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MS Bar Annual Meeting of Business Law and Health Law Sections
Business Courts Roundtable Discussion
July 17, 2008

**Executive Summary of Business Courts/Complex Litigation Courts/Specialized Dockets by
State or Local Jurisdiction**

Prepared by MS Secretary of State
Division of Policy and Research

- Operating in approximately 18 states and counties, and increasing
- Copy of full survey and executive summary on SOS website
- They help to alleviate the overcrowded dockets and help expedite cases involving business and corporate litigation
- Common themes include:
 - Specialized forum to handle business-related cases
 - 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
 - Mechanisms to fast-track case
 - Use of written opinions. 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.
- Business Courts are quickly becoming important judicial fixtures in many states or counties across the country.
- Reaction to these courts has been overwhelmingly positive
- Most jurisdictions have created a specialized docket within an existing court either for business case designations or for complex litigation cases
 - **Business cases docket route:** Boston, Massachusetts; Cook County (Chicago), Illinois; Fulton County (Atlanta), Georgia; Maine; Maryland; Las Vegas, Nevada; Reno, Nevada; New York; Orlando, Florida; Miami, Florida; Tampa, Florida; Oregon (2nd Judicial District); Philadelphia, Pennsylvania; North Carolina, South Carolina and Rhode Island
 - Includes simple business disputes as well as complex business litigation

- Depends on the jurisdictional limitations placed on the docket by the court rules or statutes under which the court is established
 - **Complex civil litigation courts or dockets:** Arizona; California; Connecticut (four counties); Broward County, FL; and Allegheny County (Pittsburgh), PA
 - Have “concurrent jurisdiction over complex civil cases.”
 - Don’t hear simple (non-complex) business disputes
- **Judicial Selection.** They are mostly 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 elected, 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
 - New York directly elects business court judges
- Term Length and the criteria used in selecting judges vary. Some states have no criteria.
- Judge Ben Tennille, the Special Superior Court Judge for the Greensboro, NC Business Court, recently stated that the most important qualification is not business experience, but rather a hardworking mentality and the ability to handle complex and paper intensive cases. He suggested that the business experience can be gained “on the job” through serving on the business court bench
- **Funding.** Most business courts require no additional funds other than the judiciary’s 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.
- **Filing Fees.** Filing fees are generally the same as for regular courts
 - NC charges a \$200 removal fee, which is deposited into the general fund
 - No jurisdictions currently use special or increased filing fees for business court cases as a means to fund the business court itself
- **Jurisdiction.** Some Business courts have concurrent jurisdiction over selected types of business cases. There are several methods:

1. Either party can file a motion to have the case transferred to the business court/docket
 2. 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.
 3. Chief Justice of Supreme Court decides which cases are appropriate for the business court
 4. Group of judges decide together what cases will be assigned to the business court.
 5. 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
 6. Civil court judge can also file for transfer of a case that has been assigned to him from civil court to the business court
- Many business courts have mandatory jurisdiction
 - 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
 - Phil 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 judge's discretion
 - The minimum amount in controversy requirement, which is generally established by a court rule, varies greatly from one jurisdiction to another
 - Some do not require a minimum amount in controversy
 - Some have adjusted this as a gate-keeping measure to better manage the caseload and to prevent the overcrowding of the business court docket
 - **Cases Heard in Business Courts.** The types of cases that can be heard in the various business courts vary.
 - Included:
 - Generally, business courts will hear: business torts, breach of contract or fiduciary duty, securities, fraud, unfair competition, antitrust, and U.C.C. actions
 - Technology-type disputes heard in MD and NC
 - Real estate disputes included in Cook County, DE and Maine
 - Business entity laws disputes included if those states have adopted those uniform acts or something similar
 - Intellectual property disputes included in ME, NC, Orlando, Phil
 - Business/Commercial insurance disputes included in NY, Orlando, Phil
 - Debt collection cases such as UCC actions are included in Cook County, Maine, Nevada, NY, Orlando, SC
 - Excluded:
 - Medical malpractice cases are usually excluded
 - NY excludes cases involving individual cooperative or condominium housing units and actions for rent only

- Unfair competition, NC does not allow claims based solely on
 - Personal injury and product liability claims excluded in Orlando and Phil.
 - 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 Phil. 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.

- **Fast-Track Discovery Mechanisms**
 - Usually a case management conference at the beginning of each case to decide the time-line of events such as discovery
 - Maine limits the number of interrogatories, production of documents, requests for admissions, and notices of deposition in case
 - NY 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
 - Phil. has 3 case-tracking assignments: expedited (13 months), standard (18 months), and complex (24 months)

- **Use of Cutting-edge technology in and out of the courtroom**
 - Several business courts have advanced technological courtrooms
 - NC 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.
 - Orlando 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. Also have videoconferencing capabilities for remote witnesses.