 100 years, it arguably has been the nation's leading trial court on issues of corporate governance, and it remains preeminent--or at least penultimate in preeminence to Delaware's Supreme Court--on corporation law. It has, however, no historical jurisdiction over commercial disputes at law solely involving money damages. Rather, multimillion dollar contract or tort actions involving Delaware corporations, litigated in Delaware state court, historically are heard in Delaware's Superior Court, not Chancery.

The distinct commercial and business court models first witnessed in New York City and Chicago are quite different from the Chancery Court model. However, because the Circuit Court of Cook County retains a separate Chancery Division which also hears business cases, this somewhat limits the jurisdictional scope of the Law Division's "Commercial Calendar." Thus, we'll begin the discussion of new business courts with New York's Commercial Division, a model that includes both law and equity cases, unlike the Court of Chancery (equity only) or Cook County Law Division (law only).

The New York Supreme Court's Commercial Division, which now operates in 10 counties or judicial districts, has a broad jurisdictional model. This is not only because it includes both law and equity cases, but because of the quantity and types of cases it hears. Assuming that a jurisdictional minimum amount in dispute is met, the Commercial Division entertains cases that fall within a specified list of business and commercial case types. There is no express requirement that a case falling within this jurisdictional list must be complex in nature to find its way into the Commercial Division; the case must simply be one among delineated categories of business or commercial disputes. Each case is then assigned to an individual judge from beginning to end.

A different, more selective, model was adopted for the North Carolina Business Court, another of the seminal "new" business courts. As in New York, North Carolina's Business Court is designed to have a single judge hear business and commercial disputes, at equity or law, from beginning to end. However, as originally established in 1995, there were no presumptive case categories defining its jurisdiction; rather, the North Carolina Business Court would only hear business and commercial cases if those cases were complex. The Court's protocols set forth criteria as to what made a case complex, along with a judicial gatekeeping mechanism for case selection, which was necessarily more subjective than New York's broad, case matter-specific, jurisdiction model.

North Carolina's jurisdiction has subsequently been amended to include certain specific categories of cases to be presumptively included on the Business Court's docket, including technology-based disputes, but a large swath of unlisted case types must still meet the complexity requirement to find their way into North Carolina's Business Court. By its nature, there will be fewer cases in such a business court; but those should all be complex cases, providing the Business Court judges with an equally demanding individual case load as those found in broad jurisdiction courts like New York's Commercial Division with a greater variety of case types.

The broad jurisdiction model that defines jurisdiction by case type has been adopted in Philadelphia, Rhode Island, Massachusetts, Orlando, Miami, and Tampa. Chicago's Commercial Calendar uses a similar standard. The complex business dispute model has been adopted in Maryland, Las Vegas, Reno, Atlanta, and Pittsburgh. None of the new business courts follow an equity only model as found in the Delaware Court of Chancery.

Most recently, Maine's newly implemented Business and Consumer Docket provides its designated judges with the gatekeeping function as to what cases come within its specialized program; and there will likely be a flexible evolution to shaping that court's jurisdiction. The focus is on claims involving "matters of significance to the transactions, operations or governance of a business entity and/or the rights of a consumer arising out of transactions or other dealings with a business entity," and that "the case requires specialized and differentiated judicial management." Eugene, Oregon's Commercial Court includes a long list of permissible case types (including those going beyond most business court jurisdictional lists), but leaves the decision regarding whether to accept a case to the presiding judge. In South Carolina's new statewide business court pilot program, jurisdiction exists over six specific statutes and "such other cases as the Chief Justice may determine."

The "New" Court of Chancery

A fascinating development among the new business courts is a change in the "old" business court, the Delaware Court of Chancery. In 2003, Maryland implemented its statewide Business and Technology Case Management Program (BTCMP). In doing so, it became the first state with a functioning business court to expressly include technology disputes (e.g., computer technology, biotech, etc.) in its

jurisdiction. While technology disputes are typically business based, and thus arguably within a business court's jurisdiction in any event, Maryland's express use of the term, coupled with extensive plans on judicial education, made a statement that Maryland intended to become especially capable in handling cases that would mark the new twenty-first century economy.

Within a few months of the BTCMP's implementation, Maryland's neighbor made significant changes in Chancery's historic jurisdiction to reach over into the law side (i.e., to permit the Chancery Court to become a commercial court as well as a business court). Through executive and legislative effort, the Chancery Court's statutory jurisdiction was expanded to include some forms of solely monetary disputes within its original jurisdiction, expressly including technology disputes. This jurisdiction over purely law-side matters was a significant innovation. Additionally, the new statutes provided that Chancery judges could mediate certain types of commercial disputes, including technology-based disputes, even if the disputes involved solely monetary claims. This was the fruition of a "mediation-only" jurisdiction concept, originally conceived in 2001, that would lend the expertise of these business court jurists to commercial litigants in assisting in the resolution of purely monetary disputes, another significant innovation on the historic equity only jurisdiction.

These expansive statutes were not so dramatic, however, as to give Chancery concurrent jurisdiction with Delaware's Superior Court over all business disputes. Further, the new jurisdiction includes a minimum amount in dispute of \$1 million, and it does not permit jury trials, unlike the new business courts. It does signal that Delaware is making the extraordinary bench and resources of the Chancery Court available in a wider range of case types, including technology-based disputes. Thus, by including some purely commercial actions within its ambit, we might say that Chancery has become part of the new business court trend.

Why Specialized Business Courts?

There is a perceived need to create a stable and reliably informed system for administering and deciding business and commercial cases. In this respect, business courts are part of a greater movement toward specialization. While there are some estimable opponents of judicial specialization, the theory is that a judge who is consistently hearing a limited--though not small--universe of case types will develop a greater knowledge and expertise in both the subject matter of these cases and in their procedural management. This will permit these specialist judges to make more reliable and informed decisions, and to do so with greater efficiency.

While many analogies may be offered--"you wouldn't go to a thoracic surgeon for lower back surgery"—the most common point offered in support of judicial specialization is the fact that lawyers specialize in the areas of the law that they practice. Thus, if it is working for lawyers, it will work behind the bench as well.

From another angle, there is also a concern over appearances; that is, it won't do to have lawyers with decades of experience in an area of the law having their cases decided by judges who have little or no experience with the subtleties of that subject. It theoretically undermines the system when a lawyer on the losing side can tell the client--whether true or not--that the judge simply did not understand the law, implying that the lawyer is an expert in the field so the judge must be wrong, and therefore a court system that allows judges who don't know the law to decide cases must be unreliable.

There are arguments against judicial specialization, such as risks of myopia, lack of cross-pollinating ideas from learning other fields of the law, having the same judge hearing all cases in the same subjects for too long, and so on. Further, there is the argument that all judges already have a

specialization that goes beyond any single subject area and encompasses all subjects--judging itself.

In light of the number of criminal cases federal judges have on their dockets and non-business statutory or diversity matters they hear having nothing to do with business disputes, there is yet no great outcry against federal judges hearing business cases. It remains to be seen if the specialized business court judges will start taking cases from federal courts because they pose a lower risk of unpredictable results. If an out-of-state business is sued in one of the business courts, it can remove to federal court. A study on removal, or the lack thereof, in these circumstances would prove useful, as would a study on out-of-state businesses as business court plaintiffs. There is some anecdotal evidence that contracting parties are including state business courts in choice of venue provisions.

Why Create More Business Courts?

A core of business courts have survived their initial pilot phases and developed roots within their court systems. These programs have garnered respect locally, and sometimes regionally or nationally, for their expertise, efficacy, and internal efficiencies, as well as because of the belief that taking business and commercial cases off of the general docket allows other kinds of cases to move more efficiently as well. Such results have merited, and continue to merit, emulation and consideration by other states.

This is not simply a "you've got one so I better get one" attitude, or a competition over which state can have the best court system *qua* court system. However, competitive implications between cities and states are undeniable. The business court becomes a means to give businesses and their lawyers confidence that business and commercial disputes will be decided with informed and deliberate reasoning. This adds a component of stability to a state, region, or city that wants to keep or attract businesses. If a city or state has such a court, and its neighbor does not, that neighboring city or state may come to sense a potential disadvantage. The concentration of business courts along the East Coast may be explained, in some part, by this potential for competitive disadvantage.

Still, not every state court system has adopted a business court when presented with the possibility. In New Jersey, which has had business court pilot programs in Bergen and Essex Counties for over 10 years, the Supreme Court rejected legislative efforts to create a commercial division within the state trial court. Oklahoma's Supreme Court has not acted on 2003 legislative authorization to create business courts in Oklahoma City and Tulsa, though it has not rejected that concept either. In Colorado, the projected case numbers did not justify a business court, and in Milwaukee, an unusually streamlined business case set of procedures was not utilized by the local bar. Michigan's legislative authorization for a "Cyber Court" was quickly passed, but that program was never funded. As stated above, California chose a complex case management model over any form of business court model, as have Connecticut and Arizona, though there are arguments that such programs need not be mutually exclusive. *See Mitchell L. Bach and Lee Applebaum, A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 BUS. LAW. 147, 204-06 (2004). In all of these circumstances, however, the effort to create a business court has evoked considerable thought, attention, and even soul searching in some instances.

The Experiment Continues

One consistent argument for business courts is that they may assist the rest of the court system in a number of ways. Business and commercial cases, whether procedurally complex or not, are removed from the general docket, which should improve case flow for other areas of litigation.

Further, the business courts may become laboratories for innovations that can be used systemwide. There is clear evidence in New York, where the Commercial Division has been such a "laboratory" in

the words of business court pioneer Robert L. Haig, and some of its innovations have been recommended for general use in the New York Supreme Court's Trial Division. A visit to the North Carolina Business Court's Web site, www.ncbusinesscourt.net, shows cutting-edge uses of technology on the Internet and in the courtroom that could provide general models. And, back to the source, the Court of Chancery's "mediation only" jurisdiction provides a model that other trial courts may consider.

There is also a potential for interesting synergies as individual business courts reach beyond their borders. The American College of Business Court Judges' national membership includes judges from numerous business and complex litigation courts, who meet at least once a year. Opinions are issuing from a number of business courts which are readily available online nationally. These are just becoming the subject of legal scholarship, initially with the University of Maryland's *Journal of Business and Technology Law*. More obviously, and most significantly, some business court judges' decisions are having regional or national impact beyond the city or county in which they sit.

In sum, the growth of business courts has been and remains a dynamic process, both within the existing business courts themselves and in relation to other courts and communities.

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The History of Delaware's Business Courts

Their Rise to Preeminence

By Donald F. Parsons Jr. and Joseph R. Slights III

Today, an increasing number of states have a business court or judges assigned only to business disputes. Most of these courts were created in the past 15 years. For example, during this period Pennsylvania established a Complex Litigation Center in Philadelphia and later a Commerce Program; the Illinois Circuit Court in Cook County began assigning judges to hear only commercial cases; New York created a division of the New York State Supreme Court devoted solely to commercial litigation; Wisconsin began a pilot program in Milwaukee County and appointed two judges to a special business court; and North Carolina established a business court with judges in Greensboro, Charlotte, and Raleigh, who preside over complex corporate and commercial law cases. A few more states join this list each year.

Delaware houses the nation's oldest business court--the Delaware Court of Chancery established in 1792. The Court of Chancery has broad jurisdiction over disputes involving the internal affairs of Delaware business entities. Otherwise, its jurisdiction is generally limited to traditional equity jurisdiction. Consequently, some complex commercial disputes fall outside its purview. The Delaware Superior Court handles most of those cases, which include, for example, contract disputes where only legal remedies, such as money damages, are sought.

The Delaware Court of Chancery

In its more than 200 years, the Court of Chancery has become the forum of choice for determining disputes that involve the internal affairs of corporations and other business entities. It has developed a respected body of case law interpreting the Delaware General Corporation Law and earned a worldwide reputation for fairness, experience, and expertise in presiding over corporate disputes.

Until 1792, Delaware's Court of Common Pleas had jurisdiction over both common law and equity matters. The Delaware Constitution of 1792 divested the Court of Common Pleas of its equity jurisdiction and established a Court of Chancery and the position of chancellor to exercise that jurisdiction. By the late 1800s, most other states had consolidated their equity and law jurisdictions and moved away from having a separate equity court.

During its early years, the Court of Chancery primarily exercised equity jurisdiction and provided relief that was not available in a court of law. Most of the early volumes of the Court of Chancery reporters do not deal with corporation law issues but instead involve decisions condemning property and ordering parties to perform certain obligations or to stop doing certain things.

By the early twentieth century, however, Delaware began to emerge as the preferred forum for incorporation of the nation's businesses. In 1897, Delaware adopted a new constitution, permitting incorporation under general law instead of by special legislative mandate. Under this provision, Delaware enacted a general corporation law in 1899 calling for perpetual corporate existence and general powers. Before then, most of the country's large corporations incorporated in New Jersey. In

fact, Delaware modeled its 1899 General Corporation Law largely after the relatively liberal statute New Jersey had at that time.

After the Delaware legislature's adoption of the General Corporation Law, the Court of Chancery began to render decisions dealing with corporation law issues. Because the Court of Chancery does not have jury trials, explained Lewis S. Black, a Wilmington attorney and author of numerous books and articles on corporation and securities law, the judges were called upon to write opinions explaining their reasoning and a body of law began to develop.

New Jersey remained the leading state for incorporation until 1913, when under the leadership of New Jersey Governor Woodrow Wilson, it passed antitrust and other laws inhospitable to corporations. These new laws outlawed attempts to create monopolies or suppress competition and forbade the chartering of any new holding companies. The number of corporations incorporated in New Jersey declined precipitously. Delaware, with its newly adopted General Corporation Law, stood ready to serve as the state of incorporation for the many companies fleeing New Jersey. The Court of Chancery provided an able forum in which to adjudicate and resolve internal corporate controversies.

The chancellor remained the sole judge of the Court of Chancery under the constitution of 1897. He was appointed by the governor and served a 12-year term. In 1939, the Delaware legislature created the position of vice chancellor, to be appointed by the chancellor and to serve much like a magistrate or master. In 1949, the Delaware Constitution provided for the office of vice chancellor as a judge, with nomination by the governor and confirmation by the senate, and a 12-year term. In 1951, the legislature amended the constitution again and created a three-member supreme court with appellate jurisdiction in certain criminal and civil matters, including final judgments and other orders of the Court of Chancery.

Today, the Court of Chancery consists of the chancellor and four vice chancellors. Since 2006, the court also has had two masters, who are comparable to magistrates and hear guardianship cases, real property disputes among individuals, and trust administration cases, thereby enabling the Chancery judges to spend more time on corporate and commercial disputes. With more than 60 percent of the nation's Fortune 500 companies incorporated in Delaware, the Court of Chancery, on average, receives and disposes of 800 to 1,000 civil actions a year, with the vast majority involving business disputes.

A number of features make the Court of Chancery unique. First, the court does not have jury trials, only bench trials. Litigating parties can expect one judge to handle their case from start to finish and, in most instances, to provide a well-reasoned written opinion. Second, the Court of Chancery's equity jurisdiction gives it the distinct ability to create special remedies, beyond money damages, to redress breaches of duty. Although the court generally does not have jurisdiction over matters for which there is an adequate remedy at law, the "clean-up doctrine" gives the court discretionary jurisdiction over legal claims that are joined with other claims within its jurisdiction.

The Delaware legislature expanded the Court of Chancery's jurisdiction in 2003 to include adjudication of technology disputes that arise out of agreements involving at least one Delaware business entity, even if they concern solely claims for damages. The synopsis of the bill enacting this and another statute discussed below, authorizing a separate "mediation only" docket, explained that the legislature intended to provide "additional benefits for businesses choosing to domicile in Delaware" and to "keep Delaware ahead of the curve in meeting the evolving needs of businesses, thus strengthening the ability of the state to convince such businesses to incorporate and locate operations" in Delaware.

The second part of the 2003 legislation authorized the Court of Chancery to create a special mediation-only docket that allows parties to mediate their business disputes before a judicial officer of the court, rather than litigate them. Qualifying business disputes include complex corporate and commercial disputes, as well as certain technology disputes. The requirements to invoke the court's confidential mediation-only jurisdiction parallel those to adjudicate technology disputes: at least one of the parties must be a Delaware business entity, the amount in issue must exceed \$1 million, and all parties must consent to the mediation. There is no requirement that any litigation be pending in the Court of Chancery or anywhere else. More than a dozen such cases have been mediated over the past three years, most of them successfully. In addition, the court's voluntary mediation program, established by court rule, allows parties litigating in the Court of Chancery to submit their case for mediation to a judicial officer other than the one assigned to the matter. The success rate in this program exceeds 70 percent. The court has mediated 68 of these cases in the past three to four years, an average of about 20 cases a year.

The Court of Chancery's most notable feature, however, remains its central role in developing an efficient and predictable body of corporation law. Delaware's General Corporation Law is an enabling statute; among other things, it gives directors broad discretion to manage the corporation, subject to fiduciary duty review by the Court of Chancery. As Chancellor William B. Chandler III explained at the International Bar Association's International Mergers and Acquisitions Conference in June 2005, the court views the corporate decision maker as having a dual role of both entrepreneurial risk taker and fiduciary for his principals, the stockholders. That view is reflected in the court's ongoing effort to reach a reasonably efficient and appropriate balance between judicial intervention to protect the rights of shareholders, and judicial restraint to allow boards and officers to pursue corporate interests without meddlesome judicial interference.

The five judges of the Court of Chancery dedicate most of their time to deciding corporate law and alternative entity disputes, which are taken on direct appeal to the state supreme court, also consisting of five judges. The interaction of the Court of Chancery and the Delaware Supreme Court plays an important role in the development of Delaware's corporation law. As Professor Robert B. Thompson of Vanderbilt University Law School explains in 37 CONN. L. REV. 619, 628 (2005), "Piercing the Veil: Is the Common Law the Problem?", "One reason that Delaware fiduciary duty law is both coherent and adaptive in the classic common law tradition is that it is made by an informed group of judges who are repeat players on matters of corporate law." Those judges' "experience, both prior to and after becoming judges, gives them an unmatched expertise in the field of corporate law." This expertise enables both the Court of Chancery and the Delaware Supreme Court to respond in a matter of weeks, if not days, to requests for preliminary injunctive and other equitable relief in connection with challenges to complex mergers and acquisitions and other major corporate transactions.

Furthermore, as most recently noted in 2007 by Vice Chancellor Leo E. Strine Jr. in litigation involving the Topps Company, Delaware has an important policy interest in having its courts speak first on emerging issues of Delaware corporate law, such as going-private transactions and options backdating, creating a jurisprudence upon which directors and stockholders may rely with confidence. The members of the Court of Chancery and the Delaware Supreme Court regularly interact with academics, shareholder groups, corporate directors, mergers and acquisitions lawyers, and corporate litigants around the country to keep current on the most recent business developments. These interactions provide valuable insights on the fast-moving business and capital markets, in which the complexity of transactions constantly evolves.

As Chancellor Chandler said in a recent address to the Delaware State Chamber of Commerce, "The

Court of Chancery remains the nation's premier business court by maintaining internal standards of excellence, by working with the Executive and Legislative branches of Delaware government to improve business law itself and its application through the Court, and by interaction with our consumers, corporate owners, decision-makers and the corporate Bar." Like its business clientele, the court continues to focus on providing the best possible judicial product.

The Delaware Superior Court

While the Delaware Court of Chancery is known for its expertise in matters of corporate and business law, the Superior Court of Delaware also has an outstanding reputation in the business community for resolving commercial disputes. The Superior Court has original jurisdiction over civil matters at common law and frequently resolves business disputes where an adequate remedy at law exists. Lawyers who are considering pursuing litigation in Delaware should keep the distinction between equity and law in mind when determining in which Delaware court to bring their claims.

The members of the Delaware judiciary enjoy an atmosphere of respect and collegiality that is essential to maintaining an advantageous forum for corporate and commercial litigation. This collaboration is most evident when cases are transferred between the Court of Chancery and the Superior Court to ensure the appropriate court awards proper relief. For example, in *Candlewood Timber Group, LLC v. Pan Am. Energy, LLC*, 859 A.2d 989 (Del. 2004), the Court of Chancery transferred a case to the Superior Court upon concluding that the plaintiffs' request for specific performance would not adequately remedy the environmental damage that Pan American's oil drilling allegedly caused to Candlewood's property in Argentina. The Superior Court, likewise, will transfer matters to the Court of Chancery if it determines that the parties seek equitable relief or if the claims involve matters relating to the exercise of fiduciary duties. The transition is seamless and allows the state's bifurcated court system to thrive.

The Delaware State Constitution of 1831 established the Superior Court, which held its first session on April 9, 1832. On April 9, 2007, the 19 current statewide judges of the Superior Court held a special session to commemorate the court's one hundred seventy-fifth anniversary.

Also in 2007, for the sixth consecutive year, Delaware ranked first overall in the State Liability Systems Ranking Study of the U.S. Chamber of Commerce Institute for Legal Reform. The study polls national in-house counsel and senior corporate litigators to evaluate the performance of state court systems in creating a fair and reasonable litigation environment. Delaware ranked first in nine of the 12 categories, including its treatment of tort and contract litigation, class action suits, and mass consolidation suits. The study results reflect the business community's confidence in the Superior Court's handling of its complex tort and commercial litigation dockets.

The Superior Court manages a diverse civil docket, including complex commercial litigation matters. In the 1990s, the court decided large-scale commercial cases involving declarations of rights under insurance coverage agreements arising from environmental and mass product liability exposures. These disputes frequently required the judges to interpret complex insurance policies while applying the law of other jurisdictions. More recently, the court has addressed several disputes involving director and officer liability coverage. Of course, the court regularly addresses claims arising from failed business relationships, including related breach of contract and business tort claims. The amounts in controversy in these disputes range from thousands of dollars to several hundred million dollars, at times reaching more than \$1 billion.

The Superior Court continually strives to implement best practices to accommodate large-scale

business litigation. For instance, the court introduced the Complex Litigation Automated Docket (CLAD) in 1991. CLAD was the nation's first electronic docketing and filing system for civil cases. In 2000, the Superior Court was the first court in Delaware to allow parties to file briefs on CD-ROM, and e-filing is now available for all civil actions filed in both Superior Court and the Court of Chancery. In addition, the Delaware judiciary's Web site receives more than 2 million hits each month and provides valuable resources to attorneys and their clients, including forms, pattern jury instructions, and case management protocols. Between 2001 and 2006, more than 350 Superior Court civil decisions were made available on the Web site (without cost) each year. The Superior Court Web site also hosts a listserv that accommodates more than 1,700 subscribers and transmits updates regarding recent decisions, rules changes, and case management protocols as they are issued.

The court has experienced great success with alternative dispute resolution (ADR). ADR is mandatory in cases where the amount in controversy is less than \$100,000, and in other cases designated for mandatory ADR by the court. The Superior Court uses three forms of ADR: arbitration, mediation, and neutral case assessment. The court educates and trains local counsel to serve as mediators in ADR proceedings. It also has five commissioners appointed by the governor who, among other duties, resolve eligible disputes through appropriate ADR techniques. Superior Court judges also will serve as ADR practitioners when asked by colleagues.

The Superior Court is proud of its record for providing a sophisticated, convenient, and efficient forum for businesses to resolve their disputes. In the last five years, the average time from complaint to trial disposition in civil cases filed in Superior Court was approximately 28 months. The court also recognizes that full-blown, jury trial litigation is not always the most efficient or preferred means by which to resolve a controversy. With the expense and inherent inefficiencies of commercial litigation in mind, the court has developed "summary proceeding rules" that provide for expedited and streamlined discovery, motion practice, and trials for commercial disputes when the parties agree that a more direct approach to adversarial dispute resolution is appropriate and desirable. The President Judge of the Superior Court has appointed six Superior Court judges to the Summary Proceedings for Commercial Disputes Panel, all of whom stand ready to manage these cases through expedited discovery, motion practice, ADR, and trial if necessary. This unique approach to dispute resolution is intended to mirror the Court of Chancery environment by providing learned judges who will facilitate expeditious resolutions of commercial disputes.

Mindful that business litigation requires special attention, the court continues to explore new avenues to accommodate business litigants. Its recently formed Complex Business Litigation Committee, comprised of Delaware's most experienced commercial litigators, is examining the possibility of a separate business court or business docket within the Superior Court. The business court would provide a forum for businesses to litigate disputes for which a legal remedy is adequate and no other basis for jurisdiction in the Court of Chancery exists. The Committee's findings and recommendations are anticipated within the next year. In addition, the court's Civil Rules Advisory Committee currently is evaluating proposed amendments to the Superior Court rules of civil procedure, specifically regarding the use of e-discovery. A report was due by the end of 2007, and the Superior Court is expected to implement any appropriate rule changes soon thereafter.

Conclusion

Both the Delaware Court of Chancery and Superior Court demonstrate a commitment to excellence in adjudication of business disputes that attracts litigants from around the country, including the nation's leading corporations. Delaware is the forum of choice for resolving complex business and commercial issues, in part, because the judiciary focuses so actively on fairness, efficiency, and expertise in

corporate law and related business matters. As a result, businesses that choose to incorporate in Delaware enjoy the benefit of a reliable and consistent body of law on which they can rely when conducting their business affairs.

Delaware welcomes the trend among other states to create a business court system similar to its Court of Chancery. As Wilmington attorney Black noted, however, Delaware's system is not easily emulated. "There are elements unique to Delaware that would be very hard to replicate, particularly in big states," he says. Delaware benefits from having a unique combination of an enabling corporation statute, a legislature that keeps the statute up to date and that has developed a long and trusting relationship with the corporate bar, and judges who come from among the best and brightest attorneys in the state, he says. "Any state that can do something close will have done something quite good for itself."

Keys to Success of Delaware's Business Courts

The Court of Chancery is known for:

- No jury trials or punitive damages.
- Frequently handling cases on an expedited basis.
- Extensive and well-developed body of corporate law.
- Well-researched opinions by one of five judges, each of whose docket consists predominantly of business cases.
- Single level of appellate review by Delaware Supreme Court.

Together with the Delaware Supreme Court Justices, the Chancellors benefit from:

- Experience, both before and after becoming judges, that gives them an unmatched expertise in corporate law.
- Regular interactions with shareholder groups, corporate directors, deal lawyers, litigants, and academics regarding important developments in business law.

The Superior Court is known for:

- Introducing the nation's first electronic docketing and filing system for civil cases in 1991.
- Great success with alternative dispute resolution.
- Development of summary proceedings rules, available upon the consent of all parties, for expedited and streamlined discovery, motion practice, and trials for commercial disputes.

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Mississippi Secretary of State
BUSINESS COURT STUDY GROUPS
SUB-COMMITTEES
Discussion Issues

- **Judicial Selection – Joey Diaz, Chair**

- Whether judges should be appointed or elected
- Qualifications and criteria for judges
- Appointment and approval/confirmation process or election process
- Does MS constitution allow for appointed BC judges?
- Process to remove judges for performance issues or other reasons

- **Jurisdiction – James Holland, Chair**

- Types of Cases eligible for the Business Court
 - Types of cases to be excluded from Business Court
- Whether Business Court will have exclusive jurisdiction over any cases or all concurrent jurisdiction
- Mechanisms to assign or remove case to business court
- Whether case can be assigned to business court if one of the parties does not agree to it
- Whether to accept transfers
- Gate-keeping measures
 - Minimum amount in controversy
 - Judge or other person to have discretion to accept case into business court
- Appeals from BC, expedited appeals process
- Whether appeals from State Tax Commission should go directly to Business Court
- Venue

- **Procedure and Technology – Amanda Jones, Chair**

- Should Court be established by statute or judicial order
- Should program be started as a pilot program initially?
- Should an existing court system be used and create special docket
- Or should a new separate court be established
- Features
 - Electronic filing
 - Fast tracks that limit discovery
 - Preservation of right to jury trial or not
 - Written opinions
 - Use of technology in and out of courtroom

- **Funding/Fees – Blake Wilson, Chair**

- Funding of Business Court
 - Potential allocation of existing funds
 - Special filing fees
 - Special appropriations
- “Loser Pays” Concept