

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

The second meeting of the Business Courts Study Group was called to order on Wednesday, June 11, 2008 at 11:00 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present is attached at Exhibit A.

Secretary of State Delbert Hosemann welcomed the group and stated he has been across the state speaking about the progress of the meetings. He remarked the process was going well.

Cheryn Baker, Assistant Secretary of State, Policy and Research Division, asked for everyone to introduce themselves. Baker then reported that Judge Pittman, Study Group Chair, would not be attending the meeting and that he had appointed James Holland to serve as the acting chair for the meeting.

Approval of Minutes.

James Holland noted that a draft of the minutes from the May 20 meeting had been distributed and a member had a revision which has been made. He then asked if there were any questions or other additions to the minutes. There were none. He then asked for a motion to adopt the minutes as set forth in Exhibit B. The motion was made, seconded, and passed unanimously.

Discussion of Need for Consensus to Further Study Business Court.

Chairman Holland next indicated that the group should discuss and decide as a threshold issue whether it is a good idea to pursue the proposal of creating a business court in Mississippi. Specifically, he asked the group for their comments on the following questions:

1. Whether the members see the benefit in a business court system;
2. What are the concerns about business courts;
3. What the hopes are for the business courts; and
4. What are some problems that might be encountered in business or in practice that may be caused or aided by the business courts?

Members of the group discussed the above questions. Their comments were:

- Lex Taylor commented that it was his understanding from the first meeting that that there was not a tremendous cost to the state or a tremendous need to reallocate resources of the existing court system to develop a business court. Chairman Holland responded that the panelists from the first meeting did state that the cheapest way to create a business court was to reallocate judges and resources from the existing system, but the group will be able to make their own decision as to what works best for Mississippi.
- Ron Peresich stated that a business court would take the lengthy major business cases out of the court system and clear up the rest of the docket. Furthermore, he expressed that it would have judges that are experienced in more sophisticated business issues.

- Chairman Holland mentioned the length of time that business litigation is taking and in turn the effect of the cost of the litigation. He also noted the attraction that a business court will give the state to businesses.
- Blake Wilson, stated that it was great that we had all the talent (of the panelists) on the phone in the previous meeting. He then mentioned how Secretary Hosemann wanted to think “outside the box” in developing business courts. Wilson explained that the chancery court in Delaware is not an appendage to another entity, it is its own entity. There maybe an opportunity for Mississippi to follow a small states' lead like Delaware rather than a large state’s lead.
- James Mozingo asked if the group had the statistical data from the Administrative Office of Courts regarding the types and numbers of filings and have we narrowed down what the jurisdictional amount in controversy would be for this court?

Chairman Holland referenced the data and graphs on statistics in the meeting’s packets, but what was not available was the length of time that a certain type of case takes compared to another case type. He commented that the Jurisdiction Sub-Committee will need to discuss and decide the cases to include and exclude.

With no further comments from the group, Chairman Holland stated that everyone in the group needed to be involved in and have ownership in the process. He also stated that there needs to be one voice when it goes to the legislature. He noted that the committee was made up of business leaders, labor leaders, lawyers on both sides of the fence, and state employees.

Request for Vote on Study of Business Court.

Next, the Chairman asked for a vote from the Group with respect to the following:

1. Does the Group agree that a business court is a good idea? and
2. Does the Group agree to pursue this idea further with more study and investigation?

The Chairman asked for any comments, ideas, or reservations about this vote.

- Mr. Mozingo commented that he did not think he could vote for the creation of a business court until he knows where it is going. There are some things he likes, but also some things he does not like.

Chairman Holland responded that the vote is on whether the group agrees to move forward to research and investigate the issues relating to a business court system.

Chairman Holland asked if anyone else had any comments about the vote. There were none.

Motion to Vote on Study of Business Court Adopted.

A motion was made for a vote on items as set forth above. There was a second and the motion carried unanimously.

Introduction of Issues by Sub-Committee Chairs.

Judicial Selection. Chairman Holland then called upon the Sub-Committee Chairs to discuss their issues. Chairman Joey Diaz, Judicial Selection, stated that the hot issue is whether a judge should be appointed or be elected. When Diaz polled people about whether they favor the election or appointment of judges, he found that people were divided on the issue. He stated he suspects that the judicial selection for the business courts will probably be one of the most controversial issues that the study group will address and he is looking forward to hearing from the committee members.

Chairman Holland then asked if anyone had questions about the judicial selection process. There followed a discussion about how judges would be selected, and how that selection process would take shape based on other aspects of the business court. Chairman Diaz commented that there will be a selection process, dependent on whether there is a state-wide court with no regions and no selection of venue or jurisdictions or a court created on a local level out of a chancery or circuit court.

Assistant Secretary Baker further explained that business courts in other states select judges various ways. She noted that some jurisdictions appoint or elect judges new judges and some jurisdictions select the business court judges from an existing pool of (elected or appointed) judges.

Kelley Williams commented that the panel said that one of the reasons this was simple and cost-effective is we are not talking about new judges but instead using existing judges for this court. Assistant Secretary Baker responded that the panel from the previous meeting did suggest using existing judges, but there were other ways to select judges and it will be up to the group to recommend how judges will be selected in Mississippi.

Secretary Hosemann stated he has talked to some circuit court judges and most of them do not come from the business side. The Secretary explained that few judges want to be removed from their jurisdictions and be assigned to the business court. Secretary Hosemann explained that he did not know if we would be able to select judges out of a pool. Also, many judges did not want to take on business cases as part of a business court.

Mr. Mozingo asked about the feasibility of using the special master system as opposed to a full business court system. Chairman Diaz commented that his understanding was that the goal of the group was to consider a new system and determine new ideas.

A member stated that an appointment process would be most efficient because judicial selection cost could be eliminated by removing the electoral process from the program.

Committee member, Glenda Glover, then stated that if judges are appointed that there should be fairness across the board and that the judges should represent each aspect of society.

Chairman Holland stated that in the appointment process the appointment should be made by someone who is fair and not just because the person is convenient.

Jurisdiction. Chairman Holland referred the group to the information packet which contained jurisdictional issues for the committee to address. The Chairman asked that the sub-committee use the information in the packets to make decisions about the types of cases and jurisdictional amounts that would be established for the business courts.

Chairman Holland noted there would be some controversy in determining the court's jurisdiction. He further commented that the group, being made up of experienced lawyers and experienced business people, should think about the types of cases that could be brought against them that the court should handle.

A committee member asked about business cases that include both business type claims (anti-trust) and consumer type claims. Chairman Holland responded that it needs to be determined whether the judges would have the ability to transfer the claim from their court to a business court. Also, would a party's counsel be able to object to the case being transferred to the business court? The basic problem is that many business cases involve multiple issues and usually only a few of the issues would be proper for the business court.

Secretary Hosemann then stated he asked the Nevada Secretary of State what they would have done different in the Nevada business court. The biggest mistake was making the jurisdiction voluntary instead of mandatory. He explained, "This is the main reason the Nevada court started off slowly. The case load has built up now because the attorneys have built up confidence in the judges, the opinions are being given faster, and complicated issues are being dealt with faster."

Procedure and Technology . Amanda Jones followed with her presentation on her sub-committee. Chairman Jones discussed whether the business court should be established by statute or judicial order. She then discussed the idea of using a pilot program to see how the court worked and allow it time to "iron out the kinks."

Jones also discussed issues that the group would cover, including fast tracks to limit discovery, electronic filing, jury trials, written opinions and technology in the courtroom. She asked whether the right to a jury trial should be preserved and will assigning a case to business court compromise that right. She continued that Mississippi does not have a very developed body of law on business issues and it would be nice to have more written opinions on business issues.

Funding and Filing Fees. Next Blake Wilson discussed funding issues. Chairman Wilson stated he wanted to look at Nevada and North Carolina because they have proven to be "outside the box" thinkers in what they have done. Wilson added that Delaware was very successful by adapting a model from South Dakota to create an out-of-the-box approach. The Chairman indicated that there is potential to consider increased fee collection. He asked the Secretary if the group could consider franchise fees or should it just stick with the court fees.

Secretary Hosemann responded that he hoped that the group would stick within the court. He stated that the Secretary's office has been looking into revising the fees electronic and paper filings. He believes the fees should be reviewed separately because there will probably be a different budget for this court.

Wilson then introduced the idea of using a "loser pay" system, to fund the court. Chairman Diaz interjected that this is a hot topic and it should be taken off the table because it will bring out

opposition. Diaz continued that such a system is a dangerous because it prohibits people from the court system and it would not be fair to small businesses.

Scheduling of Sub-Committee Meeting Dates and Reminder of Upcoming Meetings.

The Sub-Committee Chairs decided to schedule and hold their respective meetings prior to the next full group meeting date (July 9th). Chairman Holland requested reports from each sub-committee for the next meeting. The Vice Chairs will coordinate with each other so that information can be passed among different sub-committees.

It was suggested and agreed that before the sub-committees meet, each member send an email to the Chairman (and sub-committee chairs) about topics that should be addressed and opinions about how those issues should be addressed.

Assistant Secretary Baker reminded the group of the meetings scheduled and that the final report should be finished the week of September eighth.

Other Business.

Chairman Holland asked the group if there was any information that the Division could provide to help with the decision making process. The group discussed whether anyone could compile a list of judges who would be qualified to be business court judges. Chairman Diaz stated that the group is getting ahead of itself. He does believe that there are sitting judges who are qualified to act as business court judges, but it will be a difficult process to locate them. Kelley Williams clarified that it would be helpful to know as a starting point the judges who were available to serve without impeding the rest of the court system.

Secretary Hosemann replied that he would ask Chief Justice Smith and the Supreme Court regarding the viability of selecting judges to act as business court judges. The Secretary then stated that his office would break down the case statistics presented by code section. Chairman Holland then summarized that the committee voted as a group to pursue the idea of creating a business court, to work diligently, and to present sub-committee findings and reports to the entire group at the next meeting. He then asked if there was any other business to be considered.

With none, Secretary Hosemann adjourned the meeting at 12:30 P.M. by commenting, “you are launching a new ship here and I thought the discussion today was indicative to where we are going. There will be healthy agreements and disagreements in a common focus to make this a better state. I am excited about the possibilities.”

Respectfully submitted,

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A
to the Minutes of Business Courts Committee Meeting 1

Attending:

Cathy Beeding
Henry Chatham, Jr.
Joey Diaz
Larry Edwards
Glenda Glover
J. Grantham, Jr.
Joel Hill
James Holland
Amanda Jones
Leslie Lampton, III
David Landrum
John Laws
David Mockbee
James Mozingo
Ron Peresich
Tom Rhoden
William Taylor
Dan Waring
Kevin Watson
Kelley Williams
Blake Wilson

By telephone:

Dodds Dehmer
Kristina Johnson
Joy Phillips
Robert Tatum

Secretary of State Personnel Attending:

Delbert Hosemann, Secretary of State
Cheryn Baker, Assistant Secretary of State, Policy and Research
Cory Wilson, Chief of Staff
Pamela Weaver, Communications Director
Phillips Strickland, Division Coordinator
Brian Bledsoe, Intern
Jeff Lee, Intern